

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Petition of AT&T for Forbearance Under 47)	WC Docket No. 06-125
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’s Petition for Declaratory Ruling)	
)	
Emergency Petition for a Declaratory Ruling of)	
Time Warner Telecom Inc.)	

**REPLY COMMENTS OF AT&T INC. TO PETITIONS FOR DECLARATORY RULING
FILED BY COMPTEL AND TIME WARNER TELECOM**

AT&T Inc. (AT&T) respectfully submits these reply comments in opposition to the petitions for declaratory ruling filed by CompTel and Time Warner Telecom Inc. (TWT) (collectively, Petitioners) in the above-captioned proceeding.

The handful of commenters who filed in support of Petitioners offer no new facts or legal theories that would warrant granting Petitioners’ unjustified demand to delay the detariffing relief the Commission adopted in the *Broadband Forbearance Order*, which by its own unambiguous terms became “effective on October 11, 2007.”¹ Instead, they merely parrot the same meritless claims and empty hyperbole proffered in the Petitioners’ initial filings.² Indeed,

¹ *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; Petition of BellSouth Corporation for Forbearance Under Section 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 ¶ 76 (released Oct. 11, 2007) (*Broadband Forbearance Order*).

² See BT Americas Comments at 2-6; Level 3, et al Comments at 2-9; NASUCA Comments at 2-4; NuVox Comments at 4-6.

not one commenter alleges that detariffing alters the actual *substance* of AT&T’s obligations under the special access merger commitments. Nor could they credibly do so, as the individual commitments do not require AT&T to “maintain tariffs” for any of its special access services – rather, they concern obligations not to “increase”³ certain rates; not to “provide”⁴ certain services to affiliates that are not available to other customers; not to “oppose”⁵ certain methods of dispute resolution; and not to “include”⁶ certain conditions in service arrangements.⁷ These obligations will continue to apply after detariffing.

Unable to demonstrate that detariffing will affect AT&T’s substantive obligations under the merger commitments, commenters can only repeat Petitioners’ assertion that maintaining tariffs would be beneficial in policing compliance with the merger commitments. In the absence of such tariffs, they speculate, AT&T might engage in “willful violations” of its merger commitments and other regulatory requirements.⁸ But the premise of these arguments – that tariffs are necessary to ensure compliance with the substantive requirements and, without them, the Commission’s complaint and enforcement processes are worthless – is flatly inconsistent

³ See *A&T-BellSouth Merger Order*, Appendix F, Special Access Conditions 2, 5. See also *A&T-BellSouth Merger Order*, Appendix F, Special Access Condition 6 (requiring AT&T to “offer” certain services “at rates no higher than” specified existing rates).

⁴ See *A&T-BellSouth Merger Order*, Appendix F, Special Access Conditions 3, 4.

⁵ See *A&T-BellSouth Merger Order*, Appendix F, Special Access Condition 7.

⁶ See *A&T-BellSouth Merger Order*, Appendix F, Special Access Condition 8.

⁷ See AT&T Comments at 6-17. Only one commitment required AT&T to “file” a specific tariff by a date certain and AT&T has already fully satisfied that commitment. See *AT&T-BellSouth Merger Order*, Appendix F, Special Access Condition 9 (requiring AT&T to file a tariff within 60 days of the merger closing date containing “reasonable volume and term discounts without minimum annual revenue commitments (MARC)s or growth discounts”); AT&T Comments at 12-13 (describing AT&T’s compliance with Condition 9). This specific reference to a one-time tariff filing requirement demonstrates that, where the Commission intended to impose any type of tariff filing or maintenance requirements, it was fully capable of saying so explicitly. By contrast, the complete absence of any express language imposing ongoing tariff filing or maintenance requirements shows that the Commission did *not* intend to impose such requirements.

⁸ See Level 3, et al Comments at 6-7. See also NuVox Comments at 5-6; BT Americas Comments at 3-4.

with the Commission's decision to authorize detariffing in the *Broadband Forbearance Order*, as well as a long line of other detariffing decisions.⁹ In this respect, their arguments amount to nothing more than an untimely petition for reconsideration of those decisions, and the repetitious *ad hominem* pot-shots they take at AT&T's corporate character cannot change that reality.¹⁰

In fact, this latest salvo is Petitioners *third* bite at the apple in their quest to prevent AT&T from implementing tariff relief granted by the Commission.¹¹ They initially raised the issue during the AT&T-BellSouth merger proceeding, where CompTel and its member companies aggressively lobbied the Commission to require AT&T to withdraw its then-pending broadband forbearance petitions.¹² As previously discussed in AT&T's Comments,¹³ the

⁹ See *Broadband Forbearance Order* ¶ 42. See also *Review of Regulatory Requirements of Incumbent LEC Broadband Telecommunications Services*, Memorandum Opinion and Order, 17 FCC Rcd. 27000 ¶ 26 n.82 (2002) (citing Commission detariffing precedent and observing that the Commission "has long recognized that tariff regulation has many drawbacks.").

¹⁰ See NASUCA Comments at 4 ("NASUCA also believes that the granting of forbearance to AT&T's broadband services was unnecessary."); TWT Petition at 10 ("trusting AT&T (in light of its unwholesome incentives) is insufficient"); Level 3, et al Comments at 6 ("AT&T may also seek to willfully and repeatedly violate the special access merger commitments").

¹¹ In a related effort to dredge-up previously settled issues, BT Americas claims that it needs tariffed access to BOC-provided Ethernet services because providing its own Ethernet services over TDM facilities acquired from BOCs is not cost-efficient and reduces the quality of its Ethernet offerings. BT Americas Comments at 7-8. The Commission, however, has already flatly rejected this very same argument on two separate occasions in the last six months. See *Broadband Forbearance Order* ¶ 26; *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, FCC 07-149 ¶ 102 (released Aug. 20, 2007).

¹² Comments of CompTel, WC Docket No. 06-74, at 19 (Oct. 25, 2006) ("CompTel's Proposed Forbearance Condition. The merged entity agrees that it will withdraw the AT&T and BellSouth forbearance petitions pending before the FCC (CC Dockets No. 06-120 and 06-125) and shall not file any additional forbearance petitions dealing with the same or similar service offerings"); Letter from Jonathan Lee, CompTel, to Marlene Dortch, FCC, WC Docket No. 06-74 at 2 (Dec. 26, 2006) (repeating CompTel request for the Commission to dismiss or require withdrawal AT&T's pending petition for forbearance).

¹³ See AT&T Comments at 13-14.

Commission found no conflict between the merger commitments and the pending forbearance petitions and rejected CompTel's demands.

They raised the issue again in the broadband forbearance docket, where TWT made the same arguments it repeats here: detariffing AT&T's broadband special access services would "diminish" the special access merger commitments in violation of AT&T's separate merger commitment not to seek or give effect to a future grant of forbearance that "diminishes or supersedes the merged entity's obligations under these merger commitments" ¹⁴ TWT further demanded that the Commission "deem the pending AT&T and legacy BellSouth petitions for forbearance null and void." ¹⁵

The Commission, of course, did no such thing. To the contrary, after reviewing TWT's submissions and AT&T's response, ¹⁶ the Commission *granted* AT&T's forbearance petitions in large part in the *Broadband Forbearance Order*, which became "effective on October 11, 2007." ¹⁷ In that *Order*, the Commission found that continued tariff regulation would "create market inefficiencies, inhibit carriers from responding quickly to rivals' new offerings, and impose other unnecessary costs." ¹⁸ The Commission concluded that detariffing AT&T's broadband services was in the public interest. ¹⁹ In fact, the Commission pointed out that

¹⁴ See Letter from Thomas Jones, Wilkie Farr & Gallagher on behalf of TWT, to Marlene Dortch, FCC, WC Docket No. 06-125, at 2-3 (Oct. 8, 2007) (TWT Oct. 8 Letter); Letter from Thomas Jones, Wilkie Farr & Gallagher on behalf of TWT, to Marlene Dortch, FCC, WC Docket No. 06-125, at 2 (Oct. 11, 2007) (TWT Oct. 11 Letter). See also *A&T-BellSouth Merger Order*, Appendix F, Forbearance Condition 2.

¹⁵ TWT Oct. 8 Letter at 4. See also TWT Oct. 11 Letter at 3 ("The AT&T and BellSouth 'Me Too' forbearance petitions should therefore be deemed null and void as a violation of the Merger Conditions.").

¹⁶ See Letter from Jack Zinman, AT&T, to Marlene Dortch, FCC, WC Dockets Nos. 06-125 & 06-74 (Oct. 10, 2007).

¹⁷ *Broadband Forbearance Order* ¶ 76. See also *id.* ¶ 78.

¹⁸ *Broadband Forbearance Order* ¶ 33.

¹⁹ *Broadband Forbearance Order* ¶ 46.

numerous CompTel member companies had raised concerns about AT&T's ability to use its tariffs to invoke the filed rate doctrine and, thus, these "commenters . . . suggest that a mandatory detariffing regime would be more appropriate."²⁰ Accordingly, the Commission expressly ruled that the forbearance relief it granted for AT&T is conditioned upon "mandatory" detariffing.²¹

Moreover, the Commission emphasized in the *Broadband Forbearance Order* that, notwithstanding the detariffing relief it adopted, AT&T would:

continue to be subject to sections 201 and 202 of the Act in its provision of its specified broadband services, which, among other things, mandate that AT&T provide interstate telecommunications services upon reasonable request and prohibit it from acting in an unjust or unreasonable manner or otherwise favoring particular entities in the provision of "like" services provided to other entities.²²

In addition, the Commission observed that "the formal complaint process in Section 208 of the Act and Sections 1.720 through 1.735 of the Commission's rules will continue to apply to [AT&T's broadband] service offerings."²³ Further, as a condition of the AT&T-BellSouth merger, AT&T remains subject to an annual certification requirement, pursuant to which an officer of the corporation must attest to AT&T's compliance with the merger commitments.²⁴

Thus, despite the commenters sky-is-falling rhetoric about AT&T's purported ability to "willfully and repeatedly violate the special access merger commitments,"²⁵ the Commission will remain fully able to ensure AT&T satisfies its merger commitments in a detariffed environment – which AT&T intends to do in all events.

²⁰ *Broadband Forbearance Order* ¶ 42. See *id.* n.165 (citing comments from Alpheus, DeltaCom, Integra, McLeod, Mpower, Norlight, Pac-West, TDS Metrocom, and Telepacific).

²¹ *Broadband Forbearance Order* ¶ 42.

²² *Broadband Forbearance Order* ¶ 35.

²³ *Broadband Forbearance Order* ¶ 36.

²⁴ See *AT&T-BellSouth Merger Order*, Appendix F, Certification Condition.

²⁵ Level 3, et al Comments at 6.

After striking-out twice, Petitioners have now ginned-up the instant proceeding in yet another feckless attempt to forestall the detariffing relief the Commission granted in the *Broadband Forbearance Order*. But neither the Petitioners nor the commenters who support them have offered any significant new facts or arguments to distinguish their current positions from the positions they advocated in their previous failed attempts at blocking the Commission from detariffing AT&T's broadband services. The Commission should – once and for all – put a stop to the Petitioners' endless efforts to interfere with the broadband forbearance relief that the Commission itself adopted and directed AT&T to implement.²⁶ Accordingly, for all of the reasons discussed above and in AT&T's opening Comments, the Commission should promptly deny the petitions for declaratory ruling filed by CompTel and TWT.²⁷

Respectfully Submitted,

/s/ Jack S. Zinman
Jack S. Zinman
Gary L. Phillips
Paul K. Mancini
AT&T Inc.
1120 20th Street, N.W.
Washington, D.C. 20036
(202) 457-3053

Attorneys for AT&T Inc.

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²⁶ See *AT&T-BellSouth Merger Order* ¶ 42 (describing detariffing as “mandatory”).

²⁷ In its January 11, 2008 Reply Comments, CompTel takes issue with the “Business Services Agreement” pursuant to which AT&T intends to provide its broadband services in a detariffed environment. CompTel Reply Comments at 4-5. Specifically, CompTel alleges that paragraph 5 of that Agreement, in which AT&T reserves the right to increase prices upon 30 days notice to customers, is evidence of AT&T's intent to violate its special access pricing commitments. CompTel is wrong. The Business Services Agreement covers broadband services that may be provided under arrangements that may extend beyond the duration of AT&T's commitments, at which time the pricing limits in those commitments will no longer apply. Moreover, if, while those commitments are in place, AT&T chooses to offer broadband services below the price ceilings set forth in its commitments, AT&T may also subsequently choose to increase its rates for those services up to (but not above) the applicable price ceilings. Thus, CompTel's concerns about the Business Services Agreement are entirely misplaced.