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October 10, 2007

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Lobby Level
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*

*AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC
Docket No. 06-74*

Dear Ms. Dortch:

AT&T Inc. (AT&T) files this letter to respond to misrepresentations contained in a letter submitted by Time Warner Telecom (TWT) on October 8, 2007,¹ regarding the interplay between AT&T's above-referenced broadband forbearance petitions and AT&T's commitments related to the AT&T-BellSouth merger.² TWT claims that by asking the Commission to grant forbearance from Title II common carrier regulation for certain broadband enterprise services,³ AT&T has violated the "forbearance" merger commitment, pursuant to which AT&T agreed not to seek forbearance from its substantive merger commitments, such as the special access commitments that TWT claims are implicated here.⁴ As discussed below, TWT's allegations are

¹ Letter from Thomas Jones, Willkie Farr & Gallagher, Counsel for Time Warner Telecom, to Marlene Dortch, FCC, WC Docket Nos. 06-125, 06-74 (Oct. 8, 2007) (TWT Letter).

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 In this letter, for the sake of convenience, AT&T refers to the services at issue in its petitions as "broadband enterprise services." AT&T emphasizes, however, that it is seeking relief for all of the services specified in the above-captioned forbearance petitions regardless of the type of customer seeking to use them. See AT&T Reply Comments at 4-5.

⁴ TWT Letter at 2. *See also See AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189, Appendix F, Special Access Conditions & Forbearance Condition 2 (released March 26, 2007) (AT&T-BellSouth Merger Order).* TWT does not allege that AT&T has in any way violated Forbearance Condition 1, which

based on a fundamentally erroneous characterization of those merger commitments and should be flatly rejected by the Commission.⁵ Contrary to TWT's misguided assertions, AT&T's broadband forbearance petitions are fully consistent with its merger commitments, which AT&T intends to satisfy in their entirety.

Prior to the AT&T-BellSouth merger, AT&T and BellSouth filed petitions seeking forbearance from Title II common carrier and *Computer Inquiry* regulations of certain packet-switched and optical broadband enterprise services. Subsequently, in connection with the merger, AT&T committed, among other things, not to increase and, in some cases to reduce, the rates for certain special access services that were set forth in tariffs on file with the Commission as of the Merger Closing Date.⁶ AT&T also committed that it would "not seek or give effect to any future grant of forbearance that diminishes or supersedes the merged entity's obligations or responsibilities under these merger commitments during the period in which those obligations are in effect."⁷ TWT claims that AT&T's pending forbearance petitions would, if granted, enable AT&T to withdraw its tariffs for certain broadband enterprise services that may also qualify as special access services under its merger commitments.⁸ In TWT's view, such tariffs are "needed to comply" with AT&T's special access obligations and any detariffing that results from forbearance would "eviscerate" AT&T's special access merger commitments.⁹

TWT's argument is fatally flawed because it confuses "tariffs" with "rates." AT&T did *not* commit to maintain "tariffs" for any special access services. Rather, as discussed above AT&T committed not to increase the "rates" for certain special access services and, in some cases, to lower such "rates." So long as AT&T abides by these commitments, it makes no difference whether the rates are contained in a tariff (prior to forbearance) or in a contract (after forbearance) – either way, AT&T's customers will receive the benefits of the special access merger commitments. Thus, TWT is just plain wrong when it claims that tariff forbearance would diminish or supersede AT&T's special access merger commitments.

applies to petitions "altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act." *Id.* at Appendix F, Forbearance Condition 1.

⁵ TWT also erroneously asserts that AT&T has withdrawn its forbearance petitions to the extent that they "initially encompassed interexchange services, leaving only the special access component of business broadband services subject to the pending petitions." TWT Letter at 1. In fact, AT&T withdrew its petition only with regard to "Title II dominant carrier regulation" of broadband services provided on an interstate interexchange basis that are subject to the relief granted in the 272 *Sunset* Order. *See* Letter from Robert W. Quinn, Jr., AT&T, to Marlene Dortch, FCC, WC Docket No. 06-125, at 1 (Sept. 12, 2007).

⁶ *AT&T-BellSouth Merger Order*, Appendix F, Special Access Commitments.

⁷ *AT&T-BellSouth Merger Order*, Appendix F, Forbearance Commitment 2.

⁸ TWT Letter at 2.

⁹ TWT Letter at 2.

TWT goes on to allege that granting forbearance from other non-rate-related Title II regulations, such as contract filing requirements under section 211 of the Act, discontinuance of service requirements under section 214 of the Act, and compliance with the Commission's price cap rules, would diminish or supersede AT&T's special access merger commitments.¹⁰ But again, TWT erroneously seeks to broaden the scope of AT&T's forbearance commitment beyond the plain language of that commitment. AT&T did not agree to a complete moratorium on requesting or giving effect to forbearance from *any and all* provisions of Title II and the Commission's rules. Instead, AT&T agreed not to seek or give effect to forbearance that diminishes or supersedes its obligations or responsibilities "under *these* merger commitments" while they remain in effect.¹¹ Forbearance from the statutory provisions and regulations cited by TWT, however, would not diminish or supersede AT&T's obligations and responsibilities related to its special access merger commitments. Indeed, regardless of whether the contract filing requirements of section 211 or the discontinuance procedures of section 214 continue to apply after forbearance is granted, AT&T will still be required to abide by its "rate freeze" commitment. Likewise, the elimination of price cap regulation will have no effect on AT&T's ability to comply with its merger commitments. The merger commitments required a one-time adjustment in certain rates and placed a cap on the adjusted and non-adjusted rates. AT&T will maintain that cap for the duration of its merger commitments irrespective of whether price cap regulation applies.¹²

Lastly, TWT suggests that granting forbearance and giving AT&T "non-carrier status" would limit the Commission's ability to enforce AT&T's special access merger commitments, which would "diminish" and "supersede" those commitments.¹³ In making this argument, however, TWT completely ignores the *AT&T-BellSouth Merger Order*, which plainly states that AT&T's merger commitments "are enforceable by the Commission,"¹⁴ notwithstanding the fact that some of those commitments relate to non-common-carrier services that are not subject to Title II of the Act.¹⁵ Moreover, to the extent the Commission does not fully grant AT&T's forbearance petitions and instead treats AT&T's broadband enterprise services as non-dominant common carrier services, AT&T would still be subject to the relevant provisions of Title II cited by TWT, including sections 201, 202, and 206-208.

For all of the reasons discussed above, the Commission should see TWT's Letter for what it is: a desperate, meritless eleventh-hour attempt to distract the Commission's attention from the task of granting AT&T's forbearance petitions and enabling AT&T to efficiently provide its customers with innovative broadband services to meet their business needs.

¹⁰ TWT Letter at 3-4.

¹¹ *AT&T-BellSouth Merger Order*, Appendix F, Forbearance Commitment 2 (emphasis added).

¹² See *AT&T-BellSouth Merger Order*, Appendix F, Special Access Commitments.

¹³ TWT Letter at 2.

¹⁴ *AT&T-BellSouth Merger Order* ¶ 222.

¹⁵ See, e.g., *id.* at Appendix F, Promoting Accessibility of Broadband Service Commitment.

If you have any questions or need additional information, please do not hesitate to contact me. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

/s/
Jack Zinman

cc: Ian Dillner
Scott Deutchman
Scott Bergmann
Chris Moore
John Hunter