

**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)	

**COMMENTS OF
NUVOX COMMUNICATIONS**

NuVox Communications (“NuVox”), by its attorneys, and pursuant to the Commission’s Public Notices released on November 20, 2007¹ and December 6, 2007,² respectfully submits these comments in support of the Emergency Petition for Declaratory Ruling filed by Time Warner Telecom Inc. (“TWTC”) on November 21, 2007, and the Petition for Declaratory Ruling filed by COMPTTEL on November 13, 2007.

NuVox urges the Commission to issue a declaratory ruling confirming that AT&T Inc. (“AT&T”) may not exercise dominant carrier tariffing and other relief granted in the Commission’s October 12, 2007, Memorandum Opinion and Order in the above-captioned proceeding³ until the voluntary commitments agreed to by AT&T as part of its merger with

¹ *Public Notice, Pleading Cycle Established form COMPTTEL Petition for Declaratory Ruling*, DA 07-4686 (Nov. 20, 2007).

² *Public Notice, Pleading Cycle Established for Time Warner Telecom Inc. Petition for Declaratory Ruling*, DA 07-4908 (Dec. 6, 2007).

³ *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §106(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007) (“*AT&T Forbearance Order*”).

BellSouth Corporation (“BellSouth”), and upon which the Commission conditioned approval of the merger, expire.⁴

DISCUSSION

As part of the voluntary commitments upon which the FCC conditioned approval of the AT&T/BellSouth merger, AT&T/BellSouth 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.”⁵ AT&T/BellSouth also committed to numerous conditions regarding special access, including Ethernet and SONET/OCn services.⁶ Subsequently, the FCC, in its order granting AT&T partial forbearance from dominant carrier regulation for certain “enterprise broadband” services, reaffirmed those obligations: “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.”⁷ This restraint on AT&T’s forbearance relief was reinforced in a statement that Commissioner Robert McDowell released with the *AT&T Forbearance Order*. In that statement, Commissioner McDowell echoed the limitation imposed in the FCC’s order, noting that AT&T would be relieved from its existing tariffing, price freeze and facilities discontinuance requirements for non-TDM-based business broadband services “upon expiration of the voluntary merger conditions agreed to by AT&T as the result of its merger with BellSouth, after December 29, 2010.”⁸

⁴ *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, at Appendix F (2007) (“*AT&T/BellSouth Merger Order*”).

⁵ *Id.*, at Appendix F at 5815.

⁶ *Id.*, at 5810-5812.

⁷ *AT&T Forbearance Order*, ¶ 2.

⁸ *AT&T Forbearance Order*, Statement of Commissioner Robert M. McDowell.

Nevertheless, AT&T has demonstrated its intent to use the Commission's limited grant of forbearance to "diminish" or "supersede" its merger commitments on no less than two separate occasions. As TWTC notes, AT&T sent a November 15, 2007, letter to broadband providers advising that AT&T "will no longer be offering new Pricing Flexibility Contract Tariffs for certain services."⁹ In addition, AT&T has stated that it will no longer comply with its existing tariffing and pricing flexibility requirements for non-TDM-based business broadband services.¹⁰ As explained in more detail below, these actions clearly diminish or supersede AT&T's merger commitments in violation of the Commission's merger conditions.

The FCC adopted the merger conditions to "ensure the public interest is served."¹¹ The Commission's subsequent grant of forbearance, again based on a public interest standard,¹² was expressly premised on the continued applicability of the merger conditions.¹³ Thus, AT&T's stated intention to withdraw tariffs for certain "enterprise broadband" special access services for which forbearance was granted is contrary to both orders. Allowing AT&T to proceed with its plans to withdraw tariffs for Ethernet and SONET/OCn services would be contrary to the public interest. COMPTTEL correctly asserted that issuance of a declaratory ruling in this instance would provide regulatory certainty and conserve resources by averting litigation over AT&T's planned tariff withdrawals. Accordingly, NuVox supports TWTC's and COMPTTEL's requests for the Commission to issue a declaration affirming AT&T's obligation to honor its voluntary commitments until those merger conditions expire.

⁹ TWTC Petition at 3 (citing AT&T New Non-Dominant Broadband Forbearance Pricing Contract Process Letter (Nov. 15, 2007)).

¹⁰ *Id.* (citing Letter from Jack Zinman, AT&T, to Marlene Dortch, WC Docket Nos. 06-125, 06-74 (Oct. 10, 2007)).

¹¹ *AT&T/BellSouth Order*, ¶¶ 19-22.

¹² TWTC Petition, n.5; 47 U.S.C. §310(d)(2007).

¹³ *AT&T Forbearance Order*, ¶ 2.

I. THE MERGER CONDITIONS REQUIRE AT&T TO FILE AND MAINTAIN TARIFFS FOR KEY SPECIAL ACCESS SERVICES

Among the merger conditions to which AT&T agreed are 11 commitments specifically relating to special access services. Of these voluntary commitments, certain conditions apply for a period of 42 months from the closing date of the AT&T/BellSouth merger, whereas other commitments apply for 48 months from the closing date, and one condition applies for 39 months after the filing of the tariff revisions implementing the commitment.¹⁴ These special access merger commitments are premised upon AT&T maintaining tariffs and amending them to bring them in compliance with the commitments.

NuVox relies on the rate freeze and rate reduction requirements in Special Access Conditions Nos. 5 and 6 of the AT&T/BellSouth Merger Order that impose limits on AT&T's capability to increase prices on OCn, Ethernet and other special access services.¹⁵ NuVox agrees with TWTC that these provisions, among others, expressly require implementation through filed tariffs. For example, Condition No. 5 states that "No AT&T/BellSouth ILEC may increase the rates in interstate tariffs, including contract tariffs, for special access services that it provides in the AT&T/BellSouth in-region territory, as set forth in tariffs on file at the Commission on the Merger Closing Date, and as set forth in tariffs amended subsequently in order to comply with the provision of these commitments."¹⁶

Although Condition No. 5 requires AT&T to refrain from increasing special access rates until the merger conditions expire on December 29, 2010, there is evidence that

¹⁴ *AT&T/BellSouth Merger Order*, Appendix F at 5810; *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Order on Reconsideration, WC Docket No. 06-74 (Mar. 26, 2007).

¹⁵ *Id.*, at 5811 Conditions Nos. 5 and 6.

¹⁶ *Id.*, Condition No. 5.

AT&T already is undermining its obligation. As COMPTTEL notes in its Petition for Declaratory Ruling,¹⁷ AT&T's Transmittal No. 1114 eliminates certain discount plans and thereby effectuates a rate increase, contrary to Condition No. 5. This "underscores the importance of the Commission's clarifying AT&T's rights and responsibilities under the AT&T Forbearance Order."¹⁸ In addition, as TWTC states, tariffs such as those described in Conditions Nos. 5 and 6 must be dominant carrier tariffs, subject to various regulations designed to protect purchasers.¹⁹

NuVox purchases Ethernet services and SONET/OCn services from AT&T pursuant to AT&T's federal tariffs. Eliminating such tariffs would lead in short order to the erosion of NuVox's ability to ensure that it obtains special access circuits from AT&T on nondiscriminatory terms. NuVox also would be deprived of its ability to challenge the tariff during a 15-day notice period prior to the tariff taking effect, and receive an expeditious refund of any rates determined to be unlawfully high. Unlike dominant carrier tariffs, non-dominant carrier ones afford purchasers only one day's notice, thus leading them to challenge rates after the tariff takes effect. Under such provisions, NuVox would be forced to wait months for a resolution to a challenged rate and to recoup payments deemed to be exorbitant. NuVox agrees with TWTC that such a result would effectively diminish, if not supersede, AT&T's obligations and responsibilities under the merger commitments.²⁰

¹⁷ COMPTTEL's Petition for Declaratory Ruling at 2, 3 n.5 (Nov. 13, 2007).

¹⁸ *Id.*

¹⁹ TWTC Petition at 6; 47 U.S.C. §204(a)(3)(2007).

²⁰ *Id.* at 7.

II. OTHER SPECIAL ACCESS MERGER COMMITMENTS ARE DIMINISHED IF AT&T REFUSES TO FILE AND MAINTAIN TARIFFS

NuVox agrees with TWTC that AT&T's refusal to file tariffs also would diminish the effectiveness of other special access merger conditions.²¹ For example, Special Access Condition No. 9 requires AT&T "to file one or more interstate tariffs that make available to customers of ... Ethernet service reasonable volume and term discounts without minimum annual revenue commitments (MARC)s or growth discounts."²² If this provision were nullified by AT&T's withdrawal of its tariffs, NuVox could be deprived of the opportunity to obtain reasonable volume and term discounts as required under the merger conditions for Ethernet and OCn services that NuVox purchases from AT&T's federal tariffs for the duration of the merger conditions.

NuVox likewise agrees with TWTC and COMPTTEL that removal of AT&T's tariffing obligations would eliminate key protections afforded by Special Access Conditions No. 3, 4, 7 and 8 that are only given meaning through tariffing requirements.

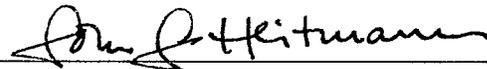
²¹ *Id.* at 10.

²² *AT&T/BellSouth Merger Order*, Appendix F at 5812.

CONCLUSION

Given the conflict between the *AT&T Forbearance Order* and AT&T's October 10, 2007 and November 15, 2007 letters, and the Commission's public interest obligations in maintaining the conditions set forth in the *AT&T/BellSouth Merger Order*, NuVox supports TWTC's and COMPTEL's Petitions. NuVox respectfully urges the Commission to clarify that AT&T is bound by the voluntary commitments it made pursuant to its merger with BellSouth so as to ensure that Ethernet and SONET/OCn special access services are offered subject to dominant carrier regulations until the merger conditions expire.

Respectfully submitted,



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