

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

In the Matters of	)	
	)	
	)	
Petition of AT&T Inc. for Forbearance	)	
	)	
Under 47 U.S.C. § 160(c) from Title II	)	WC Docket 06-125
and <i>Computer Inquiry</i> 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 <i>Computer</i>	)	
<i>Inquiry</i> Rules with Respect to Its	)	
Broadband Services.	)	

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**INITIAL COMMENTS OF  
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER  
ADVOCATES  
SUPPORTING PETITIONS FOR DECLARATORY RULING**

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On November 11, 2007, COMPTTEL filed a Petition for Declaratory Ruling requesting that the Federal Communications Commission (“FCC” or “Commission”) “issue a ruling confirming that AT&T [Inc.] may not detariff any of its broadband services or otherwise take advantage of the forbearance relief that the Commission granted in the Memorandum Opinion and Order released in the above-captioned proceeding on October 12, 2007 until the commitments it voluntarily made to obtain approval of its merger with BellSouth expire.”<sup>1</sup> On November 21, 2007, Time Warner Telecom Inc. (“TWTC”) filed a Petition for Declaratory Ruling requesting that the

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<sup>1</sup> COMPTTEL Petition at 1.

Commission clarify that “AT&T must continue to offer its Ethernet and OCn special access services subject to dominant carrier regulation, including the existing tariffing, price freeze, pricing flexibility, and facilities discontinuance requirements applicable today, until the expiration of the AT&T-BellSouth merger conditions.”<sup>2</sup> By Public Notice dated December 6, 2007, the Commission set a common comment date for the two petitions.<sup>3</sup>

The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>4</sup> supports both petitions. The commitments that AT&T voluntarily made in order to achieve Commission approval of its merger with BellSouth must be maintained.

In the *AT&T/BellSouth Merger Order*, the Commission adopted a series of conditions with which AT&T had agreed to comply.<sup>5</sup> In its decision in the instant proceeding, the Commission granted substantial forbearance relief under 47 U.S.C. § 160 to AT&T with regard to its existing packet-switched broadband telecommunications services and its existing optical transmission services.<sup>6</sup> The Commission also relieved

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<sup>2</sup> TWTC Petition at 4.

<sup>3</sup> DA 07-4098.

<sup>4</sup> NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio. Rev. Code Ch. 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). NASUCA members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers, but are not created by state law or do not have statewide authority.

<sup>5</sup> *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) (“*AT&T/BellSouth Merger Order*”) at 5807-25 (Appendix F).

<sup>6</sup> Memorandum Opinion and Order, FCC 07-180 (rel. October 12, 2007) (“*Broadband Forbearance Order*”), ¶ 1 (footnotes omitted).

AT&T of its obligations under the *Computer Inquiry* rules in connection with these services, conditioned on its compliance with the *Computer Inquiry* obligations that apply to all non-incumbent local exchange carrier (“LEC”), facilities-based wireline carriers.<sup>7</sup>

Yet the Commission also imposed significant limitations on the forbearance.<sup>8</sup> Specific to the subject covered by the COMPTTEL and TWTC Petitions, the Commission stated, “The limited forbearance relief granted herein does not affect in any way the full force and effect of the merger conditions adopted in the *AT&T/BellSouth Order*.”<sup>9</sup>

That statement would appear to be clear. Despite the Commission’s intentions, however, as COMPTTEL states:

The language in the Commission’s order granting forbearance relief to AT&T conditioned on AT&T’s withdrawal of its special access tariffs when read in conjunction with the language specifying that the forbearance relief granted does not affect in any way the merger conditions, which incorporate commitments to maintain particular special access tariff provisions in effect through 2010, has created uncertainty and confusion with respect to the earliest date on which AT&T may withdraw its tariffs for the broadband services at issue.<sup>10</sup>

The uncertainty and confusion have actually been created by AT&T. As described by TWTC:

On November 15, 2007 ... AT&T sent a letter advising broadband providers that it “will no longer be offering new Pricing Flexibility Contract Tariffs for certain services.” This is a clear violation of AT&T’s duty to continue to offer non-TDM-based broadband services under tariff until the expiration of the merger conditions. AT&T has also indicated that it will no longer comply with its

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<sup>7</sup> Id.

<sup>8</sup> Id., ¶ 2.

<sup>9</sup> Id.

<sup>10</sup> COMPTTEL Petition at 6.

existing tariffing or pricing flexibility requirements for non-TDM-based business broadband services.<sup>11</sup>

AT&T must be held to the conditions that allowed the Commission to find that, overall, the merger was in the public interest.

The AT&T/BellSouth merger was opposed by a wide variety of parties, including NASUCA.<sup>12</sup> NASUCA is one among many parties who believed that the conditions agreed to in the merger did not nearly overcome the anti-competitive impacts of this merger of giants – particularly as compared with the conditions imposed on earlier mergers. To allow the meager merger conditions adopted here to be diluted as AT&T has proposed would add additional injury to insult. NASUCA also believes that the granting of forbearance to AT&T's broadband services was unnecessary.<sup>13</sup> This increases the importance of preserving the merger conditions like those covered by the COMPTTEL and TWTC petitions.

The legal framework under which the FCC approves mergers is significantly different from that seen in forbearance.<sup>14</sup> Even without the explicit statement in the *Broadband Forbearance Order*, forbearance should not be considered for the merger requirements that were adopted just last year.

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<sup>11</sup> TWTC Petition at 3; see also COMPTTEL Petition at 5.

<sup>12</sup> See WC Docket 06-74, Comments of the National Association of State Utility Consumer Advocates (October 24, 2006).

<sup>13</sup> See Comments of the New Jersey Division of Rate Counsel (August 17, 2006).

<sup>14</sup> The processes used in both types of Commission cases have decided weaknesses from the consumer perspective; the lack of rules covering forbearance proceedings is somewhat more galling. See the Notice of Proposed Rulemaking, *In the Matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended* (rel. November 30, 2007).

For these reasons, the Commission should grant the Petitions for Declaratory Ruling.

Respectfully submitted,

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