



OPASTCO

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June 14, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Ex Parte Notice

**Re: AT&T Inc. and BellSouth Corporation Applications for Approval of
Transfer of Control
WC Docket No. 06-74
DA 06-904**

Dear Ms. Dortch:

On June 13, 2006, Chad Miles of Enhanced Telecommunications Corporation in Sunman, IN, Roger Nishi of Waitsfield & Champlain Valley Telecom in Waitsfield, VT, H. Keith Oliver of Home Telephone Company in Moncks Corner, SC, and Stuart Polikoff of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) met with representatives from the Office of General Counsel, Wireline Competition Bureau, International Bureau, and Media Bureau. Representing the Office of General Counsel were Jim Bird, Joel Rabinovitz, and Ann Bushmiller. Representing the Wireline Competition Bureau were Nick Alexander, Bill Dever, Paul Zimmerman, Steve Rodini, Treffaney Lowe, Jon Reel, Adam Kirschenbaum, and Tim Stelzig. Representing the International Bureau was Marilyn Simon. Representing the Media Bureau was Natalie Roisman. The purpose of the meeting was to share OPASTCO's concerns regarding the proposed merger between AT&T and BellSouth and the need for certain conditions to be imposed on the merger if it is approved by the Commission. Conditions on the merger are necessary in order to constrain the increased market power that AT&T will have in the provision of wholesale network services which, if left unchecked, would harm rural consumers.

OPASTCO is a national trade association representing over 550 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include commercial companies and cooperatives, together serve more than 3.5 million

customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

Section 254(b) of the Telecommunications Act of 1996 calls for telecommunications and information services in rural areas that are reasonably comparable to the services offered in urban areas and at affordable and reasonably comparable rates. Rural ILECs need access to AT&T's network at just, reasonable, and nondiscriminatory rates and terms in order to provide their customers with high-quality, affordable services that connect them to the world outside of their service areas.

If the Commission decides to approve the merger between AT&T and BellSouth, conditions need to be imposed because the two companies' combined market power would otherwise enable them to unilaterally set the rates and terms for access to their network without negotiation. The merger will increase AT&T's market power over its bottleneck facilities because of the removal of AT&T and BellSouth as actual and potential competitors in each other's regions. AT&T will also gain market power through the tremendous increase in its retail customer base. In some cases, AT&T and BellSouth, individually, are able to dictate the rates and terms that they charge rural ILECs for access to their networks. This demonstrates that they have unchecked market power and that rural ILECs do not have sufficient competitive alternatives. The merger will only exacerbate the imbalance in negotiating power between AT&T and rural ILECs, to the detriment of rural consumers.

Therefore, should the Commission decide to approve the AT&T/BellSouth merger, OPASTCO urges that the following conditions be imposed **for a minimum of five years following the close of the merger:**

- The rates and terms for wholesale access to AT&T's network must be provided on a "most favored nation" basis – i.e., the same rates and terms that AT&T provides to its own affiliates and to its largest customers. The following are the facilities/services that rural ILECs need access to on a most favored nation basis:
 - A. Long distance / toll facilities
 - B. Internet backbone access (special access, DS1s, DS3s, and bandwidth)
 - C. Transiting (tandem switching and transport)
- In order to verify that all contracts are on a most favored nation basis, AT&T must publicly disclose the rates and terms of the wholesale interconnection contracts that it enters into with other carriers. At the very least, AT&T should be required to file such contracts with the FCC. [Section 211 of the Communications Act gives the FCC the authority to require carriers to "file with the Commission copies of all contracts, agreements, or arrangements with other carriers..."]
- AT&T must not increase the rates paid by existing AT&T and BellSouth customers for wholesale DS1 and DS3 local private line services.

- AT&T must not increase the rates set forth in AT&T's and BellSouth's interstate tariffs for special access services, including contract tariffs, that either company provides in its in-region territory.
- AT&T's rates for transiting must either be capped (with annual increases permitted based on inflation) or, in the alternative, AT&T must demonstrate to the Commission that its transiting rates are cost-based. [This condition is necessary to address the fact that Cingular Wireless would be wholly owned by one company, which gives AT&T an incentive to increase its transiting rates, even if it means raising them for Cingular as well.]
- AT&T must maintain settlement-free peering arrangements with at least as many providers of Internet backbone services as it did prior to the merger. [This condition is necessary to prevent upward pressure on the prices that rural ILECs pay for access to the Internet backbone and, in turn, must charge their customers for Internet access. Once BellSouth's Internet traffic is migrated to AT&T's backbone, AT&T's need to maintain peering arrangements will diminish and its bargaining power over smaller backbone providers will increase. It is possible that AT&T will seek to peer only with backbone providers of comparable size (ex. Verizon), and those very large providers will charge smaller backbone providers to deliver their traffic. The elimination of peering arrangements among backbone providers would lead them to raise the rates they charge for access to their networks.]
- Prior to the completion of the minimum five-year period for which the above conditions are in effect, the FCC should conduct an analysis for each of the relevant wholesale services to determine whether or not they are sufficiently competitive. A service is sufficiently competitive if AT&T would not have undue market power over rural ILECs in contract negotiations. Only to the extent that the FCC determines that a specific service is sufficiently competitive should AT&T be relieved of some or all of the conditions for that particular network access service.

In accordance with FCC rules, this letter is being filed electronically in the above-captioned docket.

Sincerely,

Stuart Polikoff
Director of Government Relations
OPASTCO