

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of)	
)	
Petition of AT&T for Forbearance Under)	
47 U.S.C. § 160 from Title II and Computer)	WC Docket No. 06-125
Inquiry Rules with Respect to its Broadband)	
Services)	
)	
BellSouth Petition for Forbearance Under)	
47 U.S.C. § 160 from Title II and Computer)	
Inquiry Rules with Respect To its Broadband)	
Services)	

COMPTEL’S PETITION FOR DECLARATORY RULING

COMPTEL, through counsel, hereby moves the Commission to issue a ruling confirming that AT&T may not detariff any of its broadband services or otherwise take advantage of the forbearance relief that the Commission granted in the Memorandum Opinion and Order released in the above-captioned proceeding on October 12, 2007¹ until the commitments it voluntarily made to obtain approval of its merger with BellSouth expire. A declaratory ruling further clarifying AT&T’s rights and obligations will serve the public interest by reducing the need for the expenditure of time and resources to divine the Commission’s intent through litigation.

In requesting Commission approval of their merger, AT&T and BellSouth offered certain voluntary commitments applicable for a period of forty-two months from the

¹ *In the Matters of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 07-180 (rel. Oct. 12, 2007) (“AT&T Forbearance Order”).*

merger closing date, other commitments applicable for forty-eight months from the closing date, and one commitment applicable for thirty-nine months after the filing of the tariff revisions implementing the commitment.² The Commission accepted AT&T's merger commitments after finding that they served the public interest, ordered that its approval of the merger was conditioned on AT&T and BellSouth's compliance with the merger commitments and specifically determined that the commitments are enforceable by the Commission.³ The merger closed on December 29, 2006.⁴

Among the merger commitments AT&T made were 11 commitments relating to special access services. Commitments 2 and 4 through 9 specifically reference AT&T's special access tariffs. While Commitments 2 and 5 reflect AT&T's pledge not to raise tariffed rates,⁵ Commitments 4, 6, 7, 8 and 9 incorporate AT&T's commitments with

² *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189, at Appendix F (“*AT&T/BellSouth Merger Order*”); March 26, 2007 Letter from Robert W. Quinn, Senior Vice President, Federal Regulatory, AT&T to Marlene H. Dortch filed in WC Docket No. 06-74.

³ *AT&T/BellSouth Merger Order* at ¶227 and Appendix F.

⁴ January 29, 2007 letter of Wayne Watts, Senior Vice President and Assistant General Counsel, AT&T, to Marlene H. Dortch filed in WC Docket 06-74.

⁵ On October 31, 2007, AT&T filed a revision to BellSouth's FCC Tariff No. 1, which proposes to withdraw the availability of the Transport Advantage Plan (“TAP”) for new customers after November 15, 2007. The TAP is a volume and term plan that allows customers to receive rewards in the form of bill credits in exchange for maintaining specified levels of monthly recurring billings for special access services for a specified period of time. The bill credits range in amount from 3% to 12.5% and are applied on a monthly basis based on the previous month's total billing. BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1 at Section 2.4.8(H). AT&T's withdrawal of the bill credits is tantamount to a rate increase because customers who would otherwise be eligible for the TAP will no longer be able to take advantage of the discounted rates. In Special Access Condition No. 5, AT&T agreed not to implement any special access rate increases through December 29, 2010. Contrary to that

respect to the terms and conditions of its special access tariffs, including the agreement to refrain from unreasonable discrimination “in favor of its affiliates in establishing the terms and conditions for grooming special access facilities”;⁶ the agreement to “certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer” prior to providing a new or modified contract tariffed service to its own affiliates;⁷ the agreement to “offer DS1 and DS3 channel termination services, DS1 and DS3 mileage services, and Ethernet Services, that currently are offered pursuant to the Phase II Pricing Flexibility Provisions of its special access tariffs at rates that are no higher than, and on the same terms and conditions as, its tariffed rates, terms and conditions as of the Merger Closing Date for such services in areas within its in-region territory where it has not obtained Phase II pricing flexibility”;⁸ the agreement not to “oppose any request by a purchaser of interstate special access services for mediation by Commission staff of disputes relating to AT&T/BellSouth’s compliance with the rates, terms and conditions set forth in its interstate special access tariffs and pricing flexibility contracts or to the lawfulness of the rates, terms and conditions in such tariffs and contracts”;⁹ the agreement not to “include in any pricing flexibility contract or tariff filed with the Commission after the Merger Closing Date access service ratio terms which

commitment, AT&T’s Transmittal No. 1114 does propose a rate increase. AT&T’s tariff filing underscores the importance of the Commission’s clarifying AT&T’s rights and responsibilities under the *AT&T Forbearance Order*.

⁶ *AT&T/BellSouth Merger Order* at Appendix F, Special Access Commitment 4.

⁷ *AT&T/BellSouth Merger Order* at Appendix F, Special Access Commitment 4.

⁸ *AT&T/BellSouth Merger Order* at Appendix F, Special Access Commitment 6.

⁹ *AT&T/BellSouth Merger Order* at Appendix F, Special Access Commitment 7.

limit the extent to which customers may obtain transmission services as UNEs, rather than special access services”;¹⁰ the agreement “to file one or more interstate tariffs that make available to customers of DS1, DS3 and Ethernet services reasonable volume and term discounts without minimum annual revenue commitments (MARC) or growth discounts”; and “to the extent an AT&T/BellSouth ILEC files an interstate tariff for DS1, DS3 or Ethernet services with a varying MARC,” the agreement to “at the same time file an interstate tariff for such service with a fixed MARC.”¹¹ All of these special access conditions remain in effect until 2010.¹²

The *AT&T Forbearance Order* explicitly states that “the limited forbearance relief granted herein does not affect in any way the full force and effect of the merger conditions adopted in the *AT&T BellSouth Order*.”¹³ All of the services for which the Commission granted AT&T forbearance are offered as special access services, including special access services covered by the special access tariff commitments AT&T made to obtain approval of its merger with BellSouth. The Commission conditioned “the forbearance relief granted to AT&T on its not filing or maintaining any interstate tariffs for its specified broadband services.”¹⁴ Although the Commission specified that the effective date of the *AT&T Forbearance Order* is October 11, 2007, a fair reading of the Order leads to the conclusion that AT&T may not withdraw any of its interstate tariffs for

¹⁰ *AT&T/BellSouth Merger Order* at Appendix F, Special Access Commitment 8.

¹¹ *AT&T/BellSouth Merger Order* at Appendix F, Special Access Commitment 9.

¹² *AT&T/BellSouth Merger Order* at Appendix F, Special Access Conditions.

¹³ *AT&T Forbearance Order* at ¶2.

¹⁴ *AT&T Forbearance Order* at ¶42.

the special access broadband services, including Ethernet, that are incorporated in the merger commitments until the merger commitments themselves expire in 2010.

In his separate statement, Commissioner Robert M. McDowell confirmed his agreement with this reading of the *AT&T Forbearance Order*. He stated that AT&T would not be relieved from the existing tariffing, price freeze and discontinuance requirements for non-TDM based business broadband services until the voluntary merger conditions expire on December 29, 2010.¹⁵ While COMPTTEL supports Commissioner McDowell's reading of the *AT&T Forbearance Order*, AT&T clearly does not. The day before the effective date of the *AT&T Forbearance Order*, AT&T represented to the Commission that "AT&T did not commit to maintain 'tariffs' for any special access services" and that "tariff forbearance would [not] diminish or supercede AT&T's special access merger commitments."¹⁶ The Commission did not directly address AT&T's representation in the order resolving the petition for forbearance, other than to rule that AT&T's merger commitments remain in effect.

Section 1.2 of the Commission's rules, 47 C.F.R. §1.2, authorizes the Commission to issue a declaratory ruling to terminate a controversy or to remove uncertainty. The Commission has issued declaratory rulings in the past to, among other things, "alleviate possible confusion." See e.g., *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory

¹⁵ *AT&T Forbearance Order*, Statement of Commissioner Robert M. McDowell at 1.

¹⁶ See Letter dated October 10, 2007 from Jack Zinman, General Attorney and Assistant General Counsel, AT&T, to Ms. Marlene H. Dortch filed in WC Docket No..06-125.

Ruling and Order, DA 07-2863 (rel. June 28, 2007) at ¶5 (confirming that carriers may not engage in self-help to avoid access charges by call blocking).

The language in the Commission's order granting forbearance relief to AT&T conditioned on AT&T's withdrawal of its special access tariffs when read in conjunction with the language specifying that the forbearance relief granted does not affect in any way the merger conditions,¹⁷ which incorporate commitments to maintain particular special access tariff provisions in effect through 2010, has created uncertainty and confusion with respect to the earliest date on which AT&T may withdraw its tariffs for the broadband services at issue.

In an effort to avoid protracted legal wrangling over whether AT&T may immediately withdraw its tariffs for the special access services at issue or otherwise take advantage of the forbearance granted or must wait until the merger conditions expire, the Commission should issue as soon as possible a declaratory ruling spelling out AT&T's rights and responsibilities. Addressing this issue now will hopefully minimize disputes with respect to the Commission's intent in granting AT&T limited forbearance relief and will provide needed regulatory certainty to the public and to the many industry participants affected by the Commission's decision, including those retail and wholesale customers that currently purchase AT&T's tariffed special access broadband services.

For the foregoing reasons, COMPTTEL respectfully requests that the Commission clarify that AT&T may not withdraw its special access tariffs or otherwise take advantage of the broadband forbearance relief granted on October 11, 2007 until the merger commitments for the services at issue expire in 2010.

¹⁷ *AT&T Forbearance Order* at ¶¶2, 42.

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Respectfully submitted,

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