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November 12, 2004

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

Re: Unbundled Access to Network Elements
WC Docket No. 04-313 & CC Docket No. 01-338

Dear Ms. Dortch:

Attached for filing is "The Bells' Criticisms of AT&T's Business Case Analyses Are Meritless" in connection with the above referenced matter. Please contact me if you have any questions.

Very truly yours,

/s/ David L. Lawson

David L. Lawson
Counsel for AT&T Corp.

The Bells' Criticisms of AT&T's Business Case Analyses Are Meritless.

AT&T's Comments provided the Commission with detailed analyses, based on AT&T's *actual* business cases since the beginning of 2003, demonstrating that deployment of loops and transport is generally uneconomic below the Commission's previously established capacity thresholds of 2 DS3s for loops and 12 DS3s for transport. Comments of AT&T, D'Apolito-Stanley Dec. ¶¶ 12-24 & Fea-Giovanucci Dec. ¶¶ 10-38, 57-76. Given that AT&T's analysis is based directly on its actual business cases, and is consistent with other competitors' sworn testimony, the Bells have no sound basis for challenging these facts. Nevertheless, the Bells offer a handful of meritless criticisms. Remarkably, the Bells' claims focus on their recommendations as to how their competitors could find less expensive ways to deploy outside plant, implicitly suggesting that none of the competitors themselves has thought of or made use of them – even though competitors' very survival depends on implementing the most efficient and economical business plans available. The Bells' criticisms are wholly unfounded and should be rejected.

1. Contrary to the Bells' Claims, Competitors Rarely Have Access To ILEC Conduit. The Bells' principal criticism of AT&T's business case is that AT&T overstated cost of deploying outside plant, because competitors can simply lease ILEC conduits at low rates instead building their own. *See, e.g.,* Qwest 22-23, 28-29, 34-39; SBC Keown Dec. ¶¶ 9-10; Verizon Pilgrim Dec. ¶¶ 13-23. The Bells are wrong for several reasons.

As any efficient competitor would, AT&T regularly seeks out structure sharing opportunities as a way to reduce its outside plant costs. However, structure sharing with other competitors has proven infeasible in most instances, Fea-Giovanucci Dec. ¶ 82. Moreover, although empty ILEC conduit may exist, contrary to the Bells' implications, they rarely have what they define as "spare" conduit space available between the precise points a competitor seeks to connect. The practical use of "spare" conduit is further limited by typically long lead times required to identify and pull fiber through Bell conduit.

There are many reasons why it is so difficult for competitors to locate and use Bell conduit:

- *First*, ILECs have no incentive to make their conduit – and thus lower costs – available to rivals, especially for laterals to customer locations. The cost-based charges the Bells may apply to the leasing of spare conduit (often less than a dollar per foot per year (*see, e.g.,* Qwest Reply at 37)) pales in comparison to the profits the incumbent can retain by forcing competitors either to buy special access or build their own facilities.
- *Second*, even when an existing conduit is not currently in use, the Bells frequently do not consider the empty conduit "spare" but rather classify it as "reserved for future use," making it unavailable to competitors under the Commission's structure sharing rules. Categorizing empty conduit as "reserved" is particularly questionable in light of the Bells' own admission that additional optronic equipment can readily expand the capacity of existing fiber. *See, e.g.,* Verizon Pilgrim Reply Dec. ¶ 10.

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- *Third*, the Bells typically *retire copper cables in place* – *i.e.*, they simply leave their retired copper in existing conduits, filling up the available conduit space until such time as they may need the capacity for their own purposes; and because there is no requirement that Bells remove retired copper to make space available for competitors, they generally do not do so.
- *Fourth*, when Bells construct new underground infrastructure, they typically install only a few conduits, only providing the limited number that are necessary to meet the Bells' currently projected requirements (including "reserved" and maintenance spares) -- even though the additional cost of providing additional conduit is trivial. This in turn allows the Bells to claim that there is no "available" capacity even in newly constructed conduit.¹
- *Fifth*, much of the Bells' conduit is used for interoffice transport and in the past, if the Bells deployed "spare" capacity, this is where the Bells would do so. Although the Bells may have empty conduit on routes between wire centers, they generally do not have such capacity into individual buildings – where it is most needed by competitors. Moreover, conduit between Bell offices is useless unless a competitor is collocated in one or both wire centers and *also* has entrance facilities between at least one of those collocations and its network. Otherwise, the conduit would simply provide a "path to nowhere," because a competitor's ultimate purpose in using loop and transport UNEs is to get traffic onto its own network, not merely between points on the ILEC's network.
- *Sixth*, as a result of the above, Bell conduit is rarely available between the exact points a competitor needs it to construct its own facilities, *e.g.*, to provide a complete path between an access point on a competitor's metro fiber and an enterprise customer's premises.
- *Seventh*, even if there happens to be spare conduit in a Bell's network, competitors need a practical means to identify those locations. However, because sufficient OSS do not generally exist, identifying available Bell conduit is often difficult and time consuming, making it highly impractical to use, because the Bells do not make information on their conduit readily available in the time interval necessary to support a competitive bid to an enterprise customer. Instead of providing a searchable database, Bells generally force competitors to make individual and specific inquiries each time they are investigating new construction. This in turn makes it difficult if not impossible to integrate any available ILEC conduit into competitors' local network planning and to reflect the potentially lower cost in a customer-bid. Conversely, making a competitive bid on the mere hope of making extensive use of Bell-provided conduit capacity has the high probability of financial disaster for any competitor engaging in such a strategy.
- *Eighth*, even in the rare case that a competitor has identified spare conduit to a building, the competitor also needs a way to access that conduit. This means the Bell must *also* make available additional capacity to a pull box where the Bell conduit and existing competitive

¹ This and the prior two points thus rebut Bell claims, *see, e.g.*, Verizon, Pilgrim Dec. ¶ 12, that it is a "rare case[]" when a Bell's conduits are not full for competitive carriers. In fact, it *is* rare that Bell conduit is full for the ILEC itself. However, competitors face a much different situation when they seek access to the same conduit.

fiber capacity are both present. Otherwise, the competitor must perform additional construction with resulting costs that are little different than a direct build.

- *Finally*, it should also be recognized that the most “congested” Bell conduits are exactly where competitors are most likely to need them – in downtown central business districts, where the costs of deploying outside plant are the highest.

In sum, despite the impression the Bells seek to convey, AT&T’s experience is that the Bells generally fill (or keep filled) their own conduit to capacity or claim that any currently unused space is “reserved for future use,” so that there is usually no “spare” capacity available for CLEC use. But even when conduit capacity may otherwise be available, there are operational impediments to locating and using such capacity. Critically, the Bells fail to identify any data or statistics that show where such capacity is available, making it impossible for the Commission to assess their implicit assertion that such capacity is readily available everywhere. As shown above, it simply is not. And in all events, as shown immediately below, AT&T’s business case analysis already *includes* the rare situations where Bell conduit is available.

2. AT&T’s Business Case Analysis Already Accounts For Structure Sharing Opportunities. The Bells’ claim that AT&T did not account for structure sharing is simply wrong. AT&T’s business case analysis was *not* a hypothetical, “back of the envelope” analysis; rather, it was based on a review of *all* of its *actual* business cases since the beginning of 2003 -- *including* all instances in which it could lease conduit from the ILEC or another carrier (or even use aerial rather than underground cable). Specifically, AT&T’s conclusions reflect the median cost of the middle 80% of the outside plant investment from its actual business cases since the beginning of 2003. The highest 10% and lowest 10% unit costs were dropped to avoid outlier issues. However, if AT&T had used all the unit cost data points – *i.e.*, if the lowest *and* highest 10% were included – the unit outside plant cost would have been considerably *higher* than that used in the business case. Thus, the business case reflects the actually experienced mix of structure type and structure sharing rather than the unsupportable assumption – which the Bells imply – that spare and inexpensive conduit capacity is ubiquitous.

3. The Bells’ Own Facts Undermine Their Case. SBC asserts that CLECs lease 18 million feet of duct in SBC’s territory. SBC Keown Reply Dec. ¶ 11. Even if true, however, that is a drop in the bucket. According to 2003 SOCC Table 2.6, SBC reported just under 460,000 duct kilometers across its territories, which converts to about 1.55 *billion* duct feet. Thus, by SBC’s own admission, CLECs *as a whole* lease from SBC only about one percent of SBC’s conduit capacity. Moreover, a substantial portion of this leased capacity is used either for getting into and out of a collocation within a central office, or for interoffice links that may not be part of a metro network -- neither of which would have any relevance to the present inquiry. In fact, AT&T alone leases over 5 million feet of SBC conduit *solely* to serve its long haul network.

4. AT&T’s Other Assumptions Are Reasonable. The Bells also criticize the assumptions in AT&T’s business cases as unrealistic, but these are in fact the *actual* assumptions AT&T uses when committing its limited capital -- and AT&T has no incentive either to pad its costs or to understate its anticipated revenues, because doing so would restrict its ability to obtain internal

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funding to serve customers. Simply stated, AT&T's business case evidence is based on actual practice and experience since 2003, not the self-serving assumptions the Bells advocate.

- *Committed Revenues.* The Bells' argue that the Commission should not base impairment decisions on an assumption that competitors require "committed" revenues to support "new" loop and transport construction. See Qwest 24-25, 30-33; SBC Keown Reply Dec. ¶ 15. But this claim rests on a fatal omission -- it ignores that the entire business case/impairment analysis *presumes* that a competitor has *already constructed* metro fiber in the area. This omission is especially egregious, since the Bells themselves readily acknowledge that competitors have built such backbone fiber, and even base other arguments on that very fact.² In fact, the Commission's impairment analysis assumes that the "efficient competitor" under consideration *has already placed significant assets and capital at risk* even before any consideration of the *additional* costs and revenues associated with the network *extensions* that are being considered. This is precisely the approach employed in AT&T's business cases. Accordingly, the Bells are flat wrong in suggesting that an impairment analysis based on committed revenues places all the risks of entry on the incumbent.³ Moreover, if efficient competitors who have built such backbone networks are denied access to UNEs that are uneconomic to construct or replace with competitively priced wholesale options, they are forced either to lose money or not compete at all -- both of which seriously harm competition on the merits.

Contrary to the Bells' suggestions, no competitor in today's market environment can afford to build additional facilities on the speculation that they *might* serve significant numbers of new customers. Rather, they can rationally build facilities only to serve committed revenues. *E.g., Triennial Review Order* ¶ 303. The Bells built the vast majority of their fiber networks before any significant local competition emerged, and those networks were sized to enable them to serve the entire market -- and to incur negligible cost in adding incremental capacity. Fea Reply Dec. ¶¶ 4-11. Thus, the Bells' networks are characterized by enormous economies of scale and reach that includes pre-deployed capacity whose sunk costs were funded by captive ratepayers. In contrast, new entrants are in a vastly different situation. They cannot build new facilities on the assumption (or hope) that they can serve the entire market, or even that they will win all of the demand that could potentially be served by the specific facilities they are deploying. Their only rational deployment strategy is to incrementally extend existing facilities to serve committed revenues -- and even then only where those committed revenues will cover (or nearly cover) the non-fungible cost of deployment over the customer commitment period. D'Apolito/Stanley Dec. ¶¶ 6-8, 19. Over the past several years, the financial failures of numerous CLECs have proved that a "build it and they will come" deployment strategy is a recipe for economic disaster. And the Commission itself has recognized that, given the enormous scale economy advantages that they must overcome, competitive carriers cannot obtain funding or afford to build new facilities if they do not have a reasonable prospect of recovering those costs within a

² See the Route-by-Route discussion *infra*.

³ In all events, the incumbents' efficient risks are incorporated into the TELRIC pricing scheme.

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relatively short time. *Triennial Review Order* ¶ 303. The evidence here fully supports that conclusion. D’Apolito/Stamley Dec. ¶ 6-8; Fea-Giovannucci Dec. ¶¶ 57-76.

- *Salvage Value.* The Bells’ other criticisms are based on mistaken assumptions about AT&T’s analysis. For example, contrary to Qwest’s claim (at 24-25), the analysis in AT&T’s D’Apolito/Stamley Declaration *expressly included* substantial re-use and salvage value. D’Apolito/Stamley Dec. ¶ 18. In fact, depending upon the specific assets involved, AT&T’s business case assumed a positive cash flow value at the end of the contract period of between about ****[PROPRIETARY BEGIN] [PROPRIETARY END]**** percent. This adjustment fully accounts for the positive impacts of reusing assets, whether for the same customer (due to contract renewal) or by redeploying the asset elsewhere. In fact, the business case is conservative, because it did not assign any cost to remove or refurbish used assets.
- *Splice Points.* Verizon criticizes AT&T’s assertion that its splice points are typically 2000 feet apart, *see* Verizon Pilgrim Reply Dec. ¶ 5. However, SBC *concedes* that its splice points are 2000 feet apart, per the industry standard. *See* SBC Keown Reply Dec. ¶ 15 n.17 (“Like its competitors, SBC uses standard network engineering guidelines to limit the number of splices in its fiber network. Under these guidelines, SBC places access points at approximately 2000 feet increments, which is comparable to the increments used by AT&T”). Competitors have good business reasons to place splice points at this distance. Unlike the Bells, they cannot expect to serve the vast bulk of customers, nor is facilities-based service even economical for most customers. Given that AT&T places its splice points in a manner consistent with industry practices and because the AT&T business case reflects the actual costs in reaching those splice points, the Verizon criticism is a red herring.
- *Route-by-Route Approach.* The Bells claim that analyzing impairment on a route-by-route basis is wrong, because competitors build metro rings with an eye toward long-term potential revenues and serving a broad area. Verizon 46-47; BellSouth Padgett Reply Dec. ¶¶ 39-40. The Commission correctly found otherwise in the *Triennial Review Order*. The construction of a metro ring is a *prerequisite* to the construction of alternative loops and transport, but loops, dedicated transport (and comparable entrance facilities) are the only facilities relevant to the Commission’s deliberations here, and contrary to the Bells’ assertions, the costs of constructing those alternative facilities are high. A competitor’s decision to build *additional* loop or transport facilities – which already *assumes* the competitor has “bought into” a general area by constructing its own metro fiber -- depends on whether the revenues the competitor has on a specific route justify the *incremental investment* needed to construct *additional* transmission facilities that will connect to its metro ring. The Bells’ suggestion that a competitor’s specific revenues on a given point-to-point route are irrelevant to the impairment analysis is thus patently absurd. Moreover, the facts presented by AT&T and the other competitive carriers demonstrate that the Bells’ blithe assertions that construction of such new facilities is simple and low cost are simply wrong.

3. ILEC Claims That They Lack Ubiquitous Fiber Networks. The Bells’ contentions that they do not have ubiquitous fiber networks and are essentially “in the same position” as their

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competitors is especially absurd. *See, e.g.*, Qwest Reply at 23, 26-28; SBC Reply at 26-27; SBC Keown Reply Dec. ¶ 14.

- AT&T has already refuted these claims in detail in the Fea Reply Declaration at ¶¶ 4-11. As explained there, the Bells' interoffice transport networks are virtually 100% fiber, and the Bells have also deployed fiber loop plant that is very close to, if not deployed directly into, virtually all locations requiring high capacity services. *Id.* Even in the unusual instance in which an ILEC must deploy new fiber to a location, it usually has pre-existing conduit and other infrastructure in place that allows it to provide services at lower incremental cost than their competitors.
- SBC's claim that only a small percentage of its commercial buildings are served by fiber is misleading. SBC Keown Dec. ¶ 14. SBC asserts that only a small percentage of commercial buildings "with DS1 and above facilities" are "connected to SBC's fiber network" in its Southwest region. *Id.* This assertion is irrelevant. DS1 loops are typically provided over ILEC copper facilities (unless, as is the case for CLECs, a fiber loop has been justified by other customer requirements at the same location). But stating the mere fact that ILEC DS1 loops are carried over copper facilities serves only to artificially dilute the percentage of commercial locations that SBC admits to accessing with fiber facilities. And more importantly, it does nothing to rebut a finding of impairment for DS1 loops. The Commission has clearly recognized – and indeed there is no significant debate – that the limited amounts of traffic that can be carried over copper preclude any competitor from constructing alternative copper facilities. Further, SBC's own data on fiber deployment show that it has extended its fiber to a large proportion of the buildings with sufficient demand to require such facilities, *see* Fea Reply Dec. ¶ 10, and it offers no evidence that DS3 services can practically be provided over anything other than fiber.⁴

⁴ Even under laboratory conditions, VDSL (which is an *asymmetric* service capable of carrying DS3 capacity (> 50Mbps) in one direction) cannot handle such capacity at distances of 2000 feet. Furthermore the DSL Forum tutorial (General Introduction to Copper Access Technologies) expressly notes that DSL technology for symmetric DS3 service is not current technology and when it is ultimately introduced it would require even shorter copper loops. Thus, Qwest's assertion that HDSL (an even lower capacity service than VDSL) could replace fiber for DS3 service is clearly wrong. *See* Qwest Reply, Teitzel-Orrel Dec. ¶ 23