

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

In the Matter of)	
)	
BELLSOUTH CORPORATION)	WC Docket No. 06-74
)	
and)	DA 06-904
)	
AT&T INC.)	
)	
Comments on Application For Consent)	
To Transfer of Control Filed by AT&T)	
Inc. and BellSouth Corporation)	
)	
<i>Attention: Wireline Competition Bureau</i>)	

SATURN TELECOMMUNICATION SERVICES, INC'S
COMMENTS ON APPLICATION FOR CONSENT TO TRANSFER OF CONTROL
FILED BY AT&T INC. AND BELLSOUTH CORPORATION

COMES NOW SATURN TELECOMMUNICATION SERVICES, INC. ("STS") by and through its undersigned attorney and files its comments on Application For Consent To Transfer of Control filed by AT&T, Inc. ("AT&T") and BellSouth Corporation ("BellSouth"), and hereby requests that this Honorable Commission deny the Petition of AT&T, Inc. and BellSouth Corporation. In support of its request, STS asserts that the proposed merger is contrary to the best interest of the public in that the anti-competitive and monopolistic behavior of BellSouth and the flagrant disregard that BellSouth shows for the rules and regulations of the FCC, both of which are evidenced by this Petition, would only be further magnified by permitting the merger of BellSouth and AT&T. Further, the merger of BellSouth

and AT&T would make it extremely difficult, if not impossible, for small regional CLECs, such as STS, to operate profitably.

1. STS is a competitive local exchange carrier (CLEC) and interexchange carrier (“IXC”) certified by the Florida Public Service Commission (“FPSC”) to provide telecommunication services in the State of Florida.
2. STS is also a telecommunications carrier and local exchange carrier under the Telecommunications Act of 1996 as amended (“the Act”).
3. Prior to January 2005, STS was providing service to its customers primarily through UNE-P arrangements with BellSouth pursuant to an Interconnect Agreement.
4. In approximately 2005, due to the expected release of the FCC’s TRRO, STS realized that in order to remain a viable CLEC in the State of Florida and continue to service and meet the needs of its existing customer base, it would need to change its manner of operations and become a facilities-based carrier.
5. STS was willing to commit the substantial financial resources required to construct a facility to provide telecommunication services to its customers, provided that the same could be done in a profitable and successful manner.
6. Commencing in January 2005, with the TRRO transition deadline approximately a year and three months away, STS inquired of BellSouth regarding its products, prices and the feasibility of working

with BellSouth to develop a facility to which STS's UNE-P base of customers could be migrated in a profitable manner and in compliance with Section 227 of the TRRO for the transitioning of a CLEC embedded base of UNE-P customers during the mandated transitioning period.

7. Throughout February 2005, STS and BellSouth exchanged numerous telephone calls and e-mails discussing in detail BellSouth's proposition for the migration of STS's embedded UNE-P base to a facilities environment in which BellSouth would remain the underlying network provider. Based upon the representations and promises of BellSouth, and in order to meet the mandate of the TRO and TRRO, STS agreed to allow BellSouth to design and construct the network, and STS incurred substantial expenses associated therewith.
8. Throughout these conversations and e-mails, STS voiced numerous concerns and questioned BellSouth on multiple occasions as to whether BellSouth could perform the conversion process of STS's embedded base of UNE-P customers to this commingled network and what the resulting net line cost would be.
9. On each and every occasion, BellSouth assured and represented to STS that BellSouth could convert STS's embedded base through the "Bulk Migration Process," provided that such process was in the parties' Interconnect Agreement.

10. BellSouth verified that the Bulk Migration Process was contained in the Interconnect Agreement. BellSouth further represented and assured STS that the network could be engineered, constructed, operational, and the embedded base of UNE-P customers transitioned to STS' network no later than the TRRO deadline of March 10, 2006.
11. From February through May 2005, BellSouth and STS continued to discuss this proposed network. BellSouth continually assured STS that this process would work and that STS's embedded base of UNE-P customers could be converted to STS's network of commingled UNE, UNE-Combinations, and ACCESS Network Combination ("Commingled Enhanced Extended Links") ("EELS Services").
12. Throughout these discussions, STS requested and received assurances from BellSouth regarding the net cost on a per line basis for this network in order to ensure that it was economically feasible and practical to invest the substantial monies required to build the network, and to ensure that the end product would be profitable. Further, STS received assurances that BellSouth could and would be able to comply with the TRO's commingling requirements with regard to the network BellSouth proposed, designed and built. (See TRO section 579, 581 and 584.) BellSouth continually assured STS regarding the cost of building the network, converting the existing base, and maintaining the network. Based upon BellSouth's

representations, the investments in allowing BellSouth to design and construct the network would result in profits based upon the FCC's definition of a "reasonably operationally efficient CLEC."

13. Multiple times, STS inquired of BellSouth whether it had commingling procedures in place and the ability to use Bulk Migration ("Batch Hot Cut Procedures") to convert the embedded base to STS's network, and the cost of the same. On numerous occasions, STS asked BellSouth regarding the collocation equipment required at the node.
14. Commencing in the first days of 2005, and continuing throughout the year, BellSouth advised STS that it had the ability and procedures in place to use Bulk Migration in the conversion process for STS' embedded base.
15. There was no indication whatsoever that the Bulk Migration Process would not be available for STS until STS representatives attended a December 2005 training class for Bulk Migration given by BellSouth. Even though BellSouth did not state at the seminar that the Bulk Migration Process was not in place, the lack of information and adequate training led to such an inference.
16. Moreover, in November and December 2005, STS provided a spreadsheet to BellSouth identifying the UNE-P base of customers to be converted. STS interpreted this to mean that it was to be used in

the Bulk Migration Process as provided in the TRRO Addendum executed by BellSouth and STS.

17. BellSouth represented to STS the equipment that was needed for the network and the type of loops that could be used. Commencing in February 2005 and continuing throughout the remainder of the year, BellSouth advised STS on numerous occasions that UNE-L (“Unbundled Voice Grade Loops”) could be used such as Unbundled Network Element (“UNE”) of Unbundled Copper Loops Non-Designed or Unbundled Voice Grade Loops SL, the cost of which were provided for in the Parties’ TRRO Addendum. In reasonable reliance upon the information and proposals provided to STS by BellSouth, which were checked and rechecked with BellSouth on numerous occasions, and in conjunction with the rates and STS’s Interconnect Agreement and subsequent TRRO Addendum, STS prepared a cost analysis of the network in order to determine the average per line cost. STS prepared this analysis in order to make absolutely certain that the substantial investment in this network designed by BellSouth would be profitable and that the information supplied to it by BellSouth regarding the rates and types of loops was accurate. The analysis evidenced that the investment would be profitable.
18. In order to confirm its analysis and ensure that the network could be built and operated as proposed by BellSouth, STS sent the

spreadsheet of costs and all elements discussed to BellSouth for its comments and necessary changes. BellSouth reviewed the spreadsheet, made several small alterations and returned the revised spreadsheet to STS. The spreadsheet revised by BellSouth verified the cost of the network and transition of the embedded base, verified that the UNE of Unbundled Copper Loops Non-Designed in combination with ACCESS (Enhanced Extended Links EELs Commingled) could be used for the conversion of the embedded base, and evidenced that, based upon these costs, this network would be profitable to build and operate.

19. In the beginning of February 2006, BellSouth reaffirmed that the UNE Unbundled Copper Loops Non-Designed and Unbundled Voice Grade Loops SL-1 in combination with ACCESS (“EEL”) could be used in this commingled network that would be designed and built by BellSouth.
20. BellSouth and STS met in May 2005 to resolve any concerns regarding BellSouth’s proposed network. During that meeting, BellSouth again assured STS of the type of equipment to be used at the nodes collocation points. BellSouth explained that this was “a conversion of an embedded base, and not new service.” BellSouth also verified that it could use the Bulk Migration Process provided in the Parties’ Interconnect Agreement.
21. During the May 2005 meeting, BellSouth further explained that a new agreement needed to be entered between STS and BellSouth to allow

for commingling and alternate services for UNE-P in the event STS could not be ready to migrate its embedded base by the end of the transition period. BellSouth required that the following Agreements be signed: Special Access Agreement for the OC 48 Fiber Ring; (2) TRRO Addendum allowing “commingling of services”; and (3) T-MBR Agreement which allows for “commercial rates” terms and conditions.

22. STS was reluctant to sign a T-MBR Agreement because these “market based rates” were exorbitant, and would not permit the company to operate profitably or even be competitive.
23. However, STS entered into the T-MBR Agreement based upon assurances by BellSouth that the network would be up and running and the embedded base would be transitioned to the network by March 10, 2006. Since BellSouth represented that not only the embedded base but new customers and lines could also be serviced by the network, STS relied upon these representations and did not overly concern itself over these high market based rates, as only a small amount of customers who could not be placed on the network would be subject to these rates.
24. During all these meetings, BellSouth assured STS that the network could be built as promised, based on the figures given, and the network could be built and operated profitably by a reasonably efficient CLEC.

This network was not only proposed by BellSouth, but also engineered, designed and built by BellSouth.

25. Immediately after the May 2005 meeting, STS sent BellSouth a spreadsheet outlining the proposed network, the element and cost breakdown, and inquired whether BellSouth agreed it would work.
26. BellSouth responded telephonically and via e-mail, stating the proposed network fulfilled the obligations of the TRO and the TRRO and that UVG Loops could be commingled with ACCESS.
27. Throughout this entire process, STS relied upon the expertise and representations of BellSouth regarding the structure and/or engineering of the network, the loops, and other elements that would be needed to transition the embedded base and successfully operate the network.
28. Throughout this entire process, BellSouth continually assured STS that the network would be operational and the embedded base converted to the network no later than March 10, 2006, in order to meet the mandate of the TRRO.
29. At all times, STS complied with each request made by BellSouth. STS invested substantial monies to build its network, which was constructed exactly pursuant to the design proposed and engineered by BellSouth. The network was operational by November 2005.

Throughout this period, STS continually asked BellSouth for specific information on the procedures for migrating its embedded base.

30. Throughout the months of December 2005 and January 2006, STS pressed BellSouth for the procedures to Bulk Migrate its UNE-P base of customers.
31. In February 2006, for the first time, BellSouth conceded that it had no Bulk Migration Process in place for the migration of STS's embedded base of UNE-P customers to the commingled network, and the migration would have to be handled manually.
32. Additionally, in February 2006, BellSouth stated for the first time that the only UNE that it would allow STS to use is UVL-SL2.
33. Prior to February 2006, BellSouth had never mentioned the UVL-SL2. This was approximately eight months after a multi-million dollar OC 48 contract was signed with BellSouth and after hundreds of thousands of dollars had been spent to install the network.
34. Prior to February 2006, BellSouth advised STS that the UCL-ND could be used for every STS customer. In fact, the entire network was based upon the utilization of UCL-ND in combination with transport.
35. The installation costs of the SL-2s were substantially higher than the UCL-ND installation costs, which created an economic barrier for the migration of the company's embedded base of business. Moreover, the monthly recurring rates for the SL-2s were substantially greater than

the recurring rates for the UCL-NDs. Such non-recurring rates for migrating an embedded base and the recurring rates made it impossible for any reasonably efficient CLEC to operate profitably in competition with BellSouth using this type of UNE or UNE combination.

36. BellSouth knew or should have known since the beginning of negotiations in January 2005 that there was no Bulk Migration in place to convert the embedded base through the commingling rules of the TRO. BellSouth did not publish rules for the commingling of the UNE combinations until well after STS had committed with BellSouth to build the network. It is apparent that these rules for commingling which prohibited the type of design proposed for STS's network by BellSouth were being written at the same time the network was designed
37. In violation of the FCC's TRO and TRRO, BellSouth, through its commingling rules, was defeating the very network that it induced STS to purchase. From the inception, BellSouth knew that the network it proposed and designed would never work. This left STS in an untenable position, and unable to meet the deadlines required by the TRRO. Due to the fact that the embedded base was not moved to the network, and new customers could not be added to the network, STS was trapped with the outrageous market rate bills, which rendered it

unable to operate profitably. Further, STS was out the substantial monies it had spent to develop the network. Not only had STS spent money building the network, it built new facilities and hired new employees to operate the network. STS entered into other agreements based upon a business plan, which was premised on the network designed by BellSouth being operational and running.

38. BellSouth's conduct has been, and continues to be, anticompetitive and monopolistic, and deliberately designed to harm a telecommunications competitor. There is no doubt that BellSouth intended to harm its competitor or drive it out of business. There can be no excuse or justification for BellSouth's behavior. One may presume that BellSouth will respond that the Company is so large it did not know what other departments of the Company were doing. That is no justification, but rather a reason to deny the merger between AT&T and BellSouth. Creating a larger bureaucratic organization would only serve to enhance its anticompetitive and monopolistic behavior.

39. In the TRRO section 233, this Commission stated:

"We expect that incumbent LECs and competitive carriers would implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their Interconnect Agreement consistent with our conclusions in this Order. We note that the failure of an incumbent LEC or competitive LEC to negotiate in good faith under section 251 (c)(1) of the Act and/or implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms and conditions necessary to implement our rule

changes. We expect that parties to this negotiation process will not unreasonably delay implementation of the conclusions adopted in this Order.”

40. BellSouth’s conduct is in bad faith and violates the directives above-stated in the TRRO.
41. Moreover, this Commission in its TRO sections 579, 581 and 584 permitted or required the commingling such as contained in the network proposed and designed by BellSouth. BellSouth’s refusal to construct and price the network according to its design is a violation of the TRO.
42. Additionally, in the TRRO, this Commission required a period of time in which the ILECs would transition the CLECs UNEs to alternatives. See Sections 142, 226, and 227 and section 51.319 of the TRRO.
43. BellSouth used this transition period to induce STS to spend substantial money to build a network, which was proposed, designed and constructed by BellSouth. STS committed substantial resources to comply with the TRO and TRRO. BellSouth then pulled the rug out from under STS by creating commingling rules that unfairly restrict competition, violate the TRO and make STS unable to utilize its network for the intended purpose. To further attempt to drive STS out of business, BellSouth then subjected STS to market based rates, as BellSouth refused or was unable to transition STS’s embedded base and new customers to STS’ network. This is simply wrong. BellSouth is

clearly profiting through its own fraudulent conduct. Permitting BellSouth to merge with AT&T will only create an atmosphere in which these types of abuses will increase.

44. STS has had many other problems with BellSouth during this period. Many of STS's customers lost telephone service during Hurricane Wilma in 2005. There were numerous documented instances in which BellSouth approached STS's customers and advised them that their service could be restored immediately if they switched to BellSouth, but that it would take weeks to restore their service if they remained STS's customers. BellSouth through UNE-P was supplying these services to STS's customers. BellSouth's actions in the aftermath of Hurricane Wilma are a clear violation of section 251(c)(3) of the Act. BellSouth testified to the Commission in support of this merger that the combination of AT&T and BellSouth would put it in a better position to respond to natural disasters such as Hurricanes Katrina and Wilma. BellSouth's behavior shows that it used grave natural disasters as an opportunity to generate profits and to unfairly compete.
45. BellSouth, in conjunction with the other ILECs such as Verizon and SBC, invested an enormous amount of money and manpower, and vigorously argued before the Federal Courts and this Commission that Unbundled Network Elements-Platform should no longer be required at established rates, and that carriers should invest in upgrading or

establishing their own facilities to better serve their customers. BellSouth argued that it was no longer necessary or fair to provide the CLECs with UNE-Ps, and the carriers could effectively compete by investing in their own facilities. STS made every effort to follow the mandate of the Federal Court and this Commission. BellSouth resorted to fraud and unfair business practices to prevent STS from establishing its own facilities and timely transitioning its embedded base. By its actions as demonstrated herein, BellSouth is violating the very regulations it fought so valiantly to establish. This Commission should not reward BellSouth for BellSouth's own transgressions by approving the merger.

46. BellSouth claimed that it could provide for Batch Hot Cuts and commingling of services. BellSouth and the other ILECs used these false claims to persuade the Courts and this Commission to eliminate UNE-P. BellSouth's track record should cause this Commission concern whether BellSouth's current promises are once again false.
47. BellSouth's treatment of STS demonstrates that BellSouth has no regard for the regulations of this Commission or the various Federal and State constraints against unfair competition and monopolistic behavior. If the Commission approves this merger, BellSouth's flagrant disregard for the law will go beyond the nine BellSouth states and extend to all states in which AT&T operates.

48. BellSouth disingenuously argues that this merger will enable it to offer services to a much larger region throughout the United States so as to be better able to compete with companies that have developed a national footprint. This Commission should consider the enormous amount of money BellSouth has spent over the last six years before this Commission, the Courts, and the various State Commissions to oppose CLECs and eliminate competition. If BellSouth wanted to establish a national footprint, it could have utilized its own resources to build a network nationwide, instead of entering into an unholy alliance with AT&T.
49. Historically, BellSouth has never shown any interest in building a monopoly or network outside its own region, except for cellular service in partnership with SBC. Rather, BellSouth's business plan is to suppress and eliminate competition, by any means, without concern for the legality of the method. The fact that BellSouth would go to such extremes to eliminate competition from a small regional CLEC such as STS should serve as a warning to this Commission that BellSouth needs to be regulated and kept on a short leash, and not be given license to run amok nationwide.
50. BellSouth has failed to use its resources to substantially upgrade its services to a national footprint, or a national VOIP network. The question naturally arises: can this Commission believe that after the

merger with AT&T, this gigantic monopoly will totally reverse its method of doing business and start investing in a national intermodal network? It is far more likely that the merged company will utilize its greater resources to continue to improperly suppress lawful competition.

51. A denial of the merger request should compel BellSouth to use its enormous financial resources in the manner that BellSouth has already promised Congress and this Commission; namely, to develop new technologies and compete on a national level. BellSouth is not entitled to be treated differently than other companies and is not above the law.
52. BellSouth has flagrantly violated the TRO and TRRO, as well as numerous state and federal laws prohibiting unfair competition and monopolies. Until BellSouth can show this Commission that it can compete in a fair and lawful manner, and follow the rules and regulations of the FCC and various states commissions, this Commission should deny the request for merger.
53. By its actions, BellSouth has demonstrated that it engages in unfair methods of competition and attempts through unlawful means to eliminate competitors. This is not the type of company which should be merged with another giant such as AT&T.

54. STS welcomes the opportunity to substantiate all of the allegations contained herein.

WHEREFORE, STS respectfully requests that this Honorable Commission deny the merger between BellSouth and AT&T.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that the foregoing "SATURN TELECOMMUNICATION SERVICES, INC.'S COMMENTS ON APPLICATION FOR CONSENT TO TRANSFER OF CONTROL FILED BY AT&T, INC. AND BELLSOUTH CORPORATION", was mailed and emailed this 5th day of June 2006, to:

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