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January 11, 2008

VIA ELECTRONIC FILING (ECFS)

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Suite TW-A325
Washington, D.C. 20554

Re: WC Docket No. 06-125, *Petition of AT&T for Forbearance Under 47 U.S.C. 160 from Title II and Computer Inquiry Rules with Respect to its Broadband Services*

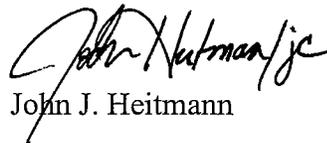
BellSouth Petition for Forbearance Under 47 U.S.C. 160 from Title II and Computer Inquiry Rules with Respect to its Broadband Services

COMPTEL and TWTC Petitions for Declaratory Ruling

Dear Ms. Dortch:

NuVox Communications, through counsel, hereby submits for filing with the Commission its reply comments in the above-referenced proceedings. Please feel free to contact the undersigned counsel at (202) 342-8434 if you have any questions, or require further information.

Respectfully submitted,



John J. Heitmann

cc: Lynne Engledow (via e-mail)
Best Copy and Printing, Inc. (via e-mail)

**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 and TWTC Petitions for)	
Declaratory Ruling)	

**REPLY COMMENTS OF
NUVOX COMMUNICATIONS**

NuVox Communications (“NuVox”), by its attorneys, submits these replies to comments filed in response to the Petitions for Declaratory Ruling of Time Warner Telecom Inc. (“TWTC”) and COMPTEL. Those Petitions ask the Commission to rule that AT&T may not withdraw tariffs for non-TDM special access services until the related special access merger commitments it made to obtain approval of its merger with BellSouth expire.¹ For the reasons set forth in its initial comments and in these replies, NuVox respectfully requests that the Commission grant the TWTC and COMPTEL petitions and reject any attempt by AT&T to

¹ *Public Notice, Pleading Cycle Established for COMPTEL Petition for Declaratory Ruling*, DA 07-4686 (Nov. 20, 2007); *Public Notice, Pleading Cycle Established for Time Warner Telecom Inc. Petition for Declaratory Ruling*, DA 07-4908 (Dec. 6, 2007).

withdraw tariffs for so-called non-TDM enterprise broadband services for as long as those conditions remain in effect.

DISCUSSION

Many competitive carriers, Internet service providers, and an association covering utility consumers in more than 40 states,² joined NuVox in supporting the TWTC and COMPTTEL petitions and strenuously voiced concerns regarding the diminishing and superseding effect that detariffing would have on the special access merger conditions. As NuVox did, many of these comments reminded the Commission of its finding that the *AT&T Forbearance Order* “does not affect in any way the full force and effect of the merger conditions adopted in the AT&T/BellSouth Order.”³

AT&T filed the only opposition to the petitions.⁴ AT&T asserts that, as of the effective date of the *AT&T Forbearance Order*, the tariffing and tariff-based requirements of the special access merger conditions adopted by the Commission in the *AT&T/BellSouth Merger Order* were superseded.⁵ This, of course, is patently inconsistent with the plain text of the *AT&T*

² Comments of BT Americas Inc. on Behalf of Itself and Other BT Entities; Comments of National Association of State Utility Consumer Advocates; Comments of Level 3 Communications, LLC, McLeodUSA Telecommunications Services, Inc., TDS Metrocom, LLC, U.S. TelePacific Corp. d/b/a TelePacific Communications (“*Level 3*”) were filed on Dec. 21, 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, ¶ 2 (2007) (“*AT&T Forbearance Order*”).

⁴ Opposition of AT&T Inc. to Petitions for Declaratory Ruling Filed by COMPTTEL and Time Warner Telecom (filed Dec. 21, 2007).

⁵ *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*”).

Forbearance Order, which states that it does not affect the merger conditions “in any way.”⁶

NuVox agrees with Level 3 and others asserting that the elimination of tariffs would remove the only viable means to detect violations and would make it virtually impossible to determine rate increases.⁷ The consistent reference to tariffs in the special access merger conditions displays the Commission’s intent for tariffs to serve not only as a benchmark but also as a compliance measure. In addition, the Commission references tariffs in combination with non-tariffed contracts throughout the special access conditions. If, as AT&T incorrectly asserts, the Commission had intended for tariffs to serve solely as a guidepost of rates at a static point in time—as of the merger closing date—then the Commission’s reference to both tariffs and non-tariff contracts in several of the conditions would have been unnecessary.

Sensing the obvious nature of the conflict between its position and that set forth by the FCC in its orders, AT&T adds that no one need worry about detariffing because it is fully committed to give full force and effect to the merger conditions any way – just without those pesky tariff requirements that allow everyone to see that it actually is doing so.⁸ But again, the plain text of the *AT&T Forbearance Order* states that the *AT&T/BellSouth Merger Order* stands as written – and not as AT&T now seeks to give effect to it. There is no way to give full effect to requirements that pertain to tariffs other than through such tariffs.

Moreover, AT&T has demonstrated that it is not to be trusted in this regard. AT&T’s long history of violating merger commitments⁹ and its attempts to diminish or gut

⁶ *AT&T Forbearance Order* ¶ 2.

⁷ *Id.* at 5.

⁸ Opposition of AT&T at 7, 9.

⁹ Level 3’s comments alone cite nearly a dozen examples of AT&T blatant disregard of merger conditions and requirements that were intended to preserve competition and

entirely its current merger conditions come on a regular basis.¹⁰ The enforcement and certification components on the merger conditions were made in conjunction with tariffing requirements and not in lieu of them.¹¹ The tariffing requirement provides the best means of ensuring transparency that, along with accelerated enforcement and certification, were deemed essential components of the conditions.

AT&T's other arguments that the tariffing component of the merger conditions can lawfully be ignored are equally unavailing. Contrary to AT&T's assertion,¹² the *272 Sunset Order*¹³ supplies no basis for adding a "but for" or "except" to the Commission's plain statement that the forbearance granted does not affect the merger conditions "in any way." In the *272 Sunset Order*, the Commission took care to describe how the merger condition would apply in the wake of its decision to allow the separate affiliate requirement to sunset.¹⁴ Likewise, in the *AT&T Forbearance Order*, the Commission took care to address the relationship between the

protect consumers. Comments of Level 3 at 6. Those violations have resulted in assessments of more than \$1 billion. *Id.* at 8. Thus, AT&T's assertion that its character has been unjustly called into question, is simply further evidence of its lack of serious commitment to abide by the conditions. Opposition of AT&T at 8.

¹⁰ AT&T has regularly tried to gut the interconnection porting requirement by insisting that the to-be-porting agreement be redlined to conform with its standard interconnection agreement. AT&T also has diminished the interconnection agreement extension requirement by creating all kinds of rules restricting its applicability. For example, AT&T recently announced that current interconnection agreements that were not in place as of the date of the effective date of the *AT&T/BellSouth Merger Order* cannot be extended and that no interconnection agreement can be extended beyond June 2010. See AT&T Clarification of BellSouth Merger Commitments Letter (Nov. 16, 2007) (attached hereto).

¹¹ See Opposition of AT&T at 8, n.24, 9.

¹² *Id.* at 3, 15.

¹³ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 01-112, Report and Order and Memorandum Opinion and Order, FCC 07-159 (rel. Aug. 31, 2007) ("272 Sunset Order").

¹⁴ *Id.* at 101 n.292.

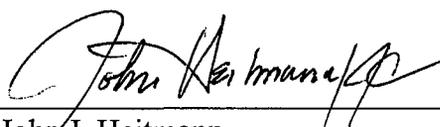
two orders and made plain that the merger conditions were not impacted “in any way.” Thus, it is plain that detariffing permitted by the *AT&T Forbearance Order* is not permitted until the merger conditions expire.

At bottom, AT&T provides no sound reason for the Commission to deny the TWTC and COMPTTEL petitions. AT&T’s assertion that it plans to adhere to the “sum and substance” of the merger conditions does not comport with the merger conditions as written and adopted and it is therefore insufficient. AT&T must adhere to the merger conditions as written. That is what the *AT&T/BellSouth Merger Order* requires and that is what the *AT&T Forbearance Order* requires. In the latter order, the Commission plainly stated it took no action to change the requirements of the former order “in any way.” Finding that AT&T may not take advantage of the detariffing permitted by the forbearance order until its commitments under the merger order expire is the only reasonable way to give full meaning and effect to both orders.

CONCLUSION

Contrary to AT&T's assertion, nothing happened to the merger conditions on October 11, 2007 – the effective date of the *AT&T Forbearance Order*. For all of the foregoing reasons, as well as those provided in NuVox's initial comments and in the petitions themselves, the Commission must reject AT&T's arguments and cut-off its attempt to shortchange the Commission, competitors and consumers on its merger commitments.

Respectfully submitted,



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Counsel to NuVox Communications

January 11, 2008

ATTACHMENT A



Date: **November 16, 2007**

Number: **CLECALL07-086**

Effective Date: **November 16, 2007**

Category: **Other**

Subject: **(Interconnection Agreements) Clarification of BellSouth Merger Commitments**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **Illinois, Indiana, Ohio, Michigan, Wisconsin, California, Nevada, Arkansas, Kansas, Missouri, Oklahoma, Texas and Connecticut**

Issuing ILECS: **AT&T Illinois, AT&T Indiana, AT&T Ohio, AT&T Michigan, AT&T Wisconsin, AT&T California, AT&T Nevada, AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, AT&T Texas and AT&T Connecticut**

Response Deadline: **January 15, 2008**

Contact: **AT&T Negotiator**

Conference Call/Meeting: **NA**

The purpose of this Accessible Letter is to clarify AT&T's implementation of two merger commitments adopted and approved by the Federal Communications Commission ("FCC") in its BellSouth/AT&T "Merger Order".¹ The commitments discussed herein concern porting and extending interconnection agreements ("ICAs").

Porting ICAs

Merger Commitment 7.1 allows carriers to port effective interconnection agreements entered into in any state in AT&T's 22-state ILEC operating territory (subject to stated limitations and requirements).² Some carriers have inquired why they are not able to port an agreement when the initial term has expired but the agreement itself has not yet been noticed for termination/renegotiation. This letter clarifies that such agreements are, in fact, eligible for porting under Merger Commitment 7.1, and AT&T has consistently implemented the commitment in this manner. However, carriers should be aware that adopted agreements always carry the same expiration date as the underlying agreement that is being adopted.³ Therefore, if a carrier adopts and ports an ICA whose initial term has expired, subsequent noticing of that ICA for termination and renegotiation will require that the adopted/porting agreement also be renegotiated. Moreover, consistent with federal rules, ICAs that have been noticed for termination/renegotiation are not eligible to be ported because they have already "remain[ed] available for use by telecommunications carriers...for a reasonable period of time."⁴ Accordingly, when porting agreements pursuant to Merger Commitment 7.1, carriers should be mindful of whether the ICA, by its terms, is eligible to be noticed for termination/renegotiation or has already been noticed by either party.

¹ Memorandum Opinion and Order, *In the Matter of AT&T, Inc. and BellSouth Corporation Application for Transfer of Control*, 22 F.C.C.R. 5662 at ¶222, Appendix F (March 26, 2007) ("Merger Order").

² Merger Order at Appendix F, "Reducing Transaction Costs Associated with Interconnection Agreements," ¶ 1.

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, 19 FCC Rcd 13494 (FCC 2004).

⁴ 47 C.F.R. § 51.809(c).

Extending ICAs' Terms

Merger Commitment 7.4 allows carriers to extend the terms of their current ICAs for a period of up to three (3) years, subject to amendment to reflect prior and future changes of law.⁵ The question has arisen whether ICAs may be extended for three years from the expiration date of the ICA's initial term (as interpreted and implemented by AT&T) or some other date (e.g., the merger close date of December 29, 2006 or the date of a carrier's extension request). While AT&T believes that its interpretation is supported by the plain language of Merger Commitment 7.4, as well as by the *ex parte* documents submitted to the FCC and the negotiations of the commitment prior to release of the Merger Order, AT&T is modifying its position to allow carriers additional opportunities to extend the terms of their agreements. As such, effective with the date of this Accessible Letter, AT&T will implement Merger Commitment 7.4 as follows:

ICAs Expiring Prior to January 15, 2008 (Option 1): ICAs whose initial terms have already expired, or will expire prior to January 15, 2008, may be extended for up to three years from the date of a carrier's extension request, provided that AT&T receives the carrier's extension request prior to January 15, 2008.⁶ An ICA's term may be extended only once pursuant to Merger Commitment 7.4.⁷ If no request to extend the ICA's term has been received by AT&T prior to January 15, 2008, the ICA's term may not be extended pursuant to the merger commitment.

ICAs Expiring On or After January 15, 2008 (Option 2): ICAs whose initial terms will expire on or after January 15, 2008, may be extended for up to three years from the expiration date of the ICA's initial term, provided that (i) AT&T receives a carrier's extension request prior to the ICA's expiration date of the initial term, and (ii) the ICA's initial term expires before June 29, 2010, the sunset date of the merger commitment. ICAs whose initial term expires after June 29, 2010 are not eligible for extension. An ICA's term may be extended only once pursuant to Merger Commitment 7.4. If no request to extend the ICA's term has been received by AT&T as of the expiration date of the ICA's initial term, the ICA may not be extended pursuant to the merger commitment.

Important Note for Both Options Above: The expiration date of an agreement's initial term may be either express (e.g., "January 15, 2008") or a date that requires calculation (e.g., "three years from the Effective Date"). Initial terms may also be a date established by a filed and approved amendment (e.g., an ICA's initial term expired on January 15, 2001, but an amendment extended the expiration date until January 15, 2003, in which case the latter is still considered the expiration date of the ICA's initial term). For purposes of implementing Merger Commitment 7.4, the expiration date of an agreement's ***initial term*** will in all cases be used, as described above, to calculate whether the agreement is eligible for extension. Any evergreen term, renewal term or default term (e.g., month-to-month or year-to-year) or any other term that continues the agreement beyond the expiration of its initial term will have no bearing on whether and how the agreement may be extended. This has important implications for the options discussed above, including without limitation:

⁵ Merger Order at Appendix F, "Reducing Transaction Costs Associated with Interconnection Agreements," ¶ 4. Merger Commitment 7.4 applies to ICAs in effect as of the date of the Merger Order, December 29, 2006.

⁶ Compare with *Order of the Kentucky Public Service Commission*, Petition of Sprint Communications Company L.P. et al. For Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky d/b/a AT&T Southeast, Case No. 2007-00180 (Sept. 18, 2007) (holding that Merger Commitment 7.4 gives carriers the right to extend ICAs for three years from the merger close date of December 29, 2006, or until December 29, 2009).

⁷ Carriers that extended or requested to extend the initial term of an ICA that has already expired pursuant to AT&T's prior policy (i.e., for up to three years from the initial expiration date) may re-submit a request to extend the ICA pursuant to this Accessible Letter. For such carriers, the ICA may be extended under Option 1 for up to three years from the date of carrier's ***initial, prior*** request, as long as carrier sends the required notice discussed herein by January 15, 2008.

- For Option 1, the initial term of an ICA may have already expired but the ICA may still be in effect (e.g., the ICA expired on June 1, 2007 and it is presently in effect on a month-to-month basis). The required extension notice under Option 1 must be received by AT&T prior to January 15, 2008, regardless of the fact that the ICA remains in effect on a month-to-month or other basis. On January 15, 2008, unless a carrier has submitted the required notice to extend the term, it will be deemed to have waived any extension rights with respect to that ICA.
- For Option 2, the required term extension notice must be received by AT&T prior to the expiration date of the ICA's initial term, regardless of whether the ICA continues in effect beyond the expiration date of the initial term. Upon the expiration date of an ICA's initial term, a carrier will be deemed to have waived any extension rights with respect to that ICA.

The options under Merger Commitment 7.4 as described in this Accessible Letter are available to carriers regardless of whether they have already submitted an extension request, and regardless of the disposition of that prior request. However, carriers desiring to extend the terms of their ICAs as stated herein must submit another extension request, as AT&T is unable to decide unilaterally what any carrier may want to avail itself of at this point in time. **Carriers may not rely on prior extension requests to avail themselves of the options discussed in this Accessible Letter. Carriers who do not submit an extension request, by the time periods indicated above, may not extend their ICAs pursuant to Merger Commitment 7.4 as described herein.** Extension Request Forms can be found by CLECs on AT&T's CLEC Online website at <https://clec.att.com/clec>⁸ and by paging/wireless carriers at <https://primeaccess.att.com/>.⁹

Conclusion

Any questions regarding this Accessible Letter should be directed to your Lead Negotiator.

A copy of AT&T Texas' filing with the Public Utility Commission of Texas and any accompanying tariff sheets (if applicable) can be viewed on the Internet at the following website, typically on the effective date of the changes.

http://www.att.com/search/tariffs.jsp?category=TEXAS/TELCO/FILING_LOG

⁸ From the HOME page of CLEC Online, click on the sub-heading Interconnection Agreements located on the left-hand side of the page and follow your cursor to the BLS Merger Commitment Request Forms link. A new window will appear. On the page AT&T/BLS Merger Commitments under Reducing Transaction Costs Associated with Interconnection Agreements, you will see a list of four commitments. The fourth contains an Extension Request Form to be completed and submitted to AT&T Wholesale Contract Management, via fax or email. The fax number and email address are provided on this page.

⁹ From the HOME page of Prime Access, click on the subheading BLS-Merger Request Forms located on the left-hand side of the page. An AT&T CLEC Online Disclaimer will appear, click OK. A page containing the BLS Merger Commitment Request Forms will be displayed. Under Reducing Transaction Costs Associated with Interconnection Agreements, you will see a list of four commitments. The fourth contains an Extension Request Form to be completed and submitted to AT&T Wholesale Contract Management, via fax or email. The fax number and email address are provided on this page.