

**JOINT STATEMENT OF
COMMISSIONER MICHAEL J. COPPS AND
COMMISSIONER JONATHAN S. ADELSTEIN,
DISSENTING**

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry 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 Computer Inquiry Rules with Respect to Its Broadband Services; WC Docket No. 06-125, Memorandum Opinion and Order (October 11, 2007).*

Let us start by noting what may already be obvious to many – dealing with the multitude of forbearance petitions before us is a risky and messy business. There are no requirements on the parties to be explicit in their requests or detailed in the data they provide. It is left to the Commission to sort through and if we don't, we hand over the writing of these rules to industry. With this as a backdrop, today's Order addresses two far-reaching forbearance petitions seeking relief from Title II and *Computer Inquiry* obligations based on the apparent belief that the broadband enterprise services at issue exist in a competitive marketplace. We find the evidence to support forbearance here altogether underwhelming.

First, the definition of the product market to which we should apply forbearance remains in dispute. Merely calling services "broadband enterprise services" does not negate the fact that they are tariffed as special access services and have been identified as such in previous orders. As our colleagues know, there is substantial data available in this and other proceedings to indicate that the special access market is anything but competitive. In fact, the Commission has committed to completing our long-pending rulemaking on this very topic. We should not be granting forbearance for rules covering special access services without a rigorous analysis of competition for these services – an analysis wanting in today's decision.

The Order suggests that forbearance will only impact the largest, most sophisticated business customers, but the record makes clear that services targeted to small, medium, and large businesses are all on the line. Moreover, these services are used as critical inputs by other communications providers, including wireless, satellite, and long distance providers that serve both residential and business customers. For that reason, business users of all sizes, competitive providers, and the Small Business Administration's Office of Advocacy have asked the Commission to conduct a careful analysis before forbearing from the rules in question. We don't see such an analysis here.

With regard to the appropriate geographic market, petitioners argue that a national analysis of the services being considered is applicable here. We have repeatedly argued that deregulating broadband is no national strategy for deploying these services, and we believe that today's Order is a missed opportunity for the Commission to critically review whether a national framework for the market specific services before us is appropriate. Particularly distressing is the fact that more than 13 months into this 15 month

forbearance process the Bureau requested market data from petitioners to enable a local market analysis. Not only does this suggest that petitioners did not make their case in this regard, but it is apparent that little if any additional data was provided because the majority concluded it was unnecessary. The Order regrettably concludes that the Commission does not “find it essential to have such detailed information.” Also troublesome is the fact that the Order finds that “potential” competition is sufficient to protect consumers. In places where substantial competition does not demonstrably exist, it seems that forbearance actually can make the problem worse as “potential” competitors will have even less ability to successfully compete to provide a check on any anti-competitive behavior.

We have repeatedly proffered that these kinds of decisions are too important to be made without the in-depth market analysis that might support them. Recent Congressional hearings have demonstrated a growing impatience with policymaking via analysis-poor forbearance decisions. Here the Commission clearly has chosen not to chart a different course. The lack of data concerning the specific product and geographic markets at issue and this Order’s lack of analysis cause us great concern about both the substance and the process by which the Commission grants forbearance from our rules.

While we certainly appreciate the Order’s decision to implement an expedited complaint process and to retain key interconnection, universal service, privacy, disabilities access, and other Congressionally-mandated provisions -- forbearance from which would have been devastating for consumers and competition -- we cannot support this Order’s decision to forbear from rules that provide critical pricing protection.

For these reasons, we dissent from today’s Order.