STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

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

With this partial grant of AT&T's forbearance petition, the Commission is striking a thoughtful balance between de-regulation and consumer protection. Today we are setting up a de-regulatory framework for AT&T's business broadband services, while also ensuring that longstanding consumer protection and competition promotion measures remain in place.

Upon the expiration of the voluntary merger conditions agreed to by AT&T as the result of its merger with BellSouth, after December 29, 2010, AT&T will be relieved from existing tariffing, price freeze and facilities discontinuance requirements for non-TDM-based business broadband services. While the Order grants relief to AT&T, it does not forbear from existing regulation of DS-0, DS-1 or DS-3 type special access services most heavily relied upon by many enterprise users, wireless carriers and competitive local exchange carriers.

In the spirit of Section 10's mandate to promote both competition and the public interest, however, today's action preserves Title II jurisdiction over business broadband services. Maintaining common carrier treatment of these services is significant because our Order gives both competitors and consumers protections against discriminatory conduct and unjust and unreasonable rates, terms and conditions as mandated by Sections 201 and 202 of the Communications Act.

Furthermore, the Commission is creating a procedure whereby complaints filed relating to services covered by this Order must be adjudicated by the Commission within five months and would be subject to broad and aggressive discovery procedures. Such a swift and certain complaint process, combined with strong discovery rules, should provide the parties with greater incentives to reach mutually beneficial agreements before litigating disputes.

As competition in the broadband market continues to grow, especially through the deployment of new wireless technologies, less regulation should be required. However, many parties allege that competition in the special access market is uneven and is limited to certain urban areas, thus creating supply bottlenecks that favor incumbent local exchange carriers in the business broadband and wireless markets. Despite requests for better data to help us resolve disputes of these material facts, the Commission still has inadequate information to determine whether allegations that competition is scarce in

certain segments of the special access market have merit. I will continue to work to ensure that these questions are explored further in the Special Access proceeding after a more granular record has been established through detailed mapping of business broadband facilities.

In the interim, the Commission is taking another step toward streamlining its regulation of the broadband market in the wake of the Supreme Court's 2005 *Brand X*[1] decision which declared that broadband services provided over cable facilities are information services. Recent history has shown that thoughtful de-regulation combined with appropriate consumer protections can help spur competition and investment in new facilities. As a result, a virtuous cycle of competition, investment, innovation and lower prices can result. Today's Order is intended to produce just such a positive environment for American consumers.

[1] *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2005).