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**REDACTED FOR PUBLIC INSPECTION - IN WC DOCKET NO. 05-25, RM-10593  
before the Federal Communications Commission**

January 27, 2011

**FILED/ACCEPTED**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**JAN 27 2011**

Federal Communications Commission  
Office of the Secretary

Re: AT&T Data Submitted in Response to Request in *Special Access NPRM*

AT&T Services, Inc., on behalf of its operating companies and affiliates, hereby submits data in response to the Commission's request that the public voluntarily submit data to assist the Commission in evaluating the issues raised in the *Special Access NPRM*.<sup>1</sup> In preparing this response, AT&T has attempted to follow the instructions and present the data included in the voluntary information request, in the format requested, in the *Public Notice*. In a number of cases, the voluntary information requests were unclear, and/or the data requested was unavailable or not maintained in AT&T's systems in the format requested. In such cases, we were required to make certain assumptions regarding the data requested, or simply were unable to provide the data requested. In this cover letter, we have set forth the assumptions on which we relied in preparing this response, and identified the data we are unable to provide.

As discussed herein, AT&T's responses to the data requested by the Commission in the *Public Notice* contain some of AT&T's most commercially sensitive information (including, *inter alia*, information regarding the location, capacity and medium of AT&T's network facilities, whether those facilities are owned by AT&T or leased from another entity pursuant to an infeasible right of use (IRU) agreement, the location of collocated facilities, and the business rules AT&T uses to determine whether to build connections to particular locations), the disclosure of which would place AT&T at a significant competitive disadvantage. Accordingly, AT&T has designated all of its responses "Highly Confidential Information" subject to the protections of the *Second Protective Order* in the above-referenced docket, including the limitations on access to such information only to Outside Counsel of Record and Outside Consultants in this proceeding, and the prohibition on additional copying of such information.<sup>2</sup> Consistent with the terms of that *Second Protective Order*, AT&T has clearly identified the portions of its filing that contain Highly Confidential Information, and is submitting herewith two redacted copies of the filing, which do not contain either Highly Confidential or Confidential Information.

<sup>1</sup> *Data Requested In Special Access NPRM*, WC Docket No. 05-25, RM-10593, Public Notice, DA 10-2073 (rel. Oct. 28, 2010) (*Public Notice*).

<sup>2</sup> *Special Access Rates for Price Cap Local Exchange Carriers*, Second Protective Order, WC Docket No. 05-25, RM-10593, DA 10-2419 (rel. Dec. 27, 2010) (*Second Protective Order*).

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List A B C D E

In addition, out of an abundance of caution, AT&T is claiming protection from disclosure of the information submitted herewith pursuant to exemption 4 of the Freedom of Information Act (FOIA), and the Commission's rules, and requests that such information be withheld from public inspection except as provided in the *Second Protective Order*.<sup>3</sup> Specifically, pursuant to the Commission's decision in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55 (FCC 98-184), released Aug. 4, 1998 ("*Confidential Information Order*") and in accordance with FOIA and the Commission's Rules related to public information and inspection of records, e.g. 47 C.F.R. §§ 0.457 and 0.459, AT&T, on behalf of itself and its affiliates, hereby submits this request for confidential treatment of information submitted to the Commission in response to the *Public Notice*. This request applies to all of the information submitted herewith to the Commission.

**Statement pursuant to 47 C.F.R. § 0.459(b)**

**(1) Identification of the specific information for which confidential treatment is sought.**

All of the information being submitted in response to the *Public Notice* is confidential commercial information under Exemption 4 of the FOIA, 47 U.S.C. § 552(b)(4). Accordingly, pursuant to Commission Rule 0.459(a), AT&T requests that such information not be made routinely available for public inspection except as provided in the *Second Protective Order* in the above-referenced docket. The information includes, *inter alia*, information regarding the location, capacity and medium of AT&T's network facilities, whether those facilities are self-provisioned or leased from other providers, the location of collocated facilities, and the business rules AT&T uses to determine whether to build connections to particular locations.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The information is being provided to the Commission in response to the *Public Notice*.

**(4) Explanation of the degree to which the information concerns a service that is subject to competition; and**

The records being provided to the Commission involve various telecommunications services provided by AT&T in competition with other carriers. Telecommunications is a highly competitive industry, and AT&T's services are subject to significant competition throughout the country. The presence of such competition and the likelihood of competitive injury threatened by release of the information provided to the Commission by AT&T should compel the Commission to withhold the information from public disclosure, except as provided in the *Second Protective Order*. *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *Frazer v. U.S. Forest Service*, 97 F.3d 367, 371 (9<sup>th</sup> Cir. 1996); *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

**(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.**

AT&T's responses to the data requested by the Commission in the *Public Notice* contain some of AT&T's most commercially sensitive information (including, *inter alia*, information regarding the location, capacity and medium of AT&T's network facilities, whether those facilities are self-provisioned or leased from other providers, the location of collocated facilities, and the

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<sup>3</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d) (exempting from disclosure "[t]rade secrets and commercial or financial information obtained from any person and privileged or confidential").

business rules AT&T uses to determine whether to build connections to particular locations), the disclosure of which would place AT&T at a significant competitive disadvantage.

**(5) Explanation of how disclosure of the information could result in substantial competitive harm.**

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial and financial information of a person unless there is an overriding public interest requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4.

Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under *Critical Mass*, commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.<sup>4</sup> For materials not subject to *Critical Mass*, *National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.<sup>5</sup> The first prong asks whether disclosing the information would impair the government's ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong, it is exempted from disclosure under Exemption 4. Whether under *Critical Mass* or *National Parks*, the information provided by AT&T falls within Exemption 4.

The materials being provided to the Commission in response to the *Public Notice* are not customarily released to the public, are maintained on a confidential basis, and are not ordinarily disclosed to parties outside the company. Disclosure would subject AT&T to substantial competitive harm.

The records being provided to the Commission contain information pertaining to the location, capacity and medium of AT&T's network facilities, whether those facilities are self-provisioned or leased from other providers, the location of collocated facilities, and the business rules AT&T uses to determine whether to build connections to particular locations, and thus represent confidential commercial information that should not be released under the FOIA, except as provided in the *Second Protective Order*. Competitors could use the confidential information to assist in targeting their service offerings and enhancing their competitive positions, to the detriment of the competitive position of AT&T. See, e.g., *GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9<sup>th</sup> Cir. 1994).

Commission precedent has clearly found this type of information to be competitively sensitive and withholdable under Exemption 4.<sup>6</sup> Specifically, the Commission has recognized that

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<sup>4</sup> *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

<sup>5</sup> *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) ("National Parks").

<sup>6</sup> See e.g. *In Matter of Pacific Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-23, DA 00-2618,

competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company's costs, pricing plans, market strategies, and customer identities. See *In re Pan American Satellite Corporation*, FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).<sup>7</sup> The protective procedures established by the Commission and other governmental agencies recognize the need to keep such information confidential to the maximum extent possible. The Commission has provided the assurances that it is "sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage."<sup>8</sup> Accordingly, AT&T requests that the information submitted herewith be withheld from public inspection except as provided in the *Second Protective Order* in the above-referenced docket.

### **Qualifications and Assumptions Underlying AT&T's Responses to Specific Data Requests**

We have identified below the assumptions on which we relied (to the extent such assumptions were required) in preparing responses to the specific data requests in the *Public Notice*, and identified the data we are unable to provide. AT&T's responses reflect the most up-to-date data in AT&T's systems, rather than data as of December 31, 2009, because those systems do not archive this type of data.

Definition of "Connections": In the *Public Notice*, the Commission defines a "connection" as a "wired 'line' or 'wireless channel' that provides to an end user or seller of CMRS a dedicated communication path between a provider's network (e.g., an end office or similar point of aggregation) and a location. Multiple dedicated communications paths serving one or more end users at the same location using the same wired line or wireless channel should be counted as a single connection." *Public Notice* at 2. Because the definition does not clearly

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November 20, 2000 (supporting confidentiality for collocation data); *Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport; Southwestern Bell Telephone Company*, 13 FCC Rcd 13615 (1998)(keeping administrative operating expenses confidential because it would provide insight into business strategies); *AT&T/McCaw Merger Applications* 9 FCC Rcd 2610 (1994)(keeping confidential accounting records showing account balance information); *NAACP Legal Defense Fund on Request for Inspection of Records* 45 RR 2d 1705 (1979)(keeping confidential records that contained employee salary information); *Mercury PCS II, LLC (Request for Inspection of Records) Omnipoint Corporation (Request for Confidential Treatment of Documents)*, FCC 00-241 (July 17, 2000)(keeping confidential marketing plans and strategy information).

<sup>7</sup> Further, the Commission has ruled that not only should such data be protected, but also that information must be protected through which the competitively sensitive information can be determined. *Allnet Communications Services, Inc. Freedom of Information Act Request*, FOIA Control No. 92-149, Memorandum Opinion and Order (released August 17, 1993) at p. 3. The Commission's decision was upheld in a memorandum opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. *Allnet Communications Services, Inc. v. FCC*, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).

<sup>8</sup> *Confidential Information Order* at ¶ 8.

delineate what is meant by the terms “same wired line” and “[same] wireless channel,” we have made certain assumptions in preparing our response. Specifically, we have treated all communication paths relying on the same medium (e.g., fiber, copper, coaxial cable) serving one or more end users at a particular location as a “single connection” even if the “wired line” over which those communication paths are provided contains multiple sheaths and/or strands of, for example, fiber or copper. That is, where we have provided data concerning the total number of connections in a particular geographic area (such as in response to Question III.E.), we have treated all communication paths to a particular location using the same transmission medium (e.g., fiber or copper) as one connection regardless of the number of sheaths, and/or strands of fiber or copper pairs actually entering that location. Thus, if we have multiple fiber sheaths (each of which contain multiple fiber strands) and multiple sheaths of copper entering a particular location, we have counted all of the fiber sheaths (and the fibers contained therein) as a single fiber connection and all of the copper sheaths (and pairs contained therein) as a single copper connection serving that location.

Question III.B.1.a.: In its response to Question III.B.1., AT&T’s non-incumbent local exchange carrier (LEC) affiliates have identified those connections that they own or lease from another entity under an indefeasible right of use (IRU). In column 5, AT&T has listed the entity that owns the last segment of the facility (that is, the portion that enters the customers’ premises at a particular location) used to provide a connection to that location, and from which AT&T leased that segment pursuant to an IRU. In many, if not most, cases, the connection to that location is provided using a combination of AT&T’s own network facilities and facilities obtained from a third party. For locations to which AT&T provides a connection (or connections) wholly over its own facilities (or where the last segment of the connection – that is, the piece entering the customers’ premises – is owned by AT&T), we have left the field in column 5 blank. Where the last segment of the fiber or other network facility used to provide a connection to a particular location is leased pursuant to an IRU, we have listed the entity from which AT&T obtains that facility.

Question III.B.1.b.: Information regarding the remaining years left on facilities leased pursuant to IRUs is not readily accessible from AT&T’s automated systems. In most cases, such facilities are leased in perpetuity or pursuant to an IRU that is automatically renewed unless AT&T and/or the lessor decides not to renew the lease. Because of the time and expense necessary to review each IRU lease to determine the remaining term for those few IRUs that are not perpetual (or automatically renewed), AT&T has assumed that each such IRU has a remaining term of 20 years, and populated the field accordingly.

Question III.B.1.f.: AT&T’s systems do not maintain data on whether a connection is to a cell site in or on a building. Consequently, AT&T was able to determine whether a particular location was a cell site in or on a building only by identifying those locations at which AT&T Mobility has a cell tower or site (based on data in AT&T Mobility’s systems), and comparing them to those locations listed on the spreadsheet containing our response to Question III.B.1. Thus, in preparing our response to this question, we have identified locations as Loc\_type “2” (i.e., a cell site in or on a building) only for those buildings in or on which AT&T Mobility has a cell site – not locations at which another wireless service provider (such as T-Mobile, Sprint or Verizon) has a cell site in or on the building.

Question III.B.3.: Rather than providing hard-copy maps, AT&T is providing the underlying data in ESRI Shapefiles that can be used to produce maps using commercially available mapping software. The data we are providing can be used to create maps showing AT&T's metro fiber routes and customer locations as defined in the data request. The actual paths connecting AT&T's metro fiber network and customer locations are not included in the ESRI Shapefiles because of network and national security concerns. The data provided in response to this question are limited to geographic areas outside the footprint of AT&T's ILEC operating companies.

Question III.E.1.: In all but a few legacy BellSouth states, AT&T's systems do not maintain data regarding the "maximum total capacity" of connections to locations; rather, they maintain data regarding only the "total capacity sold" at such locations. Where we have data regarding the "maximum total capacity" of connections to locations, we have reported it. For all other locations, we have reported the "total capacity sold" in the field for "maximum total capacity."

Question III.F.: We are not providing comment on the quality, utility and clarity of the data request at this time. We reserve the right to comment on these issues once we have had an opportunity to review the data submitted in response to the request.

If you have any questions concerning the foregoing, please contact the undersigned at 202-457-3058 or Jay Bennet, Assistant Vice President – Federal Regulatory at 202-457-3031.

Sincerely,

/s/ Christopher M. Heimann

cc: Marvin Sacks

REDACTED – NOT FOR PUBLIC DISCLOSURE