



Robert W. Quinn, Jr.
Senior Vice President
Federal Regulatory

AT&T Services, Inc.
1120 20th St. NW, Suite 1000
Washington, D.C. 20036
Phone 202 457-3851
Fax 832 213-0243

September 12, 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 August 31, 2007, the Commission released the *272 Sunset Order*, which, among other things, eliminated dominant carrier regulation of AT&T's interstate interexchange voice and data services and permitted AT&T to offer such services "subject to nondominant carrier regulation," so long as AT&T complies with certain additional "targeted safeguards" adopted by the Commission.¹ In light of the relief granted to AT&T in the *272 Sunset Order* and in order to clarify the discrete issues that continue to be presented to the Commission in the above-referenced forbearance petitions, AT&T submits this letter to crystallize the scope of relief it is seeking in those petitions.² Specifically, AT&T withdraws its request for forbearance from Title II dominant carrier regulation of the broadband services described in its forbearance petitions to the extent that these services are provided on an interstate interexchange basis and are thereby subject to the relief previously granted in the Commission's *272 Sunset Order*.³

¹ *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 ¶ 2 (released Aug. 31, 2007) (*272 Sunset Order*).

² 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.

³ See *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, FCC 07-149 ¶ 24 n.71 (released Aug. 20, 2007) (*ACS Forbearance Order*) ("a forbearance petitioner of course may clarify or narrow the scope of a forbearance request through subsequent submissions"). See also *Verizon Telephone Companies v. FCC*, 374 F.3d 1229 (D.C. Cir.

For those broadband services in AT&T's forbearance petitions that were not granted relief in the 272 *Sunset Order*, because they are provided as exchange access services rather than as interstate interexchange services, AT&T continues to strongly encourage the Commission to provide relief by granting its pending broadband forbearance petitions. Contrary to the claims of some commenters, no credible argument can be made that dominant carrier regulation of these optical-level and packet-switched services is in any way "necessary" to ensuring just and reasonable rates or to protecting consumers.⁴

The Commission has long recognized that optical-level services, which are provided over fiber-optic facilities at speeds ranging from 52 million bits per second (OC-1) up to 10 billion bits per second (OC-192) – far above the Commission's 200 thousand bits per second broadband threshold – are subject to significant competition. As the Commission has previously observed, there is "substantial deployment of competitive fiber loops at OCn capacity"⁵ because "services offered over OCn loops produce revenue levels which can justify the high cost of loop construction, providing the opportunity for competitive LECs to offset the fixed and sunk costs associated with the loop construction."⁶

The Commission also has repeatedly recognized the competitive nature of packet-switched broadband services.⁷ At no time has the Commission ever concluded that this competition was limited only to interexchange services, and there is no evidence in the record to support such a novel distinction now. To the contrary, the record demonstrates that competition for these services is robust regardless of how they are offered. According to a recent analyst report, for example, 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

2004) (FCC acted arbitrarily and capriciously in denying forbearance where petitioner narrowed the scope of its forbearance petition).

⁴ See 47 U.S.C. § 10(a)(1), (2); *CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003) (a regulation is "necessary" in the forbearance context only if it has a "strong connection" to fulfilling a permissible regulatory purpose).

⁵ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 ¶ 183 (2005).

⁶ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 19020 ¶ 316 (2003). See also *ACS Forbearance Order* ¶ 105.

⁷ See *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189, ¶ 65 n.183 (released Mar. 26, 2007) (*AT&T-BellSouth Merger Order*); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, FCC 05-183, ¶ 59 n.169 (released Nov. 17, 2005); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 19020 ¶ 538.

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(Time Warner Telecom) have a larger combined share of the Ethernet market than the post-merger combined share of AT&T and BellSouth.⁸

In short, as AT&T has previously explained,⁹ the services at issue in AT&T's broadband forbearance petitions are subject to robust competition from a wide variety of intermodal and intramodal competitors and there is no legitimate reason to continue subjecting them to outmoded, monopoly-era regulations that hinder AT&T's ability to invest in next-generation broadband networks and provide innovative, customized broadband services to our customers.

Sincerely,

/s/

Robert W. Quinn, Jr.

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

⁸ See Vertical Systems Group, Mid-Year 2007 Market Share Results for U.S. Business Ethernet Services, Press Release (Aug. 2007).

⁹ See Letter from Robert W. Quinn, Jr., AT&T, to Marlene Dortch, FCC, WC Docket No. 06-125 (Aug. 28, 2007).