

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter

Petition of AT&T Inc. for Expedited  
Interim Waiver of Certain Structural  
Separation Rules for Advanced Services

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WC Docket No. 06-130  
DA 06-1394

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**COMMENTS FILED ON BEHALF OF THE  
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE**

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July 12, 2006

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**INTRODUCTION**

The New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”)<sup>1</sup> hereby files comments in accordance with the pleading cycle set forth in the Public Notice issued on July 5, 2006.<sup>2</sup> For the reasons set forth below, the Ratepayer Advocate asks that the Petition be denied.

**Background**

On June 30, 2006, AT&T Inc. (AT&T) filed a petition requesting an interim, limited waiver of the Commission’s sharing restrictions of information, employees and facilities between AT&T’s advanced services affiliates and AT&T’s incumbent local

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<sup>1/</sup> The Ratepayer Advocate is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Ratepayer Advocate participates in Federal and state administrative and judicial proceedings. See New Jersey Reorganization Plan 001-1994, codified at *N.J.S.A. 13:1D-1*, et seq.

<sup>2/</sup> Public Notice, DA 06-1394, entitled “Pleading Cycle Established for Comments on Petition of AT&T Inc. For Expedited Interim Waiver of Certain Structural Separation Rules for Advanced Services” (“Petition”), released July 5, 2006.

exchange carrier (incumbent LEC) affiliates.<sup>3</sup> Specifically, AT&T seeks a waiver of the following sections of the *SBC/Ameritech Merger Order* conditions as applied in the Commission's *SBC Advanced Services Detariffing Order*,<sup>4</sup> to the extent they prevent any AT&T advanced service affiliates from sharing information, employees or facilities with other AT&T affiliates on an exclusive basis: (1) section I.3, to the extent it incorporates section 272(c)(1) of the Communications Act of 1934, as amended; (2) sections I.4.a through I.4.e; (3) section I.4.f, as it relates to interfaces, processes and procedures; and (4) sections I.4.g through I.4.k.<sup>5</sup> AT&T also requests that the Commission clarify that, to the extent certain other conditions can be applied on a service-by-service basis, they would not apply to AT&T's provision of advanced services used in the provision of broadband Internet access service. AT&T further requests that this limited, interim waiver be granted on an expedited basis. Although the Public Notice has a release date of July 6, 2006, the Public Notice was not released until July 6, 2006. This leaves interested parties a mere six days to respond to the Public Notice. The Ratepayer

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<sup>3</sup>/ AT&T presently maintains six regional advanced services affiliates. These affiliates conduct business as AT&T Advanced Solutions (ASI).

<sup>4</sup>/ See *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Memorandum Opinion and Order, 17 FCC Rcd 27000 (2002) (*ASI Detariffing Order*). AT&T specifies that its waiver applies to any AT&T affiliates other than the traditional incumbent LECs that provides advanced services, including AT&T Corp. post-272 sunset. See 47 U.S.C. § 272. AT&T seeks this waiver until the Commission addresses regulatory treatment of advanced services in the *Incumbent LEC Broadband NPRM* or otherwise grants AT&T full and permanent relief from Title II common carrier regulations of advanced services. See *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001).

<sup>5</sup>/ See *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14859, para. 363 & App. C, Condition I (1999).

Advocate submits the short time to respond is a fundamental denial of due process and on that basis alone the Petition should be denied.

The Ratepayer Advocate submits that AT&T's Petition and waiver can only be granted by Commission modifying and revising its *ASI Detariffing Order*. The *ASI Detariffing Order* was an order issued by the Commission. As AT&T points out "the Commission gave AT&T the following choice: (a) offer its advanced services offerings through a separate affiliate (ASI) on a detariffed basis but continue to comply with sharing restrictions originally imposed in connection with the 1999 SBC/Ameritech merger (and a host of other requirements for which this Petition does not seek a waiver), or Offer its advanced services on a tariffed basis subject to dominant carrier regulation."<sup>6</sup> AT&T selected the first option and has been operating under that option since the end of 2002.

AT&T merely asserts without empirical support or actual evidence that these agreed upon restrictions are increasing AT&T costs, denying it the ability to structure its operations efficiently, and limiting its flexibility in providing customers with the best possible service.<sup>7</sup> Similarly, AT&T makes the blanket and unsupported assertions that the sharing restrictions (which they elected and chose) are significantly hampering AT&T's ability to efficiently deploy and provide advanced services and that the regulations at issue are wholly unnecessary in today's highly competitive marketplace.<sup>8</sup> As a result, AT&T claims that this interim waiver should be granted on an expedited

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<sup>6</sup> / Petition at 3-4.

<sup>7</sup> / *Id.* at 2.

<sup>8</sup> / *Id.*

basis. Essentially, AT&T is asking to eliminate restrictions voluntarily chosen by AT&T when given two options by the Commission. AT&T chose detariffing as opposed to tariffing. AT&T's refrain that it is being harmed is undercut by the fact that both in the AT&T merger proceeding and the pending BellSouth merger proceeding, AT&T has claimed and is now claiming that the benefit from those mergers would promote competition and enable AT&T to offer more service to consumers, including advanced services.

Now, AT&T wants restrictions waived while still pursuing detariffing as opposed to tariffing its advance services. The invocation of a waiver is not the appropriate vehicle to undue its election. AT&T can have one or the other option but not the detariffing option without the restrictions imposed upon by the Commission. AT&T has not shown any cause let alone good cause for grant of a waiver.

**AT&T has not shown “good cause”**

Based upon the Petition, the Ratepayer Advocate submits that AT&T has not demonstrated why the Commission should alter the options offered to AT&T in the *ASI Detariffing Order*. AT&T claims that this waiver is appropriate because the FCC has failed to fully consider the issue related to “*ILEC Broadband NPRM.*”<sup>9</sup> Failure by the FCC to act is insufficient justification for a grant of the waiver. AT&T should await Commission action on the rulemaking and abide by its chosen election.

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<sup>9</sup>/ *Id.* at 1

The record in this matter is insufficient to support the grant of the Petition. Agency action, including a grant of a waiver, must be a product of a reasoned decision making process that is based upon factual support.<sup>10</sup> One of the standards for review of agency action is “whether the agency examined the relevant data and articulated a rational connection between the facts found and the decision made.”<sup>11</sup> Moreover, the agency in support of its decision must clearly articulate the course of inquiry it followed, its analysis and the rationale behind its ultimate findings and decision.<sup>12</sup> The record before the FCC is insufficient to grant the Petition. Therefore, any grant would be arbitrary, capricious and an abuse of discretion.

### CONCLUSION

In view of the foregoing, the Ratepayer Advocate respectfully asks that the Commission to deny and dismiss the Petition. In the alternative, the Ratepayer Advocate asks that the Commission require AT&T to submit empirical support and evidence to substantiate its claims. In addition, the Ratepayer Advocate asks that the Commission modify the comment schedule and permit additional filing of comments and reply comments.

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<sup>10</sup> / *Id.*

<sup>11</sup> / See *Northeast Cellular Telephone Co. v. FCC*, 897 F. 2<sup>nd</sup> 1164, 1166 (D.C. Cir. 1990) (“Northwest Cellular”); See also *WAIT Radio v. FCC*, 418 F 2d 1153, 1159 (D.C. Cir. 1969); See *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1575-1576 (10th Cir. 1994); See also, *Necktopoulos v. Shalala*, 941 F. Supp. 1382 (SDNY 1996).

<sup>12</sup> / *Id.*

Respectfully submitted

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RATEPAYER ADVOCATE

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