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September 11, 2007

EX PARTE VIA ECFS

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

Re: *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 September 11, 2007, AT&T received an inquiry from Commissioner Tate's Legal Advisor, Chris Moore, regarding the above-referenced forbearance petitions.¹ Specifically, Mr. Moore asked AT&T whether the services in its petitions qualify as interstate interexchange services or as interstate exchange access services. He also asked how granting relief only for interstate interexchange services would affect the overall relief requested by AT&T. This letter responds to Mr. Moore's questions.

In its petitions, AT&T requested forbearance from Title II common carrier regulation and the *Computer Inquiry* rules to the extent they apply to two categories of broadband services (i.e., services capable of transmitting 200 kbps or greater in each direction) that it identified in the petitions: (1) packet-switched services, including but not limited to Frame Relay, ATM and Ethernet services; and (2) non-TDM-based optical networking, hubbing and transmission services provided at OCn speeds, including but not limited to SONET, Wave Division Multiplexing and Dense Wave Division Multiplexing services.² The petitions specifically excluded traditional TDM-based DS-1 and DS-3 special access services.

¹ AT&T Inc. filed a petition for forbearance in this proceeding on July 13, 2006; BellSouth Corporation filed a similar petition for forbearance on July 20, 2006. Subsequently, AT&T Inc. and BellSouth Corporation merged. This letter supports both AT&T Inc.'s and BellSouth Corporation's petitions.

² AT&T Petition at 8-9; BellSouth Petition at 7-8. These are the same services for which Verizon was granted forbearance relief by operation of law on March 19, 2006. See *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 04-440 (Dec. 20, 2004)*. See also *Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to Broadband Services Is Granted by Operation of Law, FCC Press Release (March 20, 2006)*.

AT&T did not seek forbearance relief based on whether the services listed in the forbearance petitions qualify as “interstate interexchange services” or “interstate exchange access services.” Indeed, none of the services listed in the forbearance petitions inherently fit solely into either category. Rather, the classification of a service into those categories is dependent on the manner in which the purchaser uses the service. Thus, for example, when AT&T provides an end-to-end broadband optical transmission service to enable an end user customer to connect multiple customer premises in different exchanges, that optical transmission service may be considered an interexchange service. That is so, even if the end-to-end service sold to the customer requires exchange access inputs. On the other hand, when AT&T provides an optical transmission service to enable a carrier customer to connect its point of presence in one exchange to an AT&T point of presence in another exchange, the service may be considered an exchange access service.

As AT&T explained in its petitions and other filings in this docket,³ the services at issue here – regardless of whether they can be classified as interexchange services or exchange access services – are subject to intense competition. The purchasers of these services are typically sophisticated businesses that are capable of extracting the most competitive terms for their broadband services from amongst a bevy of aggressive competitors across the nation. As evidence of that robust competition, AT&T cited, among other things, a recent analyst report showing that no provider of business Ethernet services had even a 20 percent market share as of mid-2007, and the leading cable provider (Cox) together with the leading CLEC (Time Warner Telecom) have a larger combined share of the Ethernet market than the post-merger combined share of AT&T and BellSouth.⁴

This robust competitiveness confirms the appropriateness of the Commission’s well-established national analytical framework for evaluating the broadband marketplace. In every order granting regulatory relief for broadband services that the Commission has issued over the last 5 years, it has consistently analyzed the broadband marketplace at the national level and has granted relief on a uniform, national basis.⁵ Both the D.C. Circuit and the Supreme Court have approved this national approach to broadband deregulation.

In none of those broadband orders, moreover, did the Commission attempt to distinguish between “interexchange” broadband services and “exchange access” broadband services and to limit relief to only the former category. Indeed, any such limit in this proceeding would not only repudiate the Commission’s own court-approved broadband precedents, but would also constitute a denial of AT&T’s pending forbearance petition. The Commission previously granted AT&T and the other Bell Companies regulatory relief for interstate, interexchange voice

³ See Letter from Robert W. Quinn, Jr., AT&T, to Marlene Dortch, FCC, WC Docket No. 06-125 (Aug. 28, 2007) (AT&T Aug. 28 Letter).

⁴ AT&T Aug. 28 Letter at 8 (citing Vertical Systems Group, Mid-Year 2007 Market Share Results for U.S. Business Ethernet Services, Press Release (Aug. 2007)).

⁵ AT&T Aug. 28 Letter at 2-6.

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and data services, including broadband services, in the *272 Sunset Order*.⁶ Limiting relief in the instant docket to “interstate interexchange” broadband services and excluding “exchange access” broadband services would provide no additional relief from Title II regulation to AT&T, thus effectively denying AT&T’s broadband forbearance petition. The Commission cannot rationally abandon its well-established uniform, national broadband framework and deny AT&T’s forbearance request based on a distinction between broadband services provided for use as interexchange services and the same services provided for use as exchange access services. Instead, AT&T urges the Commission to grant its forbearance petitions, which will enable AT&T to serve its customers free from unnecessary, monopoly-era common carrier regulations that do not apply to our competitors.

Sincerely,

/s/

Robert W. Quinn, Jr.

Cc: Ian Dillner
Scott Deutchman
Scott Bergmann
Chris Moore
John Hunter
Tom Navin

⁶ Section 272(f)(1) *Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Report and Order and Memorandum Opinion and Order, FCC 07-159 (released Aug. 31, 2007) (*272 Sunset Order*).