

Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMPTEL'S REPLY COMMENTS

COMPTEL, through counsel, hereby responds to AT&T's opposition to its Petition for Declaratory Ruling filed in the above-captioned docket. COMPTEL has asked the Commission to confirm 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 on October 12, 2007¹ until the commitments AT&T voluntarily made to obtain approval of its merger with BellSouth expire. Although AT&T relies primarily on overblown rhetoric in an effort to convince the Commission to reject COMPTEL's Petition, what its opposition actually demonstrates is the critical need for the Commission to clarify exactly what it meant when it said that "the limited forbearance relief granted herein does not affect in any way

¹ *In the Matter 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").*

the full force and effect of the merger conditions adopted in the *AT&T/BellSouth Order*.²

Clarification Is Clearly Needed

AT&T takes the position that not only is it entitled to immediately detariff its special access services despite the merger commitments to which it voluntarily agreed and on which the Commission conditioned approval of its merger with BellSouth, but also that clarification of the *AT&T Forbearance Order* is not needed because “the only ‘confusion’ here exists entirely within Petitioners’ own heads.”³ Of the parties that filed comments, only AT&T opposed COMPTTEL’s and Time Warner Telecom’s requests that the Commission clarify the relief that was granted to AT&T.⁴ With the exception of AT&T, the commenting parties all agree with COMPTTEL that the merger conditions preclude AT&T from withdrawing its special access tariffs or otherwise taking advantage of the broadband forbearance relief granted in the October 11, 2007 Order prior to the date in 2010 that the conditions expire. Commissioner McDowell also agrees that the Order should be read this way as evidenced by his separate Statement: “AT&T will be relieved from existing tariffing, price freeze and facilities discontinuance requirements for non-TDM-based business broadband services” . . . “upon the expiration of the

² *AT&T Forbearance Order* at ¶ 2.

³ AT&T Opposition at 1.

⁴ See Comments filed by Level 3 Communications, McLeod USA, TDS Metrocom, U.S. Telepacific Corp., BT Americas, Inc., National Association of State Utility Consumer Advocates, and NuVox Communications. Time Warner Telecom Inc. has also asked the Commission to clarify its forbearance ruling.

voluntary merger conditions agreed to by AT&T as the result of its merger with BellSouth, after December 29, 2010.”⁵

AT&T’s conflicting interpretation of what the Commission intended as the earliest date on which AT&T may withdraw its tariffs has created both a controversy and an uncertainty, the very type of situation that Section 1.2 of the Commission’s rules, 47 C.F.R. §1.2, was designed to address through the issuance of a declaratory ruling. AT&T’s staunch objection to the Commission’s issuance of a declaratory ruling is puzzling in light of the fact that all parties, including AT&T itself, will benefit from a definitive ruling that AT&T either is, or is not, entitled to withdraw or cancel its special access tariffs prior to the expiration date of the merger conditions. At the same time it urges the Commission to reject COMPTTEL’s request for clarification, AT&T goes to great lengths to convince the Commission to adopt its view of the *AT&T Forbearance Order*.⁶ AT&T cannot have it both ways. Despite AT&T’s histrionics to the contrary, its own opposition plainly begs for clarification of the relief granted and the sooner, the better.

The Commission Must Act Quickly To Halt AT&T’s Detariffing

AT&T argues that “the sum and substance of [its merger] commitment is an obligation not to increase the *prices* for special access services above certain levels.” It repeatedly represents that it will comply with the pricing and other obligations through non-tariff contracts. As shown below, the reliability of that representation has already been called into question. In light of AT&T’s recent tariff withdrawal filings, it is

⁵ *AT&T Forbearance Order*, separate Statement of Commissioner Robert M. McDowell at 1.

⁶ AT&T Opposition at 6-17.

imperative that the Commission clarify the extent of the forbearance relief granted without further delay in order to avoid the prejudice that AT&T's customers will undoubtedly suffer as a result of its premature detariffing.

On December 20, 2007, AT&T sent a Notice to its customers stating that pursuant to the *AT&T Forbearance Order*, it would begin withdrawing its tariffs for frame relay service, ATM service, Ethernet-based service and other broadband services in early January 2008.⁷ True to its word, on January 7, 2007, AT&T notified the Commission that it was withdrawing tariffs for services subject to the *AT&T Forbearance Order*.effective January 22, 2008.⁸ The Customer Notice states that once the tariff withdrawal is effective, rates, terms and conditions for broadband services will be moved to AT&T's Interstate Guidebook and tariff references will be treated as "references to the Guidebook." Unfortunately, the "Guidebook" is not yet available⁹ so it is impossible to compare the Guidebook language to the existing tariff language to determine whether the rates, terms and conditions are in fact identical.

For customers that do not subscribe to contract tariffs or tariff term plans, however, AT&T has stated that it will provide broadband service on a month-to-month basis under the "Business Service Agreement."¹⁰ The Business Service Agreement specifically states that the services covered are those "optical and packet-switched special

⁷ A copy of the Notice is attached hereto as Appendix 1.

⁸ See AT&T Transmittal No. 1119 dated January 7, 2008, attached hereto as Appendix 2.

⁹ A copy of AT&T's notice with respect to the unavailability of the Guidebook is attached as Appendix 3.

¹⁰ A copy of the Business Service Agreement is attached to the Customer Notice in Appendix 1.

access services subject to relief from federal tariff requirements as provided” in the *AT&T Forbearance Order*.¹¹ Pursuant to Paragraph 5.b of the Business Service Agreement, AT&T reserves the right to “increase prices by giving you at least thirty (30) days notice before the increase goes into effect.” As AT&T itself concedes, merger conditions 5 and 6 expressly prohibit AT&T from raising the rates in its interstate tariffs and contract tariffs for special access services prior to 2010.¹² Although AT&T alleges in its Opposition that “it will not increase rates for the covered services for the duration of the merger commitment regardless of whether the services are offered via tariffs or through detariffed contracts,”¹³ its reservation of the right in its “detariffed contract” to increase rates at any time cannot be squared with that allegation or the conditions on which the Commission approved the merger with BellSouth. The Business Service Agreement does not acknowledge or inform customers that the *AT&T Forbearance Order* and the merger conditions prohibit AT&T from raising rates for services before 2010. In the absence of a tariff, the Commission cannot possibly track AT&T’s compliance with the merger conditions. As a result, AT&T’s tariff withdrawal notice has intensified the need for the Commission to expeditiously clarify that the merger conditions preclude AT&T from withdrawing its broadband special access tariffs prior to 2010.

In asserting the right to withdraw its tariffs immediately, AT&T makes much of the fact that the effective date of the forbearance order was October 11, 2007. The

¹¹ See Business Service Agreement at ¶1.e.

¹² AT&T Opposition at 10.

¹³ AT&T Opposition at 10-11.

effective date of the order, however, does not in any way alter or negate AT&T's obligations pursuant to the merger conditions. On the contrary, the forbearance order specifically 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*."¹⁴ Because the forbearance order does not require AT&T to detariff its special access services prior to 2010, COMPTTEL agrees that AT&T can "easily comply" with both the forbearance order and the merger conditions.¹⁵ It must do so, however, by keeping its tariffs for the special access and Ethernet services covered by the merger conditions and addressed in the forbearance order on file until the merger conditions expire in 2010.

Allowing AT&T to withdraw its tariffs prior to the expiration of the merger conditions will totally negate merger condition 7, which prevents AT&T from opposing "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." AT&T's contention that it will not oppose a request for mediation or placement on the Accelerated Docket of disputes regarding detariffed contracts¹⁶ is meaningless. Paragraph 12 of the Business Services Agreement, the "detariffed contract," provides that AT&T may change the Agreement as well as the terms of the

¹⁴ *AT&T Forbearance Order* at ¶ 2.

¹⁵ AT&T's Opposition at 7.

¹⁶ *Id.* at 11.

Guidebook applicable to the services at any time. Paragraph 12 also provides that a customer's only option if it does not like any changes AT&T institutes is to terminate service. How could a customer challenge the lawfulness of rates, terms and conditions in an Agreement where AT&T has forced the customer, as a condition of receiving service, to agree to AT&T's terms and AT&T's right to change those rates, terms and conditions at any time or discontinue service?

The Commission must not allow AT&T to rewrite the merger conditions by withdrawing the tariffs which many of those conditions reference. AT&T proposed and agreed to the merger conditions knowing it had a pending forbearance petition that had the potential of eliminating its tariff obligations. If AT&T had thought the Commission would agree, surely it would have proposed conditions that would accommodate detariffing. It did not, and now must comply with the conditions to which it agreed.

AT&T is not merely required to comply with the tariffing provisions of the special access merger conditions. It is also specifically precluded from giving "effect to any future grant of forbearance that *diminishes or supercedes the merged entity's obligations or responsibilities* under these merger commitments during the period in which those obligations are in effect."¹⁷ If there are no relevant interstate special access tariffs, the conditions have no meaning and therefore AT&T's obligations and responsibilities under the merger conditions are unmistakably *diminished*. AT&T's obligations are also diminished by withdrawing the revised or new tariffs it was required to file pursuant to merger conditions 6 and 9. The Commission must make clear that

¹⁷ *In the Matter of AT&T Inc. and BellSouth Corporation Applications for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5815, Forbearance Condition 2 (2007) (emphasis added).

AT&T is precluded from detariffing or otherwise taking advantage of the forbearance relief relating to its special access services until the merger conditions expire.

AT&T opines that it does not have to comply with the tariffing requirements of the merger conditions because COMPTTEL had suggested similar, but alternative, language for the forbearance condition, claiming that COMPTTEL's language was "far more expansive." In comments filed on AT&T/BellSouth's proposed merger conditions, COMPTTEL suggested the addition of language stating that "the merged entity agrees that it will not give force or effect to any present or future grant of forbearance...that in any way *reduces*, alters, or otherwise affects their *duties under the conditions* and commitments of the merger." It is incomprehensible – yet nonetheless irrelevant to COMPTTEL's Petition– that AT&T finds this language "far more expansive" than the language that was ultimately approved in Forbearance Condition 2. Nonetheless, while the Commission did not, as AT&T notes, use the term "otherwise affects," it did adopt the language that is pertinent to this matter. While the words chosen are different, the meaning is the same. AT&T is precluded from giving effect to a grant of forbearance that would diminish its obligations or responsibilities under the merger conditions. The fact that AT&T was not required to withdraw its forbearance petition as a condition of the merger is likewise of no consequence, for the grant of forbearance clearly has implications that extend beyond the term of the merger conditions.

Finally, AT&T cites to the Commission's *272 Sunset Order*¹⁸ to support its argument that it can withdraw its tariffs and still comply with the merger conditions that

¹⁸ *In the Matter of 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 (rel. Aug. 31, 2007) ("*272 Sunset Order*").

specifically reference those tariffs. There is no merit to AT&T's argument. In the *272 Sunset Order*, the Commission noted that certain merger conditions to which AT&T and Verizon had agreed referenced the carriers' Section 272 affiliates and made clear that the merger conditions would continue to apply after 272 sunset regardless of whether the in-region interstate services were offered directly by AT&T or Verizon or an affiliate other than a Section 272 affiliate referenced in the condition, instead of through a Section 272 affiliate.¹⁹ The Commission characterized its action as "*extending*" the AT&T and Verizon merger condition obligations, to the BOC itself and its non-Section 272 affiliates.²⁰ By extending the merger conditions to the BOCs themselves and their non-Section 272 affiliates, the *272 Sunset Order* did not reduce or eliminate the BOCs' obligations under the merger conditions. In contrast to preserving and expanding the merger conditions as was done in the *272 Sunset Order*, AT&T's contention that it may immediately withdraw the special access tariffs on which the merger conditions are based would eliminate and eviscerate a number of the obligations on which the Commission conditioned its approval of the AT&T/BellSouth merger.

¹⁹ *272 Sunset Order*, ¶101, n. 292.

²⁰ *272 Sunset Order* at ¶ 97 n. 283.

CONCLUSION

For the foregoing reasons, and those stated in its Petition for Declaratory Ruling, COMPTTEL respectfully requests that the Commission, as soon as possible, clarify that AT&T may not withdraw its special access tariffs referenced in the merger conditions or otherwise take advantage of the forbearance relief granted in the October 11th order until the merger conditions expire in 2010.

January 11, 2008

Respectfully submitted,



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APPENDIX 1



December 20, 2007

NOTICE OF AT&T'S WITHDRAWAL OF ITS TARIFFS FOR CERTAIN BROADBAND SERVICES

Dear Valued AT&T Business Customer:

AT&T currently provides you with certain broadband services pursuant to the terms of tariffs that AT&T has on file with the Federal Communications Commission (FCC).¹ A recent FCC decision authorizes AT&T to offer these services on a non-tariffed basis.² Accordingly, in early January 2008, AT&T will file documents with the FCC withdrawing these tariffs with an effective date no earlier than January 22, 2008. AT&T's withdrawal of these tariffs will not affect the rates, terms or conditions applicable to your services.

Once the tariff withdrawal is effective, the rates, terms and conditions for your broadband services that are now in AT&T's tariffs will be moved to AT&T's Interstate Guidebook, with the exception of contract tariffs.³ The Guidebook will be located at <http://att.com/guidebook>.

If you currently subscribe to a contract tariff or a tariff term plan with AT&T for your broadband services, AT&T will continue to provide these services to you pursuant to the terms of your contract tariff or tariff term plan. Upon the effective date of the tariff withdrawal, however, references to the "tariff" in your contract tariff or tariff term plan will be treated as references to the Guidebook. You need not take any action at this time.

If you do not currently subscribe to a contract tariff or tariff term plan for your broadband services, or if your current contract tariff or tariff term plan expires without a successor, AT&T will provide your broadband services on a month-to-month basis under an agreement known as the Business Services Agreement for Broadband. This Agreement, among other things, incorporates the terms of the Guidebook. The Agreement can be found at <http://att.com/guidebook>. A copy of the Agreement is also enclosed with this letter. The Agreement will not change your current rates or services, but it does contain important terms and conditions related to your broadband services. Please take a moment to review the Agreement. If you accept the terms of the Agreement, simply continue to use your broadband services. No further action is required of you, as your continued use of the broadband services constitutes acceptance of the Agreement. If you do not accept the terms of the Agreement, please terminate your services by informing your AT&T Sales Representative of your termination and discontinuing your use of the services before the effective date of the tariff withdrawal or upon expiration of your current contract tariff or tariff term plan. You may also contact your AT&T Sales Representative to discuss alternatives.

If you have any questions about this notice, please contact your AT&T Sales Representative or call the toll free number on your billing statement.

Thanks for being a valued customer of AT&T.

¹ The broadband services referenced in this letter are the following types of optical and packet-switched broadband transmission services provided by the AT&T operating companies: Frame Relay Service; Asynchronous Transfer Mode Service; Remote Network Access Service; Ethernet-Based Service; Video Transmission Service; Optical Transport Services; Optical Networking Service; and Wave-Based Transport Service.

² Memorandum Opinion and Order, *In the Matter 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 (Rel. October 12, 2007).

³ Contract tariffs will be maintained in their current form in an archive, which can be found at <http://www.att.com/search/tariffs.jsp?category=FEDERAL>.

PLEASE READ THIS IMPORTANT MESSAGE

AT&T BUSINESS SERVICES AGREEMENT FOR BROADBAND

This AT&T Business Services Agreement for Broadband ("Agreement") applies to the AT&T Broadband Services to which you subscribe. This Agreement does not apply to any Services provided under a Tariff, contract tariff, term plan or other written agreement between you and AT&T (unless your contract tariff, term plan or agreement references this Agreement). The Effective Date of this Agreement with respect to any Individual Service is the later of: (a) January 22, 2008 or such other date upon which the withdrawal of an applicable Tariff becomes effective; (b) the date on which you subscribe to a Service; or (c) the date on which a contract tariff, term plan or contract for the Service expires.

WHEN YOU ORDER, APPLY FOR, SUBSCRIBE TO, USE OR PAY FOR THE SERVICES AFTER THE EFFECTIVE DATE, YOU ARE ACCEPTING THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT USE THE SERVICES AND TERMINATE THE SERVICES OR THIS AGREEMENT BEFORE THE EFFECTIVE DATE. TO TERMINATE THE SERVICES OR THIS AGREEMENT, YOU MUST NOTIFY AT&T BY CALLING THE NUMBER ON YOUR BILLING STATEMENT OR BY USING ANY OTHER METHOD DESIGNATED BY AT&T. BY TERMINATING THIS AGREEMENT, YOU WILL TERMINATE ALL OF THE SERVICES TO WHICH THIS AGREEMENT APPLIES. TERMINATION IS EFFECTIVE UPON RECEIPT BY AT&T. YOU WILL BE RESPONSIBLE FOR ALL APPLICABLE CHARGES (WHICH MAY INCLUDE USAGE CHARGES AND PRO RATED MONTHLY RECURRING CHARGES) FOR THE SERVICES INCURRED PRIOR TO TERMINATION. YOU MAY BE REQUIRED TO RETURN ANY UNEARNED DISCOUNTS, PROMOTIONS, CREDITS OR REWARDS AND TO PAY TERMINATION LIABILITY CHARGES AS PROVIDED IN THE GUIDEBOOK.

THIS AGREEMENT INCORPORATES BY REFERENCE ADDITIONAL MATERIAL TERMS AND CONDITIONS APPLICABLE TO THE SERVICES SET FORTH IN AT&T'S INTERSTATE GUIDEBOOK ("GUIDEBOOK"). You can learn more about the Guidebook (including how to access it) by reviewing Section 1 of this Agreement. You agree that it is impractical for AT&T to list all of the terms, conditions and charges applicable to the Services in this document and that AT&T has acted reasonably in providing you access to the Guidebook.

Services provided under this Agreement and set forth in the Guidebook may be available through negotiated agreements, which may be more favorable to you than those in this Agreement and the Guidebook.

1. DEFINITIONS

Terms not otherwise defined in this Agreement have the following meanings:

- a. "Agreement" means the terms and conditions set forth herein and in the Guidebook.
- b. "AT&T," "the Company," "we," "our" and "us" means those affiliates and subsidiaries of AT&T Inc. that provide or may provide Services to you under this Agreement. In the Guidebook, AT&T may be referred to as "the Telephone Company."
- c. "Authorized Use Policy" or "AUP" means AT&T's policy that applies to Services provided over or accessing the Internet. You can find the AUP at <http://att.com/aup>.
- d. "Guidebook" means the AT&T Interstate Guidebook and is the document that contains the standard descriptions, pricing and other terms and conditions for the Services. You can find the Guidebook at <http://att.com/guidebook>. Upon written request, AT&T will provide you with copies of the relevant portions of the Guidebook applicable to the Services to which you subscribe. In the event of a conflict between the terms and conditions of this Agreement, the AUP and/or the terms and conditions of the Guidebook, the terms and conditions of the Guidebook shall control, followed by the AUP and then this Agreement. AT&T reserves the right to modify the Guidebook as provided herein. You are encouraged to access and review the Guidebook regularly.
- e. "Service," "Services" or "Broadband Services" means the optical and packet-switched special access services subject to relief from federal tariff requirements as provided in the Memorandum Opinion and Order of the Federal Communications Commission (FCC) in WC Docket No. 06-125 (Ref. Oct. 12, 2007), which are set forth in the Guidebook and provided under this Agreement.
- f. "Tariffs" are documents that contain the standard descriptions, pricing, and other terms and conditions for any Services that AT&T files with a regulatory commission. You can find AT&T's Tariffs at <http://att.com/search/tariffs.jsp> and such other places as AT&T may from time to time designate.
- g. "You" means the person or entity subscribing to the Services provided under this Agreement, as well as all of your agents, representatives, employees, officers and directors. "You" also includes all Users of the Services, whether or not authorized by you.

2. USE OF THE SERVICES

AT&T will provide the Services to you, subject to availability and operational limitations of systems, facilities and equipment. You shall cause Users (anyone who uses or accesses any Service provided to you) to comply with this Agreement, and you are responsible for their use of any Services, unless the Guidebook states otherwise. You and all Users shall comply with all applicable state and federal laws and regulations. You are responsible for ensuring that all of the equipment you and your Users use is compatible with the Services. If a Service is provided over or accesses the Internet, you and any Users must comply with the AUP. If you desire to secure your transmissions in connection with any of the Services, you must procure, at your own cost, encryption software or other transmission protection.

3. ACCESS TO PREMISES; HAZARDS

- a. Access. On occasion, we may need access to your premises and/or other premises that are not under AT&T's control ("non-AT&T locations") to provide the Services. You agree to allow (or obtain permission for) AT&T to access all non-AT&T locations (other than public property) and equipment reasonably required to provide the Services. Access includes the ability to review information and the right to construct, install, repair, maintain, replace and remove access lines and network facilities, and to use ancillary equipment space within any building, necessary for your connection to AT&T's network. You will furnish or obtain any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items required to perform installation of the Services, and you shall obtain any necessary licenses, permits and consents (including easements and rights-of-way).
- b. Hazardous Conditions. You shall ensure that all non-AT&T locations at which AT&T installs, maintains or provides the Services are suitable and safe working environments, free of any substance or material that poses an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. If AT&T encounters any such hazardous materials at a location, AT&T may terminate the affected Service, or suspend performance until you remove the hazardous materials.

4. AT&T EQUIPMENT

The Services may include use of certain equipment owned, leased or controlled by AT&T that is located at non-AT&T locations ("AT&T Equipment"). Title to the AT&T Equipment will not pass to you. You must provide electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. You will bear the risk of loss or damage (other than ordinary wear and tear) to the AT&T Equipment.

5. PRICES, CHARGES, BILLING, PAYMENT AND CREDITS

- a. Prices and Surcharges. You agree to pay AT&T for the Services at the prices and charges set forth in the Guidebook (less any applicable discount, credit or reward), without deduction, setoff or delay for any reason. These prices do not include, and you agree to pay, all current or future taxes, regulatory surcharges, recovery fees, shipping charges, and other similar charges specified or allowed by any governmental entity relating to the sale, use or provision of the Services. These charges are not subject to any discounts, credits or rewards. Taxes and government surcharges will be in the amounts that federal, state, and local authorities require or permit AT&T to bill you.
- b. Price Changes. AT&T reserves the right to revise the prices and charges as follows:
 - Price decreases may be made without further notice to you.
 - Promotional pricing, rewards and terms will expire in accordance with the terms applicable to each promotion, without further notice to you.
 - AT&T may increase prices by giving you at least thirty (30) days' notice before the increase goes into effect. At its discretion, AT&T may provide notice by any of the methods described in this Agreement. If, within the notice period, you do not cancel the Services, purchase the Services at other rates available in the Guidebook, or negotiate rates for the Services, the price increase will become effective on the date provided in the notice. If you do not accept the modified prices or charges and you do not purchase the Services at alternative rates, you must terminate the Service and/or this Agreement before the changes become effective. UNLESS YOU CHOOSE TO PURCHASE SERVICES AT ALTERNATIVE RATES, YOUR SOLE REMEDY FOR ANY CHANGES MADE BY AT&T IS YOUR RIGHT TO CANCEL THE AFFECTED SERVICE OR TERMINATE THIS AGREEMENT.
 - Unless required by law, AT&T will not provide advance notice of changes to taxes and surcharges applicable to the Services.
- c. Billing. AT&T will determine the design and format of your bill. AT&T will also determine the billing period. AT&T may change both the format and the billing period from time to time and without notice to you. CHARGES BEGIN TO ACCRUE AT THE START OF EACH BILLING PERIOD AND CONTINUE THROUGH THE FULL BILLING PERIOD. AT&T MAY PRORATE OR ADJUST YOUR BILL IF THE BILLING PERIOD COVERS LESS THAN OR MORE THAN A FULL MONTH BASED ON THE NUMBER OF DAYS IN THE BILLING CYCLE FOR THE MONTH IN WHICH THE CHARGES ARE BILLED. You will be billed monthly in the month prior to the month that the Services are rendered; however, usage-based charges, if any, will be billed in the month following such usage. If charges for your Services include a flat rate component, YOUR FIRST BILL WILL INCLUDE CHARGES FOR THE PARTIAL MONTH IN WHICH SERVICE BEGAN AND SERVICE CHARGES FOR THE NEXT MONTH. Any mathematical error made by AT&T or any of its representatives does not constitute an offer and thus may be corrected or modified by AT&T.
- d. Payment and Disputes. Payment is due 30 days after the bill date or as specified on your billing statement (whichever is later), or as otherwise provided in the Guidebook. Restrictive endorsements or other statements on checks are void. If you do not dispute a charge in writing within 24 months after the bill date, you waive the right to dispute the charge (except to the extent applicable law or regulation requires otherwise). AT&T may charge a late payment fee for overdue payments in an amount specified in the Guidebook, or, if no such rate is specified, at the lower of 1.5 percent per month (18 percent per annum) or the maximum rate allowed by law. AT&T has the right to also recover all costs (including attorneys' fees) for collecting delinquent or dishonored payments.
- e. Deposits, Credit Checks and Credit Limits. AT&T may require you to establish a deposit as a condition of providing Service. AT&T has the right to apply the deposit against any past due amounts at any time. You authorize AT&T to investigate your credit and share information about you with credit reporting agencies. Based on your credit worthiness as AT&T determines it, AT&T may set a credit limit on your account at any time.

If you exceed your credit limit, AT&T may restrict your access to the Services.

f. Service Credits. If there is an interruption or failure of Services caused solely by AT&T and not by you or a third party or other causes beyond AT&T's reasonable control, you may be entitled to a credit or credits as specified in the Guidebook.

6. TERMINATION AND SUSPENSION

- a. By Either Party. Either AT&T or you may terminate this Agreement immediately upon notice if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, or makes an assignment for the benefit of its or your creditors. You may terminate an affected Service for material breach by AT&T, and AT&T may suspend or terminate an affected Service for material breach by you, if such breach is not cured within 30 days of notice, or as otherwise provided in the Guidebook.
- b. By You. You may terminate all or a portion of the Services to which you subscribe by (i) discontinuing your use of the Services, and (ii) placing a disconnect order with AT&T at the number on billing statement or by using any other method designated by AT&T. You are responsible for contacting us to, discontinue a Service that you no longer want or no longer can use with your existing Services, or that becomes incompatible with your other existing AT&T Services or features.
- c. By AT&T. AT&T may terminate or suspend a Service, and if the activity implicates the entire Agreement, terminate this Agreement, immediately upon notice if you (i) fail to pay any charges when due, (ii) commit a fraud upon AT&T, (iii) utilize the Services to commit a fraud upon another party, (iv) unlawfully use the Services, (v) abuse or misuse AT&T's network or Services, or (vi) interfere with another customer's use of AT&T's network or services. If you fail to rectify a violation of the AUP within 5 days after receiving notice from AT&T, then AT&T may suspend or terminate the affected Service.
- d. Outstanding Charges. You are responsible for payment of all charges identified in the Guidebook and due under this Agreement through the date of termination.
- e. Withdrawal of Service. AT&T reserves the right to discontinue providing a Service upon 12 months' notice.
- f. Termination Prior to Billing. If you cancel or terminate a Service prior to the time your obligation to pay for the Service begins, you must reimburse AT&T for time and materials, including any third party charges, incurred prior to the effective date of cancellation or termination.
- g. Reinstatement. If you ask AT&T to reinstate your Services following disconnection, cancellation or termination, AT&T may, in its sole discretion, require you to pay a deposit or other applicable charges, including installation charges.

7. DISCLAIMERS OF WARRANTIES AND LIABILITY

- a. Disclaimer of Warranties. AT&T MAKES NO EXPRESS OR IMPLIED WARRANTY AND DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR THOSE ARISING FROM USAGE OF TRADE OR COURSE OF DEALING. FURTHER, AT&T MAKES NO WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR OTHER EMERGENCY SERVICES), OR WARRANTY REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR LOAD BALANCED, THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO YOUR DATA, OR THAT SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. AT&T WILL NOT BE LIABLE FOR ANY DAMAGES RELATING TO: INTEROPERABILITY, ACCESS TO OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY YOU OR OTHERS; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH HEREIN); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 AND OTHER EMERGENCY CALLS); LOST OR ALTERED TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF YOUR OR OTHERS' APPLICATIONS, CONTENT, DATA, NETWORK OR SYSTEMS.
- b. Limitation of Liability: AT&T'S ENTIRE LIABILITY, AND YOUR EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY YOUR NEGLIGENCE, SHALL IN NO EVENT EXCEED THE APPLICABLE CREDITS SPECIFIED IN THE GUIDEBOOK, OR IF NO CREDITS ARE SPECIFIED, AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO YOU FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT IN THE SERVICES OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO AT&T. THIS LIMITATION WILL NOT APPLY TO: (i) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE; OR (ii) SETTLEMENT, DEFENSE OR PAYMENT OBLIGATIONS UNDER SECTION 8.
- c. Consequential Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES.
- d. Survival and Applicability. These disclaimers and limitations of liability will apply regardless of the form of action, whether in contract, tort, strict liability or otherwise and whether damages were foreseeable. These disclaimers and limitations of liability will survive failure of any exclusive remedies provided in this Agreement.



8. THIRD PARTY CLAIMS

- a. By AT&T. AT&T agrees at its expense to defend or settle any claim against you and to pay all compensatory damages finally awarded against you where the claim alleges that a Service infringes any patent, trademark, copyright, or trade secret, except where the claim arises out of: (i) your or a User's content; (ii) modifications to the Service by you or third parties, or combinations of the Service with any services or products not provided by AT&T; (iii) AT&T's adherence to your written requirements; or (iv) use of the Service in violation of this Agreement. AT&T may at its option either procure the right for you to continue using, or may replace or modify, the alleged infringing Service so that the Service becomes non-infringing, or failing that to terminate the Service without further liability to you.
- b. By You. You agree at your expense to defend or settle any claim against AT&T, its affiliates, and its and their employees, directors, subcontractors, and suppliers, and to pay all compensatory damages finally awarded against such parties where: (i) the claim alleges that a Service infringes any patent, trademark, copyright or trade secret, and falls within the exceptions under Section 8.a (i)-(iv) above; or (ii) the claim alleges a breach by you or any User of a software license agreement governing software provided with the Services.

9. IMPORT/EXPORT CONTROL

You, not AT&T, are responsible for complying with import and export control laws, conventions and regulations for all equipment, software, or technical information you move or transmit between countries using the Services.

10. DISPUTE RESOLUTION

All claims or disputes arising from this Agreement shall, in the first instance, be subject to the jurisdiction, statutory authority, rules and regulations of the FCC, unless otherwise agreed in writing by AT&T.

11. GENERAL PROVISIONS

- a. Confidentiality and Privacy. Each party is responsible for complying with the privacy laws to which they are subject and will not disclose any confidential information pertaining to the other unless required to do so under applicable law or

regulation. Until directed otherwise by you in writing, if AT&T designates a dedicated account representative as your primary contact with AT&T, you authorize that representative to discuss and disclose your customer proprietary network information to any employee or agent of yours without a need for further authentication or authorization.

- b. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. AT&T may (i) assign in whole or relevant part its rights and obligations under this Agreement to an affiliate, or (ii) subcontract work to be performed under this Agreement, but AT&T will in each such case remain financially responsible for the performance of such obligations.
- c. Limitations. Any claim or dispute arising out of this Agreement must be filed within two years after the cause of action arises and the parties waive any statute of limitations to the contrary.
- d. Third Party Rights. This Agreement does not provide any third party (including Users) any remedy, claim, liability, cause of action or other right or privilege.
- e. Governing Law. The Services provided under this Agreement are interstate telecommunications services as defined in Title II of the Communications Act of 1934, as amended, and are subject to the jurisdiction of the FCC. To the extent this Agreement is subject to the law of any State, it will be governed by the law and regulations of the State of your service address, without regard to its conflict of law principles.
- f. Force Majeure. Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to labor difficulties, governmental orders, civil commotions, criminal actions taken against AT&T, acts of God and other circumstances beyond AT&T's reasonable control. However, credit allowance for service interruptions as specified in the Guidebook will apply.
- g. Entire Agreement. This Agreement constitutes the entire agreement between AT&T and you concerning the Services provided under this Agreement and supersedes all other written or oral agreements. This Agreement may not be modified or supplemented by any written or oral statements, proposals, service descriptions or purchase order forms, unless in a document signed by both parties.

12. CHANGES TO THIS AGREEMENT

From time to time, AT&T may change this Agreement, including the terms of the Guidebook applicable to the Services and the AUP. If AT&T makes any changes to any terms of this Agreement, including the Guidebook or the AUP, and the changes are applicable to the Services, AT&T will provide you with at least thirty (30) days' notice of such changes (excluding optional features and other optional functionalities). AT&T MAY PROVIDE NOTICE BY USING ANY OF THE FOLLOWING METHODS IN ITS SOLE DISCRETION: POSTING ON AT&T'S WEBSITE AT OR NEAR THE LOCATION OF THE GUIDEBOOK; ACCESSIBLE LETTER (WHEN APPLICABLE); A BILL INSERT; A MASS MEDIA MESSAGE; A LETTER OR POSTCARD; A CALL TO YOUR BILLING NUMBER; OR AN EMAIL TO AN ADDRESS PROVIDED BY YOU. YOUR CONTINUED SUBSCRIPTION TO, USAGE OF, OR PAYMENT FOR SERVICES AFTER THE EFFECTIVE DATE OF SUCH CHANGES WILL BE DEEMED TO BE YOUR ACCEPTANCE OF SUCH CHANGES. IF YOU DO NOT AGREE TO SUCH CHANGES, YOU MUST CONTACT AT&T AT THE NUMBER IDENTIFIED ON YOUR BILLING STATEMENT AND EITHER TERMINATE YOUR SERVICES OR MAKE ALTERNATIVE ARRANGEMENTS WITH AT&T BEFORE THE EFFECTIVE DATE OF THE CHANGES.



APPENDIX 2



Patrick Doherty
Director – Access Regulatory Affairs
Four AT&T Plaza
Room 1921
Dallas, Texas 75202

FRN: 0007-1713-58

January 7, 2008

Transmittal No. 1119

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, D.C. 20554

This filing is being made on a streamlined basis on 15 days notice under Section 204(a) (3) of the Communications Act.

Attention: Wireline Competition Bureau

The accompanying tariff material, issued by BellSouth Telecommunications, Inc. (BellSouth) and bearing Tariff F.C.C. No. 1, is sent to you for publication in compliance with the Commission's Rules and the requirements of the Communications Act of 1934, as amended.

This filing, scheduled to become effective January 22, 2008, consists of the tariff pages as indicated on the following Check Sheets:

Tariff F.C.C. No.

1

Check Sheet Revision No.

913th Revised Page 1
11th Revised Page 1.1
252nd Revised Page 2
101st Revised Page 2.1
30th Revised Page 4.1
169th Revised Page 5
110th Revised Page 5.1
8th Revised Page 5.1.0.1
36th Revised Page 5.1.1
5th Revised Page 5.1.2
105th Revised Page 6
38th Revised Page 6.1
154th Revised Page 7
3rd Revised Page 7.1
63rd Revised Page 8.1
58th Revised Page 9
37th Revised Page 9.0.0.1
2nd Revised Page 9.0.0.1.1
28th Revised Page 9.0.0.2
36th Revised Page 9.0.1

15th Revised Page 9.0.1.1
19th Revised Page 9.0.2
1st Revised Page 9.0.2.1
20th Revised Page 9.0.3
17th Revised Page 9.0.4.0.1
1st Revised Page 9.0.4.0.2
15th Revised Page 9.0.4.1
4th Revised Page 9.0.4.2
56th Revised Page 9.0.5
2nd Revised Page 9.0.5.0.1
42nd Revised Page 9.0.5.1
62nd Revised Page 9.0.5.2
23rd Revised Page 9.0.5.2.1
20th Revised Page 9.0.5.3
3rd Revised Page 9.0.5.4

With this filing, BellSouth is proposing to withdraw certain broadband transmission services from its F.C.C. Tariff No. 1, as required by the Commission upon use of the forbearance relief pursuant to FCC Memorandum Opinion and Order No. 07-180 (the "*Order*"), released October 12, 2007.

The *Order* granted relief for all of the optical and packet switched broadband transmission services currently offered by the AT&T Operating Companies (e.g., Frame Relay, ATM, Ethernet, Remote Network Access, SONET, Optical Network and Wave-Based services), with the exception of certain Frame Relay and ATM services operating below 200 Kbps in each direction. The *Order* does not grant forbearance with respect to traditional, TDM-based DS-1 and DS-3 transmission services, nor to any services that do not provide a transmission capability of over 200 kilobits per second in each direction.

This filing proposes to implement the relief granted by the *Order*.

Supporting information discussed under Section 61.49 of the Commission's Rules, to the extent applicable, is included with this filing in the attached Description and Justification.

In accordance with Section 61.14, this transmittal letter and associated attachments are being filed electronically today via the Federal Communications Commission's Electronic Tariff Filing System (ETFS) in compliance with the electronic filing procedures.

Payment in the amount of \$775.00 has been electronically transmitted to the Mellon Bank in Pittsburgh, Pennsylvania, in accordance with the fee program procedures. The Form 159 is being transmitted electronically via ETFS as a proprietary document. These actions have been committed on the date established as the issued (filed) date as reflected above.

Wireline Competition Bureau
Page 3
January 7, 2008

Personal or facsimile service petitions against this Transmittal, as required under Section 1.773(a)(4) of the Commission's Rules, should be sent to Linda Quarles, Associate Director - Tariff Administration, 3535 Colonnade Parkway North, Room E3D1, Birmingham, Alabama 35243, facsimile number (214) 858-0639. All other correspondence and inquiries concerning this Transmittal should be addressed to Debra L. Clemens, Associate Director-Federal Regulatory, (202) 457-3066, 1120 20th Street, N.W., Suite 1000, Washington, D.C. 20036.

Sincerely,

A handwritten signature in cursive script that reads "Patrick R. Doherty". The signature is written in black ink and is positioned below the word "Sincerely,".

Attachments:

- Transmittal Letter
- Tariff Pages
- Description and Justification
- Tariff Review Plan (TRP)

APPENDIX 3

**AT&T HAS NOT YET WITHDRAWN ITS TARIFFS FOR
BROADBAND SERVICES COVERED BY THE FCC'S BROADBAND
FORBEARANCE ORDER**

The rates, terms and conditions applicable to your interstate broadband services covered by the FCC's Broadband Forbearance Order (Memorandum Opinion and Order, WC Docket No. 06-125 (Rel. Oct. 12, 2007)) are currently set forth in AT&T's FCC tariffs. The tariffs can be found at <http://att.com/search/tariffs.jsp>. On the effective date of tariff withdrawal, these rates, terms and conditions will be moved into AT&T's Interstate Guidebook. The Guidebook will be posted here on or before the effective date of tariff withdrawal. AT&T's withdrawal of its tariffs will not affect the rates, terms and conditions applicable to your services. Until the Guidebook is posted, please consult the tariffs for the rates, terms and conditions that apply and will continue to apply to your services.

Please call your AT&T Sales Representative if you have any questions.