

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

In the Matter of	)	
	)	
Request for Review by U.S. TelePacific Corp.	)	WC Docket No. 06-122
d/b/a TelePacific Communications	)	
Universal Service Administrator Decision	)	

**OPPOSITION TO MOTION TO STRIKE REPLY COMMENTS OF AT&T INC.**

AT&T Inc. (AT&T), on behalf of its affiliates, hereby opposes U.S. TelePacific Corp.'s (TelePacific's) Motion to Strike AT&T's reply comments, which were timely filed in the instant proceeding.<sup>1</sup> According to TelePacific's Motion, AT&T's reply comments were not reply comments at all but, instead, amounted to an untimely opposition to TelePacific's Petition.<sup>2</sup> TelePacific is simply incorrect and therefore AT&T respectfully requests that the Wireline Bureau Competition (Bureau) reject TelePacific's Motion to Strike.

It is clear from any plain reading of AT&T's reply comments that AT&T does not oppose TelePacific's Petition. Indeed, due to the glaring omissions contained in TelePacific's Petition (e.g., a description of the manner in which it obtains transmission facilities from its wholesale providers, whether it has provided its wholesale providers with reseller certifications), no party is in a position to make an informed decision to oppose (or support, for that matter) TelePacific's request. Notwithstanding the dearth of relevant factual information that would enable parties to comment meaningfully on TelePacific's Petition, several commenters nonetheless filed in

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<sup>1</sup> U.S. TelePacific Corp. d/b/a TelePacific Communications Motion to Strike Reply Comments on AT&T Inc., WC Docket No. 06-122 (filed Feb. 5, 2010) (Motion to Strike); Reply Comments of AT&T Inc., WC Docket No. 06-122 (filed Feb. 3, 2010) (Reply Comments).

<sup>2</sup> Request for Review by U.S. TelePacific Corp. d/b/a TelePacific Communications of Universal Service Administrator Decision, WC Docket No. 06-122 (filed Jan. 8, 2010) (Petition).

support of TelePacific. Without exception, these commenters either misunderstood or ignored relevant Commission precedent. For that reason, AT&T filed reply comments to correct those commenters' misstatements. Far from raising "new arguments," AT&T's reply comments merely stated what should be obvious to anyone knowledgeable about the Commission's universal service contribution requirements.<sup>3</sup>

It is ironic in the extreme for TelePacific to feign outrage over any party's purported procedural shortcomings when *it* plainly flouted the Commission's rules by filing an incomplete Petition. Section 54.721 of the Commission's rules requires, among other things, that requests for review contain "[a] full statement of relevant, material facts" along with "[t]he question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision."<sup>4</sup> In addition to omitting relevant facts from its Petition, on February 1, 2010 – almost one month after filing its Petition and after the due date for initial comments – TelePacific filed nine pages of "supplemental information" in this proceeding. Rather than providing the Commission with information that was not known or could not have been known to it when it filed its Petition, TelePacific instead expounds on arguments it claims it made previously in two 2009 filings to USAC, both of which it attached to its Petition.<sup>5</sup> TelePacific offers no explanation why it could not have "explained the legal

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<sup>3</sup> It is also a stretch to refer to these points as "new" to TelePacific since AT&T made many of the same statements in a filing last November in a proceeding in which TelePacific participated. *See* Reply Comments at n.6 (citing Reply Comments of AT&T Inc., *USAC Request for Guidance*, WC Docket No. 05-337 (and related proceedings), at 13-15 (filed Nov. 12, 2009)). While AT&T does not normally assume that other parties read its filings, given that AT&T's reply comments last November were in response to TelePacific's comments and TelePacific has demonstrated an interest in AT&T's filings (see Motion to Strike at 3-4 & n.11), it is doubtful that TelePacific had not reviewed AT&T's November 2009 reply comments.

<sup>4</sup> 47 C.F.R. § 54.721(b).

<sup>5</sup> *See* Letter from Andrew Lipman, Tamar Finn, and Douglas Orvis, Counsel for TelePacific, to Marlene Dortch, FCC, WC Docket No. 06-122 (filed Feb. 1, 2010) (stating that it "provides supplemental

arguments” from its earlier filings in its Petition. If the Bureau considers TelePacific’s February 1, 2010, filing at all, it should conclude that TelePacific’s arguments amount to nothing more than an untimely request for reconsideration of the Commission’s 2005 *Wireline Broadband Internet Access Order*.<sup>6</sup> Moreover, TelePacific’s claims about an “unlevel playing field” vis-à-vis its ILEC competitors are incorrect insofar as TelePacific assumes that an ILEC that provides broadband transmission facilities on a common carriage basis to an affiliated ISP does not have the same obligation to contribute to the universal service support mechanisms based on the revenues associated with that transaction as it does when it sells the same type of facility (e.g., a T-1) to unaffiliated ISPs. As we explained previously, that assumption simply is not correct.<sup>7</sup>

AT&T’s reply comments, correcting commenters’ misstatements about the Commission’s universal service contribution precedent, were timely filed and, as such, we respectfully request that they be considered by Commission staff when evaluating TelePacific’s Petition. Finally, and contrary to TelePacific’s assertion about AT&T opposing its Petition,

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information to explain the legal arguments raised on page 7 of the *April Letter* and pages 16 and 17 of the *October Letter* incorporated by reference in, and attached to, its [Petition].”).

<sup>6</sup> *Wireline Broadband Internet Access Order*, 20 FCC Rcd 14853 (2005).

<sup>7</sup> See, e.g., Reply Comments at 2, 3 (quoting *Wireline Broadband Internet Access Order* at ¶ 103).

AT&T has no objection to Commission staff affording TelePacific additional time in which to provide it with the factual information necessary for the Bureau to issue a decision on whether TelePacific correctly reported its revenue on its FCC Forms 499-A.

Respectfully Submitted,

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