at&t

Frank S. Simone
Executive Director-
Federal Regulatory

AT&T Services Inc.
1120 20th Street, NW
Suite 1000
Washington, DC 20036

T: 202.457.2321
F: 832.213.0282

August 28, 2007

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D. C. 20554

Re: *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593; *Petitions of AT&T Inc. and BellSouth Corporation Under 47 U.S.C. § 160(c) for Forbearance from Title II and Computer Inquiry Rules with Respect to Broadband Services*, WC Docket No. 06-125

Dear Ms. Dortch:

On August 27, 2007, Robert Quinn, Senior Vice President, Federal Regulatory and the undersigned, on behalf of AT&T, met with John Hunter, Legal Advisor to Commissioner Robert McDowell, and discussed the attached presentation summarizing AT&T's supplemental comments in the Commission's special access proceeding.

In addition, we discussed the Wireline Competition Bureau's recent request for market data to enable a local market analysis for the services identified in AT&T's broadband services forbearance petition. We emphasized that Commission precedent, affirmed by the courts, firmly establishes that broadband marketplace conditions should be evaluated from a national perspective and that the Commission should continue to do so in the instant proceeding.

This filing is made electronically in accordance with section 1.1206 of the Commission's rules. Please do not hesitate to contact me if you have any questions.

Sincerely,

cc: J. Hunter

Presentation of AT&T Inc.

Special Access Proceeding
WC Docket No. 05-25, RM- 10593

August 28, 2007

at&t

GUIDING PRINCIPLES

- "In the absence of market failure, I favor a market-based pro-competitive solution to the challenges raised in this proceeding over a prescriptive regulatory approach."

- The Commission should not "rush[] to regulate without thinking though possible unintended consequences."

[Statement of Commissioner McDowell, 700 MHz Auction Proceeding]

BY ANY REASONABLE MEASURE THE SPECIAL ACCESS MARKET IS THRIVING

ENTRENCHED AND INTENSIFYING INTRAMODAL COMPETITION

+

THE NOW INTENSE INTERMODAL COMPETITION FROM WIRELESS AND CABLE

=

LOWER PRICES AND MORE CHOICES EVERYWHERE

INTRAMODAL COMPETITION IS ENTRENCHED AND INTENSIFYING

- Record Evidence Is Overwhelming
  - Dozens of CLEC Competitors
  - CLEC fiber networks blanket the commercial areas where special access demand is concentrated.
  - Commercial buildings that account for more than half of AT&T's DS1 and DS3 demand are already connected to or very near existing CLEC fiber.

- Record Evidence Confirmed by Public Reports
  - On a scale of 1 to 10, "the degree of [CLEC] competition is expected to be a 9." [Frost and Sullivan (2007)]
  - Time Warner Telecom is now reported to be the third largest provider of Ethernet services with 13.7% market share, only slightly behind AT&T (19.5%) and Verizon (15.8%), and ahead of Qwest (8.4%). Time Warner states that its "primary objective" is to be a "leading provider" of business services, and already serves more than a quarter of its buildings using its own facilities.
  - XO, with service in more than 60 metropolitan markets, "guarantees . . . large enterprise and wholesale customer[s]" that it will "beat valid competing offers of comparable high-capacity network services."
  - Level 3 now has more than 25,000 route miles of competitive fiber and more than 6,500 building connections.

WIRELESS & CABLE PROVIDERS PROVIDE INTERMODAL ALTERNATIVES OUTSIDE (AND INSIDE) COMMERCIAL AREAS

- Wireless Is Now Established and Growing.
  - It can be deployed virtually *anywhere* in days, rather than the weeks or months required by wireline providers.
  - Third party reports indicate that about 20% of mobile base stations in the U.S. are backhauled via wireless technologies today, and that number is expected to double in the next five years.
  - Sprint will use FiberTower for DS1 and DS3 circuits for its 4G/WiMax upgrades in at least 7 markets and Sprint states that Sprint "look[s] forward to dramatically expanding this relationship [with FiberTower] going forward."
- Cable Is Established And Growing
  - Cable already has fiber and coaxial networks in commercial and residential areas, and is targeting backhaul and the small and medium businesses located outside commercial centers.
  - Cablevision reports "more fiber in" NY, NJ, and CT "than any phone company" and that it has "identified over 600,000 business inside [its] footprint that [it] pass[es] with cable that were serviceable today [using plant originally deployed for residential service]."
  - Time Warner Cable already has thousands of fiber connected buildings; it increased the number of fiber connected buildings by 25% last year.
  - Comcast is targeting backhaul and small and medium businesses and that it is deploying "fiber deep into where customers are present, either in the residential side or along where commercial businesses are."
  - Cox provides service to more than 180,000 business customers.
- Growing demand for backhaul capacity has further spurred investment everywhere by wireless, cable and incumbents.
- AT&T, Verizon, and others report purchasing significant numbers of DS1 and DS3 circuits from wireless and cable providers.
- AT&T customers and potential customers have told AT&T they can substitute AT&T's special access services with fixed wireless and cable services, and many have done so.

SPECIAL ACCESS MARKET IS WORKING

- LOWER PRICES
  - The amount customers actually pay for both DS1 and DS3 special access circuits has consistently declined since 2001.

- MORE CHOICES
  - There are numerous inter- and intra-modal competitors.
  - There are hundreds of plans with discounts and other terms designed to meet customers' specific needs.

- MARKETS THAT RELY ON SPECIAL ACCESS ARE THRIVING
  - Wireless: "Just last fall . . . all five [Commissioners] concluded that it was healthy, open and competitive." "[W]ireless subscriber growth has grown exponentially and competition among numerous providers has flourished." [Statement of Commissioner McDowell, 700 MHz Auction Proceeding]
  - Enterprise Services: Retail competition for enterprise customers is "strong" and will remain so "because medium and large enterprise customers are sophisticated, high volume purchasers of communications services that demand high-capacity communication services, and because there [are] a significant number of carriers competing in the market." [SBC/AT&T Merger Order, ¶ 56.]

at&t

DESIRE FOR LOWER INPUT PRICES IS NOT A FOUNDATION FOR REGULATION

- It is not surprising that some special access purchasers are seeking FCC-mandated price reductions.

- After all, what business wouldn't like government-mandated reductions in the costs of its inputs.

- But that is no basis for re-regulation.

- No Market Failure (as here) = No Basis For Re-regulation.
  [Statement of Commissioner McDowell, 700 MHz Auction Proceeding]

BALD ASSERTIONS OF MARKET FAILURES ARE REFUTED BY THE UNDISPUTED RECORD EVIDENCE

- AT&T and others have identified the small subset of wire centers that account for the vast majority of their demand and have submitted maps that plot known CLEC fiber capable of competitively serving that demand.

- AT&T and others have documented that cable and wireless providers specifically target small and medium business and backhaul customers that purchase DS1 and DS3 services outside the commercial centers where the bulk of special access demand is concentrated.

- AT&T has documented that it already purchases thousands of DS1 and DS3 circuits from wireless and cable providers, and the record establishes that others do so as well. Sprint, for example, reports that in several metropolitan areas, it is relying solely on wireless providers in connection with its 4G/WiMax upgrades.

- AT&T and others have documented that the amount customers actually pay for DS1 and DS3 circuits has consistently fallen since 2001.

BALD ALLEGATIONS OF MARKET FAILURE DO NOT WITHSTAND SCRUTINY

- Proponents of reregulation do not dispute the record evidence submitted by AT&T and others documenting competitive alternatives and price declines.

- Instead proponents of reregulation ask the Commission to *assume* that there is a market failure based on assertions that:
  - ARMIS returns are relevant.
  - Some purchasers of special access rely principally on price cap LECs.
  - Pricing flexibility tariffs "lock in" special access demand.
  - MSA-wide pricing flexibility results in deregulation in areas with few alternatives.

- None of these arguments has merit.

at&t

ARMIS-BASED RETURNS ARE MEANINGLESS

- Since 1990, The Commission Has Recognized That Service-Specific Rates of Return Are "Improper" and "Unnecessary" [LEC Price Cap Order, 5 FCC Rcd. 6786, ¶ 380]

- ARMIS Returns Are Unreliable.
  - Allocation of joint/common costs to specific services is inherently arbitrary.
  - Since 2001, ARMIS allocation factors have been frozen.
  - Freeze was instituted because ARMIS is an "outdated regulatory mechanism" that is "out of step" with the rapidly-evolving marketplace. [2001 Freeze Order, 16 FCC Rcd 11382, ¶ 1.]
  - Consequently, ARMIS greatly understates costs for special access and greatly overstates returns.

- "Trends" In ARMIS-Based Returns Are Not Accurate.
  - So-called "trends merely reflect that special access demand and revenues are rising while the allocated "cost" has remained frozen. The purported "rate of return" inherently increases when revenues are growing faster than assigned "cost" and "investment."

THE RELEVANT ISSUE HERE IS *AVAILABILITY* OF ALTERNATIVES, NOT THE PURCHASING CHOICES MADE BY A PARTICULAR CUSTOMER

- The point is illustrated by Sprint's statement that in 2006 it purchased 98% of its DS1 and DS3 circuits in Chicago from AT&T.
  - Chicago is a hotbed of competitive activity where Sprint has numerous alternatives to AT&T.
  - Indeed, Sprint has its own extensive metro fiber network in Chicago that it uses to self-supply special access.
  - The amount Sprint pays to AT&T for DS1 circuits in Chicago has dramatically fallen since 2005 because of this significant competition.
  - Sprint recently asked for competitive bidding on nearly 1000 cell sites in Chicago for its 4G/WiMax upgrades and in other markets Sprint has already turned to FiberTower and other alternative providers.
  - AT&T, in an attempt to beat the competition, has offered Sprint substantial additional discounts.
  - Thus, if any conclusion can be drawn by Sprint's past purchasing decisions, it is that AT&T offered superior service at a competitive price.

MSA-WIDE RELIEF IS NOT TOO BROAD

- The Commission previously found that "defining geographic areas smaller than MSAs" would "not . . . justify the increased expenses and administrative burdens," Pricing Flexibility Order ¶ 74, and the D.C. Circuit agreed, holding that more granular alternatives would be "less beneficial to consumers."

- Moreover, customers prefer MSA and region-wide contracts for their special access purchases and ILEC special access rates are set across broad regions, not building-by-building or wire center-by-wire center.

- Thus, the real world impact of MSA-wide pricing flexibility is that pricing flexibility contract terms are available even in areas within pricing flexibility MSAs with fewer competitive alternatives.
  - One Of Many Examples (Tariff No. 43 (Los Angeles and San Diego)):
    - DS1 and DS3 Volume Discounts of 24% to 66% on new purchases.
    - Discounts are available everywhere in L.A. and S.D. where AT&T qualifies for pricing flexibility.
    - Eliminating MSA-wide pricing flexibility would make these contract terms unavailable in areas within these MSAs where competition is least developed.

- Further, below cost UNEs are available in areas with fewer alternatives – UNEs are available in more than 95% of AT&T's wire centers – and providers can and do rely on UNEs as special access substitutes.

CRITICISMS OF DISCOUNT PLANS ARE MERITLESS

- Pricing flexibility plans offer volume and term discounts to keep pace with the competition.
- Re-regulation proponents mischaracterize these plans when they say that they must commit to purchasing most of their special access requirements from AT&T to qualify for volume discounts.
- In fact, AT&T's volume-based contracts/tariffs take many forms, and in all cases the *customer* chooses volumes.
  - Example: AT&T FCC Tariff No. 1, Transmittal No. 1056
    - AT&T publishes discounts applied to volume ranges. Customer chooses how many circuits to purchase from AT&T. Customer receives a discount associated with that volume. There is no minimum purchase and no commitment. Discounts are in *addition* to other available discounts.
  - Example: AT&T FCC Tariff No. 43 (for LA and SD, CA)
    - AT&T publishes rates applied to volume ranges. Customer chooses how many circuits to purchase from AT&T. Customer receives a discount associated with that volume. There are *de minimis* minimum volume qualification levels, *e.g.,* 100 DS1 Channel Terms, and 3 DS3 point-to-point circuits, and a modest one year term commitment for DS1s. There are no volume commitments. These are standalone discounted rates with effective discounts of 24%-66%.
  - Proponents of re-regulation focus on MARC (Minimum Annual Revenue Commitment) plans.
    - But even here customers choose how much to purchase from AT&T: customers choose how much they will commit to spend on AT&T's special access services, and customers choose the duration of that commitment.
    - Customers that prefer to not make any commitments are free to choose the plans described above.
    - MARC plans benefit customers and AT&T: (i) customers can lock in large discounts and (ii) AT&T can better plan network configuration.

at&t