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October 10, 2007

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte Notice:* WC Docket Nos. 06-125 and 06-147

Dear Ms. Dortch:

AT&T and Verizon have recently filed *ex parte* submissions in the dockets captioned above in an attempt to supplement the otherwise inadequate evidentiary record in this proceeding. Both carriers' attempts fail, for the reasons discussed below.

Special access markets are not yet competitive

The members of AdHoc are among the nation's largest and most sophisticated corporate buyers of telecommunications services; the Committee counts among its members ten of the "Fortune 100" and fifteen of the "Fortune 500" companies. Members come from a broad range of economic sectors and maintain tens of thousands of corporate premises in every region of the country. Their combined spend on communications products and services is well over two billion dollars per year. As substantial, geographically-diverse end users of telecommunications service nation-wide, AdHoc members are uniquely qualified to provide a credible, unbiased, and informed perspective on the state of competition in telecommunications markets.

Because AdHoc admits no carriers as members and accepts no carrier funding, Ad Hoc's members have no commercial self-interest in imposing unnecessary regulatory constraints on incumbent service providers. Indeed, as high-volume purchasers of telecommunications services, AdHoc members have historically been among the first beneficiaries of the FCC's de-regulatory efforts for competitive carriers. As a consequence, AdHoc has consistently advocated de-regulation for telecommunications services as soon as a market becomes competitive.

But the markets for local exchange and interstate access services are not yet sufficiently competitive for market forces to discipline the ILECs' prices and practices, as Ad Hoc has repeatedly demonstrated to the Commission in

pleadings filed in the dockets captioned above and in a variety of other proceedings that have raised the issue. Consequently, customers remain vulnerable to the supra-competitive prices, impediments to innovative applications and equipment, sluggish provisioning, and other conditions associated with the kind of lop-sided market power that AT&T retains in its local exchange and access markets. Until competition emerges in AT&T's access markets, the regulatory forbearance it seeks in this docket is simply premature.

AT&T has failed to support its petition with evidence regarding competition in the access markets at issue

Despite the marketplace realities described above, or perhaps because of them, AT&T has provided no evidence regarding the state of competition in its access markets to justify the forbearance it seeks. AT&T's petition failed to even acknowledge the distinction between the interstate access services it provides (*i.e.,* the "final mile" connection AT&T provides using facilities located within an AT&T exchange area) and the interstate interexchange services it provides (*i.e.,* long distance services).

Indeed, AT&T has claimed most recently that it does not matter whether a broadband service is "exchange access" or "interexchange." [1] This claim is simply wrong. Interexchange services and access services may use the same transmission technologies (such as ATM, Frame Relay, or TDM). But interstate *access* services use facilities located within an AT&T exchange area to originate and terminate traffic bound for points outside that exchange (and in another state), while AT&T's interstate *interexchange* services use facilities (including access service "inputs") to connect points in different exchanges (and in different states).

AT&T's failure to distinguish between access and long distance markets is significant for two reasons.

First, the Commission long ago determined that it could forbear from regulating long distance (*i.e.,* interstate interexchange services). Most recently, the Commission extended that forbearance to AT&T[2] and the other Bell

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[1] *See* Letter from Robert Quinn Jr., AT&T, to Marlene H. Dortch , Secretary, FCC, WC Docket No. 06-125 (filed September 11, 2007) ("AT&T September 11 *Ex Parte* Letter").

[2] *Petition of AT&T Inc. for Forbearance Under 47 US Section 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No 06-

Operating Companies ("BOCs") [3], even when they eliminate the structurally separate long distance affiliates they were required to establish by Section 272 of the Communications Act.

In those same orders, however, the Commission found that "targeted safeguards" and other continuing legal requirements "are needed to protect against the possible exercise of market power by AT&T and the other RBOCS" [4] in *access* markets:

> As part of the new regulatory framework established in the *Section 272 Sunset Order*, AT&T will be subject to certain targeted safeguards as well as other continuing legal requirements. The framework reflects our expert policy judgment regarding the appropriate relief from dominant carrier regulation and section 272 safeguards balanced against the competing public interest concerns. The reasons that persuaded us to adopt this new framework also persuade us that it would be contrary to the public interest to alter or eliminate it in response to AT&T's petition. Therefore we find that granting AT&T relief from dominant carrier regulation different from, or in addition to, that granted in the *Section 272 Sunset Order* would be inconsistent with the public interest under section 10 (a) (3).

AT&T In-Region Interexchange Forbearance Order at para. 7 (footnotes omitted).

Yet the "new regulatory framework" and "continuing legal requirements" imposed in the *AT&T In-Region Interexchange Forbearance Order* rely upon the very regulatory requirements that AT&T seeks to have dismantled here. The "continuing legal requirements" identified in the *Section 272 Sunset Order* include "*dominant carrier regulation of [the BOCs'] interstate exchange access* service, including price caps regulation of most exchange access services." [5]

120, Memorandum Opinion and Order (Aug. 31, 2007). ("*AT&T In-Region Interexchange Forbearance Order*").

[3] *Section 272 (f) (1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 US Section 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket Nos. 02-112, 00-175 and 06-120, Report Order and Memorandum Opinion and Order (Aug. 31, 2007) ("*Section 272 Sunset Order*").

[4] *AT&T In-Region Interexchange Forbearance Order* at footnote 28.

[5] *Section 272 Sunset Order* at paragraph 90 (emphasis added).

AT&T's failure to distinguish between the access and long distance markets is also significant because that failure has compromised the evidentiary record in this proceeding. AT&T has provided no data that would permit the Commission to ignore its recent conclusions in the *AT&T In-Region Interexchange Forbearance Order* and the *Section 272 Sunset Order* orders. AT&T's September 11 *ex parte* letter supplementing its petition[6] directed the Commission to three other AT&T *ex parte* filings in other dockets, each of which was inadequate on its face and none of which included evidence regarding competitive conditions in access markets:

- **July 31, 2006 *ex parte* letter in WC 06-74:** Data cited was classified as "highly confidential" and was only available for review at "AT&T's data room." The non-disclosure agreements in WC 06-74 limit the use of that data to the WC 06-74 proceeding so it should not be available for use by AT&T in this proceeding without being re-filed. Procedural questions aside, however, AT&T describes the "highly confidential" and redacted data as data provided on a "national market basis." "We should note that neither the syndicated database nor the projected database are designed to yield information from which absolute or relative telecommunications usage, revenue or line counts could by estimated on a state-by-state or MSA level." In other words even if the July 31, 2006 data could be viewed and used in this proceeding, it would not provide information regarding local exchange or exchange access markets.

- **August 18, 2006 *ex parte* letter in WC 06-74:** Contained a CD-ROM of data supplementing the July 31 filing. The August 18 data was also classified as "highly confidential," was only available for review at the offices of AT&T's counsel, and was also subject to the non-disclosure agreements in WC 06-74 which limit the use of data to the WC 06-74 proceeding, requiring AT&T to re-file the data in this docket. According to AT&T, the August 18, 2006 filing merely provides a disaggregation of the data filed on July 31. Since the July 31 data was not designed to provide information on local exchange or exchange access markets, the August 18 refinement of a specific category of that data is no more relevant here.

- **April 23, 2007 *ex parte* in 02-112:** This docket is the Section 272 sunset proceeding, discussed above, in which the Commission concluded that "dominant carrier regulation of [the BOCs'] interstate exchange *access*

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[6] *See* note 1, *supra.*

service, including price caps regulation of most exchange access services" was necessary.[7]

Verizon's "Criterion chart" misrepresents the data on which it is based

In an inexplicable September 17, 2007 *ex parte* filing made by Verizon in this docket, Verizon submitted a chart prepared by Criterion Economics entitled "Deregulation Increased Investment." According to Verizon, "this chart demonstrates that the Commission's deregulatory broadband policies have resulted in a substantial increase in investment in communications equipment, including broadband facilities."[8] As the attached Declaration by Colin B. Weir of Economics and Technology, Inc. demonstrates, however, Verizon misrepresents and misconstrues the data on which the chart is based, which makes it impossible to draw the conclusion Verizon advances.

The chart is based on data from the Bureau of Economic Analysis ("BEA"). The "Communications Equipment" category on which the Criterion chart bases its conclusions appears to be a category of BEA data entitled "Computers, Software and Communications" which encompasses everything from all computers and software to investment in not only telecom equipment, but broadcast and TV equipment, guided missile systems, and space vehicles, in addition to the traditional telecom broadband facilities Verizon references.[9]

There is no evidence, in either the Criterion data provided or in Verizon's *ex parte*, that "the Commission's deregulatory broadband policies" have had any impact on investment in communications equipment generally, much less investment in broadband facilities which make up only a tiny segment of the aggregated data presented. The chart attempts to discern a causal relationship between deregulation and investment while ignoring other factors that may influence investment (such as capital markets).

Most significantly, Verizon's own data disproves the very thesis it attempts to establish with the Criterion chart. As discussed in the Weir declaration, Verizon's own capital additions to Telecommunications Plant in Service were greater *before* de-regulation of broadband special access services than they

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[7] *See* note 5, *supra,* and accompanying text.

[8] Letter from Joseph Jackson, Verizon to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-125 (filed September 17, 2007). The letter represents that a "chart" and associated website address were "provided" by Dee May but does not identify who the presentation was made to, when, or in what context.

[9] Weir Declaration at 2 – 4.

were *after* deregulation. Verizon's capital additions to Telecommunications Plant in Service increased by $48.8-Billion during the period 1997-2001, which was prior to deregulation, but increased by only $35.4-billion during the period 2002 – 2006, which was after de-regulation. In other words, Verizon spent 37.7% more on telecommunications plant (including broadband) during the period that it was regulated that it did during the subsequent period of deregulation.[10]

Thus, if the Commission adopts the logic of Verizon's *ex parte*, the Commission would have to conclude that deregulation *discourages* investment.

Sincerely,

Colleen Boothby

Counsel
Ad Hoc Telecommunications Users Committee

Attachment

cc: Scott Bergmann
Scott Deutchman
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Bill Kehoe
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Deena Shetler

[10] Weir Declaration at 4 – 5.

ATTACHMENT A