

**Attachment 1: Declaration of James C. Falvey
on Behalf of Xspedius Communications, LLC**

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

In the Matter of)
)
)
Application Pursuant to Section 214 of the)
Communications Act of 1934 and)
Section 63.04 of the Commission's) **WC 06-74**
Rules for Consent to the Transfer of)
Control of BellSouth Corporation to)
AT&T, Inc.)
)

**DECLARATION OF JAMES C. FALVEY
ON BEHALF OF XSPEDIUS COMMUNICATIONS**

DECLARATION OF JAMES C. FALVEY:

1. My name is James C. Falvey. I am employed by Xspedius Communications, LLC ("Xspedius") as its Senior Vice President, Regulatory Affairs. My business address is 14405 Laurel Place, Suite 200 Laurel, MD 20707-6102. My primary job responsibilities include managing all matters that affect Xspedius before federal, state, and local regulatory agencies. I am responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, including interconnection negotiations and arbitrations, and local rights-of-way issues.

II. Background

2. Xspedius provides businesses across the southern United States with innovative, facilities-based competitive local, long distance, Internet and integrated

communications services. A privately held company based in O'Fallon, Missouri, Xspedius Communications offers integrated voice, data and Internet services over a network covering more than 3,500 route miles. Xspedius competes with all four RBOCs (Qwest, BellSouth, Verizon, and SBC), as well as Sprint (Las Vegas) and Valor (Broken Arrow, Oklahoma). Xspedius offers switched local services in twenty states and the District of Columbia.¹

3. Xspedius provides services primarily to small and medium-sized businesses, but also serves significant numbers of enterprise customers and other carriers, using its own facilities which include over 3,500 route miles of fiber and 35 switches. Xspedius does not provide service to residential customers.

4. Xspedius' network is primarily loop and transport from collocations and, in order to reach most of its customers, Xspedius must combine its own facilities with those leased from the incumbent local exchange carriers ("ILECs"), including both unbundled network element ("UNE") loops and Special Access services. In addition, on rare occasions, Xspedius is able to identify and purchase facilities and services from other competitive telecommunications carriers.

5. This declaration is provided in support of the group opposition to the AT&T/BellSouth merger proceeding and provides numerous examples of the often contrasting business practices of AT&T and BellSouth. It is critical that carriers and the Commission be able to review and compare ILEC business practices to identify those negative practices that are particularly outside the norm or the beneficial practices that should be the standard for other carriers in the market.

6. In Xspedius's experience, the BellSouth and AT&T business practices tend to directly contrast, with each party having a mix of anticompetitive and more favorable practices. Xspedius is concerned that a combined AT&T/BellSouth entity will adopt all of the anticompetitive practices of each company as standard operating practices throughout the combined AT&T/BellSouth operating region. Xspedius provides numerous examples, loosely categorized into ordering and provisioning practices and service term practices, of the different, and often conflicting, business practices utilized by each company in the hopes of highlighting the importance of being able to benchmark the AT&T and BellSouth business practices.

Ordering and Provisioning Practices

7. AT&T's business practices relating to ordering and provisioning intervals tend to be more favorable than those of BellSouth. For example, AT&T has a three-business day interval for provisioning UNEs and EELs and a five-business day interval for special access orders. In contrast, BellSouth has a five-business day interval for UNEs and a ten-business day interval for special access orders. AT&T's LEX and Prime Access ordering systems provide immediate feedback and same-day Firm Order Commitments while BellSouth's LENS and CAFÉ ordering systems require many manual orders for complex ports and EELs and are much more difficult to use. The ability to easily order and have those orders provisioned quickly is critical to a carrier's ability to compete effectively in its market. The fact that AT&T has these relatively more favorable business practices is proof that quick and easy ordering and provisioning can be accomplished and the combined AT&T and BellSouth entity should not be allowed to adopt BellSouth's less competitive practices as standard operating practices.

8. Further, BellSouth imposes unnecessary delays and expenses on competitors by requiring special construction for unconditioned local loops when no facilities are available. In contrast, AT&T does not require such construction. The fact that AT&T does not impose a construction requirement is a good indicator that BellSouth's practice is outside the norm and is not necessary. BellSouth also requires the payment of large security deposits whereas no deposit is required by AT&T. These BellSouth practices unnecessarily drive up competitor costs and otherwise serve no apparent purpose, pro-competitive or otherwise.

9. Finally, AT&T usually will fulfill reasonable expedite requests whereas BellSouth rarely honors an expedite request unless it is for special access service. Expedite processes are vital as CLEC customers often request immediate provisioning of service and carriers must have a clearly defined and effective means of fulfilling those requests. Absent the ability to conduct a comparison between AT&T's and BellSouth's business practices, Xspedius would lack the evidence to refute BellSouth's anticompetitive practices.

10. AT&T is also more responsive to requests to escalate loop orders but refuses to expedite local number portability ("LNP") orders. Similarly, BellSouth's process for escalating loops is extremely poor and is among the most difficult of all ILECs but has a better record of escalating LNP orders. The fact that they have directly opposing favorable and unfavorable practices indicates that the companies could both utilize the pro-competitive practices of the other that would level the playing field and enable carriers like Xspedius to compete more effectively.

11. BellSouth does have a more favorable project management process which permits carriers to submit orders via spreadsheet. In contrast, AT&T requires the entry of individual orders. Fulfilling customer orders is a time-sensitive undertaking and the extra time required to submit orders by entering each order individually, as required by AT&T, hinders the ability of Xspedius to quickly and efficiently serve its customers.

Service Terms

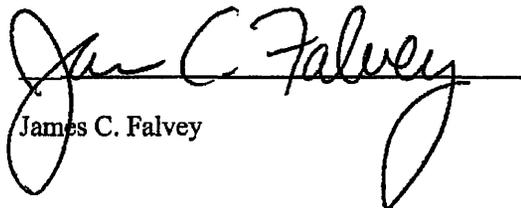
12. BellSouth's service terms tend to be more favorable than those of AT&T. By way of example, BellSouth permits carriers to fulfill special access volume and term commitments on a region-wide basis, essentially allowing "circuit portability," whereas AT&T does not offer such an option, or offers it under rates that are cost prohibitive. By refusing to allow circuit portability, AT&T diminishes the benefits of special access as an alternative to month-to-month UNE loops. AT&T essentially locks carriers into long-term special access loop plans which can be useless if the CLEC's end user customer cancels its service. This lack of portability in the AT&T special access plans is a significant problem for Xspedius in managing our special access circuit inventories.

13. AT&T's dispute resolution processes are also anticompetitive. AT&T does not appear to follow a clearly defined dispute resolution process but instead often simply denies the dispute, then exercises "self-help" by threatening to disconnect the carrier's service. In contrast, BellSouth has established and follows an escalation process for resolving disputed charges. Needless to say, AT&T's policy is extremely anticompetitive as it not only denies carriers the opportunity to resolve problems stemming from AT&T's billing practices but ensures that AT&T will not address the root cause of the billing problem.

14. BellSouth is also better than AT&T at paying the fines required by state performance metrics. BellSouth pays the liquidated damages due when it fails to meet state performance metrics while AT&T does not pay the penalties. In addition to deterring ILECs from continuing the negative and anticompetitive actions, the performance metric penalties work toward compensating CLECs for the harm caused by the ILEC's practices.

15. Finally, AT&T is willing to discuss the negotiation of commercial agreements to govern the terms of loop and transport whereas BellSouth refuses even to discuss such negotiations. Carriers need the ability to negotiate individualized terms to govern their specific circumstances and a refusal to even discuss such a negotiation is the type of anticompetitive behavior that must be prohibited lest it become the industry standard. It is worth noting that even AT&T, like all other RBOCs, has not come to terms with Xspedius on such a commercial agreement but has merely entertained the possibility of discussions.

I assert under penalty of perjury that the foregoing is true and correct to the best of my information and belief. This concludes my declaration.


James C. Falvey

Dated June 5, 2006

**Attachment 2: Declaration of Lisa R. Youngers
on Behalf of XO Communications, Inc.**

over internet protocol (“VoIP”) and various bundled service offerings. XO targets primarily small and medium-sized businesses, wholesale carriers and, to a lesser extent, enterprise customers. XO does not pursue residential customers. XO’s services are provided over a network comprised of both owned and leased fiber.

4. XO operates in ten major markets in BellSouth’s operating territory and consequently any unfavorable differences in the BellSouth and AT&T business practices, which may become standard practices for both companies after any merger, are of great concern to XO. XO also operates in many markets where AT&T operates as the ILEC. Our company is a major purchaser of UNEs and special access services from both BellSouth and AT&T, and we accordingly are well positioned to compare the business practices in the wholesale market of both RBOCs.
5. In our experience, the wholesale business practices of BellSouth and AT&T vary significantly, and in many cases the practices of one of the RBOCs is significantly more anticompetitive than the other.
6. A primary example is the structure required by the two companies for volume and term special access agreements. AT&T’s practices regarding volume and terms commitment plans are much less favorable and more anti-competitive than those of BellSouth. For instance, BellSouth permits customers to meet volume commitments on a regional basis, effectively permitting some level of “circuit portability”, whereas AT&T has no economically practical circuit portability option available. The lack of a circuit portability option locks a CLEC into a special access loop long term even if the CLEC’s end user customer cancels service, making the use of special access as an alternative to month-to-month UNE loops impractical. Similarly, BellSouth permits customers of its special access volume and term deals to satisfy revenue volume commitments over a range of service plans. This flexibility in meeting the volume and term commitment levels benefits smaller competitor companies by enabling them to balance lower revenues or volume in one of their service offerings with higher volume and term levels in other service offerings or markets. In contrast, AT&T

does not permit service plan volumes obtained from one service to be used to meet the volume terms of another service (or from one plan to another plan) in any meaningful way.

7. Another example of the different business practices concerns the performance metrics established by many states. BellSouth pays the stipulated damages when it fails to meet a metric whereas AT&T does not pay the damages. It is important to competitors like XO that carriers like AT&T be required to pay the fees as a means of deterring the negative behavior.
8. XO is concerned that if the companies are permitted to merge, it is highly likely that the merged entity would adopt the unfavorable practices and it is important that the Commission and other carriers be able to benchmark these practices against those of other carriers to determine if the practices are "outside the norm." A merger of these two regional bell operating companies ("RBOCs") will severely diminish the ability of the Commission to review these practices.

I assert under penalty of perjury that the foregoing is true and correct to the best of my information and belief. This concludes my declaration.

Lisa R. Youngers
Lisa R. Youngers

Dated June 1, 2006