



Christopher Heimann
General Attorney

AT&T Services, Inc.
1120 20th Street NW, Suite 1000
Washington, D.C. 20036
Phone 202 457-3058
Fax 202 457-3074

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

December 23, 2011

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

FILED/ACCEPTED

DEC 23 2011

Federal Communications Commission
Office of the Secretary

Re: AT&T Data Submitted in Response to Second Data Request in *Special Access NPRM*; WC Docket No. 05-25, RM-10593

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*.¹ Such data is being provided in the attached CD-ROMs. In preparing its 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, AT&T was unable to provide all of the data requested and/or in the format requested because either it does not collect and store such data, or because of limitations in the way such data is stored in AT&T's systems. In our responses, attached hereto, we have sought to identify where we lacked sufficient information to provide the data requested. We are submitting herewith responses to the data requested in Section III.D (All Purchasers).

As discussed herein, AT&T's responses to the information requested by the Commission in the *Public Notice* contain some of AT&T's most commercially sensitive information, the disclosure of which would place AT&T at a significant competitive disadvantage. Accordingly, AT&T has designated many of its responses "Highly Confidential Information" subject to the protections of the *First Protective Order as Modified*,² the *Second Protective Order*, and the supplements to that 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.³ Consistent with the terms of that *Second Protective Order*, AT&T has clearly identified the portions of its filing that contain

¹ *Competition Data Requested In Special Access NPRM*, WC Docket No. 05-25, RM-10593, Public Notice, DA 11-1576 (rel. Sep. 19, 2011) (*Competition Data Request*).

² *Special Access Rates for Price Cap Local Exchange Carriers*, Protective Order, WC Docket No. 05-25, RM-10593, 20 FCC Red 10160 (2005); *Special Access Rates for Price Cap Local Exchange Carriers*, Modified Protective Order, WC Docket No. 05-25, RM-10593, 25 FCC Red 15168 (2010) ("*First Protective Order as Modified*").

³ *Special Access Rates for Price Cap Local Exchange Carriers*, Second Protective Order, WC Docket No. 05-25, RM-10593, 25 FCC Red 17725 (2010) (*Second Protective Order*); *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Paul Margie, Wiltshire & Grannis LLP, 26 FCC Red 6571 (2011) (supplementing the Second Protective Order) (*Gillett Letter*).

10 of Copies rec'd 0+1
List ABCDE

Highly Confidential Information, and is submitting herewith a redacted copy of the filing, which do not contain either Highly Confidential or Confidential Information.

Because the Commission issued the *Second Protective Order* to cover specific categories of data that parties filed in response to the Commission's initial *Special Access Data Request*,⁴ and the *Competition Data Request* asks for different categories of information, AT&T requests that the Commission modify or expand the scope of the *Second Protective Order* to provide the heightened level of protection for highly confidential information (including, *inter alia*, information and data relating to its purchase of high capacity transmission services) submitted in response to the *Competition Data Request*. These data constitute highly confidential and commercial sensitive information, the disclosure of which could place the submitting party at a significant competitive disadvantage. The Commission plainly intended to afford those protections to any information designated as highly confidential and submitted in response to the *Competition Data Request*,⁵ and should amend the scope of the *Second Protective Order* to encompass these data to the extent the Commission concludes that any such data fall outside the scope of the *Second Protective Order*.

In addition, out of an abundance of caution, AT&T is claiming protection from disclosure of the information designated as "Highly Confidential 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 pursuant to the protections afforded to "Highly Confidential Information" in the *Second Protective Order*.⁶ 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 all information designated as Highly Confidential Information submitted herewith to the Commission in response to the *Public Notice*.

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 designated as "Highly Confidential Information" being submitted herewith 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 pursuant to the protections afforded to Highly Confidential Information as provided in the *Second Protective*

⁴ *Data Requested in Special Access NPRM*, Public Notice, 25 FCC Red 15146 (2010) ("*Special Access Data Request*"); *Second Protective Order* at ¶ 5-6 (stating that a submitting party may file under the *Second Protective Order* only those documents/data specifically authorized by the Bureau).

⁵ *Competition Data Request* at 2 (stating that parties submitting confidential and proprietary information in response to the request should do so in accordance with the *Second Protective Order* and the supplements to that order).

⁶ 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").

Order in the above-referenced docket. The information includes, *inter alia*, data relating to its purchase of high capacity transmission services.

(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); *Frazee v. U.S. Forest Service*, 97 F.3d 367, 371 (9th 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, 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.⁷ For materials not subject to *Critical Mass*, *National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.⁸ The first prong asks whether disclosing the information would impair the government's ability to

⁷ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

⁸ *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) ("*National Parks*").

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 designated as “Highly Confidential Information” and 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 regarding, *inter alia*, AT&T’s purchases of high capacity services, 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 (9th Cir. 1994).

Commission precedent has clearly found this type of information to be competitively sensitive and withholdable under Exemption 4.⁹ Specifically, the Commission has recognized that 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).¹⁰ The protective procedures established by the Commission and other

⁹ *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, 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 Red 13615 (1998)(keeping administrative operating expenses confidential because it would provide insight into business strategies); *AT&T/McCaw Merger Applications* 9 FCC Red 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).

¹⁰ 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.).

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.”¹¹ 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.

If you have any questions concerning the foregoing, please contact the undersigned at 202-457-3058, or Linda Vandeloop, Director – Federal Regulatory at 202-457-3033.

Sincerely,

/s/ Christopher M. Heimann

cc: Andrew Mulitz

¹¹ *Confidential Information Order* at ¶ 8.



Christopher Heimann
General Attorney

AT&T Services, Inc.
1120 20th Street NW, Suite 1000
Washington, D.C. 20036
Phone 202 457-3058
Fax 202 457-3074

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

December 23, 2011

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

Re: AT&T Data Submitted in Response to Second Data Request in *Special Access NPRM*; WC Docket No. 05-25, RM-10593

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*.¹ Such data is being provided in the attached CD-ROMs. In preparing its 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, AT&T was unable to provide all of the data requested and/or in the format requested because either it does not collect and store such data, or because of limitations in the way such data is stored in AT&T's systems. In our responses, attached hereto, we have sought to identify where we lacked sufficient information to provide the data requested. We are submitting herewith responses to the data requested in Section III.D (All Purchasers).

As discussed herein, AT&T's responses to the information requested by the Commission in the *Public Notice* contain some of AT&T's most commercially sensitive information, the disclosure of which would place AT&T at a significant competitive disadvantage. Accordingly, AT&T has designated many of its responses "Highly Confidential Information" subject to the protections of the *First Protective Order as Modified*,² the *Second Protective Order*, and the supplements to that 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.³ Consistent with the terms of that *Second Protective Order*, AT&T has clearly identified the portions of its filing that contain

¹ *Competition Data Requested In Special Access NPRM*, WC Docket No. 05-25, RM-10593, Public Notice, DA 11-1576 (rel. Sep. 19, 2011) (*Competition Data Request*).

² *Special Access Rates for Price Cap Local Exchange Carriers*, Protective Order, WC Docket No. 05-25, RM-10593, 20 FCC Red 10160 (2005); *Special Access Rates for Price Cap Local Exchange Carriers*, Modified Protective Order, WC Docket No. 05-25, RM-10593, 25 FCC Red 15168 (2010) ("*First Protective Order as Modified*").

³ *Special Access Rates for Price Cap Local Exchange Carriers*, Second Protective Order, WC Docket No. 05-25, RM-10593, 25 FCC Red 17725 (2010) (*Second Protective Order*); *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Paul Margie, Wiltshire & Grannis LLP, 26 FCC Red 6571 (2011) (supplementing the Second Protective Order) (*Gillett Letter*).

Highly Confidential Information, and is submitting herewith a redacted copy of the filing, which do not contain either Highly Confidential or Confidential Information.

Because the Commission issued the *Second Protective Order* to cover specific categories of data that parties filed in response to the Commission's initial *Special Access Data Request*,⁴ and the *Competition Data Request* asks for different categories of information, AT&T requests that the Commission modify or expand the scope of the *Second Protective Order* to provide the heightened level of protection for highly confidential information (including, *inter alia*, information and data relating to its purchase of high capacity transmission services) submitted in response to the *Competition Data Request*. These data constitute highly confidential and commercial sensitive information, the disclosure of which could place the submitting party at a significant competitive disadvantage. The Commission plainly intended to afford those protections to any information designated as highly confidential and submitted in response to the *Competition Data Request*,⁵ and should amend the scope of the *Second Protective Order* to encompass these data to the extent the Commission concludes that any such data fall outside the scope of the *Second Protective Order*.

In addition, out of an abundance of caution, AT&T is claiming protection from disclosure of the information designated as "Highly Confidential 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 pursuant to the protections afforded to "Highly Confidential Information" in the *Second Protective Order*.⁶ 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 all information designated as Highly Confidential Information submitted herewith to the Commission in response to the *Public Notice*.

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 designated as "Highly Confidential Information" being submitted herewith 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 pursuant to the protections afforded to Highly Confidential Information as provided in the *Second Protective*

⁴ *Data Requested in Special Access NPRM*, Public Notice, 25 FCC Red 15146 (2010) ("*Special Access Data Request*"); *Second Protective Order* at ¶¶ 5-6 (stating that a submitting party may file under the *Second Protective Order* only those documents/data specifically authorized by the Bureau).

⁵ *Competition Data Request* at 2 (stating that parties submitting confidential and proprietary information in response to the request should do so in accordance with the *Second Protective Order* and the supplements to that order).

⁶ 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").

Order in the above-referenced docket. The information includes, *inter alia*, data relating to its purchase of high capacity transmission services.

(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 (9th 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, 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.⁷ For materials not subject to *Critical Mass*, *National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.⁸ The first prong asks whether disclosing the information would impair the government's ability to

⁷ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

⁸ *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) ("*National Parks*").

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 designated as “Highly Confidential Information” and 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 regarding, *inter alia*, AT&T’s purchases of high capacity services, 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 (9th Cir. 1994).

Commission precedent has clearly found this type of information to be competitively sensitive and withholdable under Exemption 4.⁹ Specifically, the Commission has recognized that 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).¹⁰ The protective procedures established by the Commission and other

⁹ *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, 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 Red 13615 (1998)(keeping administrative operating expenses confidential because it would provide insight into business strategies); *AT&T/McCaw Merger Applications* 9 FCC Red 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).

¹⁰ 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.).

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.”¹¹ 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.

If you have any questions concerning the foregoing, please contact the undersigned at 202-457-3058, or Linda Vandeloop, Director - Federal Regulatory at 202-457-3033.

Sincerely,

/s/ Christopher M. Heimann

cc: Andrew Mulitz

¹¹ *Confidential Information Order* at ¶ 8.

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

D. All Purchasers. We request that members of the public that are purchasers of *DS1*, *DS3*, or *PSDS* services respond to the following questions.

DI. Prices. For *DS1*s and *DS3*s sold as unbundled network elements (UNEs)¹⁸ and as non-UNEs, as well as all *PSDS*, submit the following information by rate element by circuit billed in each *LSA* for each month from January 1, 2008 through December 31, 2010.

- a. The closing date of the monthly billing cycle in dd/mm/yyyy format;
- b. The four-digit operating company number (OCN) of the vendor from Telcordia's Local Exchange Routing Guide;
- c. The operating company name of the vendor from Telcordia's Local Exchange Routing Guide;
- d. The circuit identifier common to all elements purchased in common for a particular circuit;
- e. The type of circuit, (*DS1* sold as a UNE, *DS3* sold as a UNE, *PSDS*, or non-UNE *DS1s/DS3s*);
- f. The bandwidth of the circuit;
- g. The serving wire center / mileage rating point Common Language Location Identification (CLLI) of one end of the circuit;
- h. The serving wire center / mileage rating point CLLI of the other end of the circuit;
- i. The billing code/Universal Service Order Code (USOC) for the rate element;
- j. Select the phrase that best describes the rate element from the list. Names of some common rate elements are shown on the generalized circuit diagram below;
 - i. Channel mileage facility, channel mileage, interoffice channel mileage, special transport (a transmission path between two serving wire centers associated with customer designated locations; a serving wire center and an international or service area boundary point; a serving wire center and a hub, or similar type of connection);
 - ii. Channel mileage termination, special transport termination (the termination of channel mileage facility or similar transmission path);
 - iii. Channel termination, local distribution channel, special access line, customer port connection (Ethernet) (a transmission path between a customer designated location and the associated wire center);
 - iv. Clear channel capability (not shown) (an arrangement which allows a customer to transport, for example, 1.536 Mbps of information on a 1.544 Mbps line rate with no constraint on the quantity or sequence of one and zero bits);
 - v. Cross-connection (not shown) (semi-permanent switching between facilities, sometimes combined with multiplexing/demultiplexing);
 - vi. Multiplexing (not shown) (channelizing a facility into individual services requiring a lower capacity or bandwidth);
 - vii. Class of service and/or committed information rate (not shown) (for Ethernet, the performance characteristics of the network and bandwidth available for a customer port connection).
- k. If none of the possible entries describes the rate element, enter a short description;
- l. The state in which the rate element is located;

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

- m. The local access transport area (LATA) in which the rate element is located;
- n. The jurisdiction of the rate element -- i.e., whether it is categorized for regulatory purposes as Intrastate or interstate;
- o. The regulatory regime of the *MSA* under which the rate element is sold (i.e., price cap, phase I or phase II pricing flexibility);
- p. The density pricing zone for the rate element;
- q. The serving wire center / mileage rating point associated with this rate element;
- r. The number of units billed for this rate element;
- s. The dollar amount of non-recurring charges billed for the first unit of this rate element;
- t. The dollar amount of non-recurring charges billed for additional units of this rate element (if different from the amount billed for the initial unit);
- u. The monthly recurring dollar charge for the first unit of the rate element billed;
- v. The monthly recurring dollar charge for additional units (if different from the amount billed for the initial unit);
- w. The total monthly dollar amount billed for the rate element;
- x. The adjustment identifier linking this rate element to the unique out-of-cycle billing adjustment in Question III.D.2 (below);
- y. Length of time (term) commitment associated with this circuit in months;
- z. Indicate whether this rate element is associated with a circuit that contributes to a volume commitment;
- aa. Indicate whether this rate element is associated with a circuit that contributes to a revenue commitment in a *Tariff Discount Plan*;
- ab. Indicate whether this rate element was purchased out of a *Contract-Based Tariff*; and
- ac. Indicate whether this rate element is part of a circuit that is in use.

D2. Prices. For each adjustment or true-up (including credits for meeting or penalties for not meeting contractual obligations) to billed DS1 or DS3 rate elements purchased in each *LSA*, provide the following information below.

D3. Circuits Purchased. State how many *DS1* and/or *DS3* circuits your firm has purchased from ILECs, if applicable, in accordance with the categories below.

D4. Expenditures. If applicable, submit responses to the information requested below on expenditures on ILEC *DS1* and/or *DS3* services, on a national basis.

D5. Terms and Conditions. Explain what impact, if any, terms and conditions in Tariffs and/or Contract-Based Tariffs for DS1 and/or DS3 services have had on your ability to:

- a. Decrease your purchases from your current providers;
- b. Purchase services from alternative providers currently operating in the geographic areas in which you purchase services;
- c. Purchase alternative services, such as Ethernet services, from your current provider of DS1 and/or DS3 services or from alternative providers operating in the geographic areas in which you purchase DS1 and/or DS3 services;

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

- d. Contract with firms that are considering entering the geographic areas in which you purchase DS1 and/or DS3 services.

Relevant terms and conditions, among others, may include: (a) early termination penalties; (b) shortfall provisions; (c) overlapping/supplemental discounts plans with different termination dates; (d) timing associated with Changing Service Providers; (e) requirements to include all services, including new facilities, under a Tariff or Contract-Based Tariff; or (f) requiring purchases in multiple geographic areas to obtain maximum discounts.

In your explanation, provide at least one example which, at a minimum, states: (a) a description of the term or condition; (b) the geographic area in which the DS1 and/or DS3 services are provided; (c) the name of the vendor providing the DS1 and/or DS3 service; and (d) the specific Tariff and/or Contract-Based Tariff number(s) and section(s). If you allege that such provisions negatively affect your firm, state whether you have brought a complaint to the Commission, a state commission or court about this issue and the outcome. If you have not brought a complaint to any of those three entities, explain why not.

Response, D.1-5

AT&T provides a broad range of services to customers (including both businesses and other service providers) throughout the country, in areas both within and outside the footprint of its local operating companies. Where it lacks facilities to reach its customers, AT&T purchases high capacity transmission services from a plethora of other providers to extend the reach of its network. In particular, in the 16 LSAs listed in the Commission's data request that reside outside of AT&T's service territory, AT&T purchases such services from 173 different suppliers, including ILECs, CLECs, cable systems, fixed wireless providers and others. The market for these services is highly competitive, with suppliers competing not only amongst each other to win AT&T's business but also with AT&T in the provision of services to downstream customers. It also is evolving rapidly as AT&T and its customers migrate from legacy, TDM-based DS1s and DS3s to Ethernet and other broadband services that provide greater flexibility and efficiency than traditional services.

In making its purchase decisions, AT&T considers a range of factors, including the prices, service quality, and terms and conditions offered by various suppliers. Given the competitive nature of the market, AT&T is compelled to obtain the lowest possible prices for DS1 and DS3 (and indeed all high capacity transmission) in-puts, while still maintaining service quality and the flexibility to respond to evolving customer demand. As in many industries, suppliers of high capacity transmission services – CLECs, cable companies, and ILECs alike – typically offer the steepest discounts in return for volume, term and other commitments. In this highly competitive market, suppliers rely on these commitments as a way to maintain a revenue stream to cover their costs of building and operating their networks. This market dynamic requires AT&T to balance the need for flexibility (to mitigate the risk that a customer might terminate service at a particular location, leaving AT&T responsible to pay for circuits it no longer needs) against the competitive imperative of reducing costs by committing to purchase a particular volume and/or term from a supplier in return for a lower

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

rate. Thus, depending on the circumstances, AT&T will purchase circuits on a month-to-month basis, for a specific term, or pursuant to service level portability term arrangement (*i.e.*, arrangements that allow AT&T port circuits between locations).¹

While volume, term and other commitments may limit AT&T's incentive to switch providers for a particular circuit at a particular location during the term of those commitments, typically, they do not prohibit AT&T from purchasing circuits at new locations from other providers, nor do they prohibit AT&T from switching providers for existing circuits.² In deciding, in any particular situation, whether to switch to a new provider, AT&T thus must weigh whether the benefits of switching (in terms of cost, service quality, and flexibility) exceed their costs (in early termination fees, shortfall penalties, *et cetera*). Where they do, AT&T will switch. Where they do not, AT&T will stay with its existing supplier.

D.6. Terms and Conditions. Describe any circumstances in which you have purchased circuits for *DS1* and/or *DS3* services, solely for the purpose of meeting volume or revenue commitments required for a discount from your vendor of *DS1* and/or *DS3* services, that you have not used. In your description, provide at least one example which, at a minimum, states:

- a. The geographic area (e.g., *MSA* or *Non-MSA*) in which you purchased the unnecessary circuits;
- b. The name of the vendor providing the *DS1* and/or *DS3* service at issue;
- c. A description of the discount requirement (*i.e.*, volume commitment, revenue commitment, etc.);
- d. The tariff and section number(s) (or contract tariff and section number(s)), if applicable, of the specific terms and conditions described;
- e. A comparison of the dollar amount of the unnecessary circuit(s) versus the dollar amount of penalties your company would have had to pay had it not purchased and/or maintained the unnecessary circuit(s), and a description of how that comparison was calculated.

Response D.6

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

¹ In most cases, AT&T can upgrade *DS1* and *DS3* services to higher level alternative services without penalty, so long as the upgraded service is a coordinated disconnect and add and AT&T commits to purchasing the new alternative service for a term of equal or longer length.

² Only AT&T's pricing flexibility contract with FairPoint (VT, NH & ME; former VZ) limits the annual volume of services that AT&T can migrate to an alternative supplier and limits AT&T's ability to decrease, or groom, purchases from the current provider. FCC#1, Section 32.27(I), Contract Tariff Option 50.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END HIGHLY
CONFIDENTIAL]

D.7. Terms and Conditions. Describe, if applicable, any previous attempts to *Change Service Providers* or discussions relating to *Changing Service Providers*. What were the steps involved in having your service changed? Other than provisions in *Tariffs* or *Contract-Based Tariffs* addressing a customer's ability to *Change Service Providers*, did the vendor impose any constraints on how many circuits could be changed per day, per week, per month? Within what geographic region were those constraints applicable? Were all changes subject to the same constraints? If not, explain. How were these logistical constraints for changes communicated to your company? How did you overcome the logistical constraints if you were able to do so?

Response

Generally, AT&T issues service orders to establish new service with the new provider and after successfully establishing the new service issues service orders to disconnect the old service with the old provider. The only constraint identified is described in footnote 2.

D.8. Terms and Conditions. Explain how, if at all, sales for *DS1* and *DS3* services in markets subject to *Phase I* or *Phase II Pricing Flexibility* may be effectively conditioned on sales in price cap markets, or vice versa. Provide in your explanation at least one specific example which, at a minimum, states: (a) the geographic area(s) impacted (e.g., *MSA* or *Non-MSA*); (b) the provider potentially conditioning sales between areas; (c) the special access service(s) at issue; (d) a description of the conditional requirement(s); and (e) if applicable, the number and section of the *Tariff(s)* or *Contract-Based Tariff(s)* at issue.

Response

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END
HIGHLY CONFIDENTIAL]

D.9. Terms and Conditions. In *LSAs* in which you ceased buying *DS1* and/or *DS3* services from one vendor and, instead, purchased comparable *DS1* and/or *DS3* services from a competing

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

provider, state the number of times within the past 5 years you have done so, the name(s) of the provider(s) from whom you switched, the name(s) of the competing provider(s) to whom you switched, and the percentage of *DS1* and/or *DS3* circuits within the *LSA* that you switched to the competing provider. Within the same 5-year period, state the number of times your procurement division considered switching from its provider of *DS1* and/or *DS3* services to a competing provider, but decided not to do so, and explain why if those reasons are related to terms and conditions.

Response

[BEGIN HIGHLY CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] |END HIGHLY
CONFIDENTIAL]

D.10. Terms and Conditions. Explain the circumstances under which you have paid *One Month Term Only Rates* for *DS1* and/or *DS3* services and the impact, if any, it had on your business. If you have never paid *One Month Term Only Rates* for *DS1* and/or *DS3* services, explain what impact, if any, paying such rates would likely have on your business.

Response

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL]

D.11. Terms and Conditions. By *LSA*, provide the following information about each *Contract-Based Tariff* through which you buy *DS1* and *DS3* services:

- a. A description of the contingency (or contingencies) on which the *Contract-Based Tariff's* discount, if any, is based (that is, requirements for a commitment of term, volume, revenue, combination, or other);

Response

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL]

- b. A description of whether the customer's *DS1* and/or *DS3* purchases in areas not subject to either Phase I or Phase II Pricing Flexibility count towards any discount contingencies in the *Contract-Based Tariff*, and if so identify which of the non-Phase I/Phase II Pricing Flexibility areas (e.g. *MSAs* or *Non-MSAs*) count and their associated *Tariff* and section numbers;

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

Response

|BEGIN HIGHLY CONFIDENTIAL| [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
|END HIGHLY CONFIDENTIAL|

c. A description of whether the customer's DS1 and/or DS3 purchases in the Contract-Based Tariff count towards any discount contingencies in other areas (e.g., other MSAs or Non-MSAs) that are subject to Tariff Discount Plans, and if so, identify the other areas and the associated Tariff and section numbers(s) of those Tariff Discount Plans; or

Response

Purchases made under Contract-Based Tariffs do not count towards any discount contingencies in other areas (e.g., other MSAs or Non-MSAs) that are subject to Tariff Discount Plans.

d. A description of whether the customer's DS1 and/or DS3 purchases in the Contract-Based Tariff count towards any discount contingencies in other areas (e.g., other MSAs or Non-MSAs) subject to Phase I or Phase II Pricing Flexibility, and if so, identify the other areas at issue and their associated Contract-Based Tariff and section numbers; or

Response

Purchases made under Contract-Based Tariffs do not count towards any discount contingencies in other areas (e.g., other MSAs or Non-MSAs) subject to Phase I or Phase II Pricing Flexibility.

e. A description of whether the customer's DS1 and/or DS3 purchases in the LSA do not apply toward other discounts in any other areas whether in a Tariff Discount Plan or Contract-Based Tariff.

Response

|BEGIN HIGHLY CONFIDENTIAL| [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL]

D.12. Terms and Conditions. If your company did *Change Service Providers*, or entered into discussions related to doing so, identify and describe the relevant *Tariff* and/or *Contract-Based Tariff* and section numbers discussing policies for *Changing Service Providers*. Include in your description whether the *Tariff* or *Contract-Based Tariff* discusses constraints on the number of circuits that can be changed on a daily, weekly, or monthly basis, and whether the customer must continue to pay for circuits until they are changed, and at what rate.

Response

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END
HIGHLY CONFIDENTIAL]

D.13. Terms and Conditions. In each *LSA* in which you issued an RFP for *DS1* and/or *DS3* channel terminations to an end user within the past 5 years, but either received no responses or received responses that failed to meet your minimum selection criteria, describe the reasons your RFP failed, if known, and whether those reasons were associated with terms and conditions.

Response

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

DOCKET NO. 05-25

RM-10593

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o This document is confidential (**NOT FOR PUBLIC INSPECTION**)
- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.
- o Microfilm, microform, certain photographs or videotape.
- o Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed (**EXCLUDING CONFIDENTIAL DOCUMENTS**) by contacting an Information Technician at the FCC Reference Information Centers) at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician

1 cd