

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
AT&T Inc. and BellSouth Corp.	)	WC Docket No. 06-74
Applications for Approval of	)	
Transfer of Control	)	DA 06-904
	)	

**REPLY COMMENTS OF MOBILE SATELLITE VENTURES SUBSIDIARY LLC**

The comments and petitions filed in response to the above-captioned merger application were near unanimous in their opposition to the proposed merger. Commenting parties believe that the proposed merger would cause significant harm to competition and should be approved only if stringent conditions are imposed on the merged company to alleviate the harmful effects of the proposed transaction. Parties from various market segments expressed alarm over the proposed merger, discussing the threat posed by the removal of one of the few significant competitors from important markets, the increase in the ability and incentive for the merged company to discriminate against competitors, and the decrease in the ability of regulators and competitors to detect and police anticompetitive conduct.

In light of the views expressed by the commenting parties, the Commission should deny the proposed merger of AT&T and BellSouth or, at minimum, approve the merger only with conditions that ensure the continued viability of intermodal competition. Specifically, the Commission should ensure that competing carriers have access to

special access services within the AT&T and BellSouth territories at just, reasonable, and nondiscriminatory rates, terms, and conditions.

**I. THE COMMENTS AND PETITIONS FILED IN RESPONSE TO THE MERGER APPLICATION OVERWHELMINGLY OPPOSE THE MERGER AND HIGHLIGHT THE PROPOSED MERGER'S THREATS TO COMPETITION**

The overwhelming majority of parties that filed comments and petitions in this proceeding oppose the proposed merger of AT&T and BellSouth, noting the various ways in which the proposed merger would harm competition in the telecommunications marketplace. Of the two dozen or so parties that filed comments or petitions,<sup>1</sup> only one, the Alliance for Public Technology, filed brief comments in support of the merger.<sup>2</sup> The remaining parties, representing a variety of different industry segments and public interest affiliations, discuss the significant threat to competition posed by the proposed merger. Despite their varying interests,<sup>3</sup> the commenting parties agree that a merged AT&T/BellSouth would significantly hurt competition by removing one of the few existing and potential competitors for each company and increasing the incentive and ability for the merged company to discriminate against its smaller competitors.

As numerous commenting parties discuss, the proposed merger would eliminate both existing and potential competition from the market with respect to several telecommunications services.<sup>4</sup> AT&T competes with BellSouth within the BellSouth

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<sup>1</sup> The Commission has also received over 11,000 comments from individual consumers, the vast majority of which oppose the proposed merger.

<sup>2</sup> Comments of The Alliance for Public Technology, WC Docket No. 06-74 (June 5, 2006) (“APT Comments”).

<sup>3</sup> The parties that filed comments and petitions opposing the merger include CLECs, wireless carriers, Internet service providers, wireless broadband providers, resellers, industry associations, state government regulators, and consumer and public interest organizations.

<sup>4</sup> Comments of CBeyond Communications et al., WC Docket No. 06-74, at 35-50 (June 5, 2006) (“CBeyond Comments”); Petition to Deny of Access Point, Inc. et al., WC Docket No. 06-74, at

territory, particularly in the special access and business services markets.<sup>5</sup> Moreover, by virtue of the fact that they are the dominant carriers in adjacent regions, AT&T and BellSouth are each the most (or among the two most) significant potential competitor in each other's territory.<sup>6</sup> While the applicants cite competition from wireless providers, cable companies, and VoIP providers to argue that they face competition from numerous sources, the reality is that these competitors either do not represent a significant source of actual competition in the market today and/or face serious challenges to becoming significant competitors.<sup>7</sup> Cable companies, for example, do not pass most business customers and thus do not provide significant competition with respect to business and enterprise services.<sup>8</sup> Wireless carriers provide competition for mass market services, but do not provide significant competition with respect to data services, particularly for businesses.<sup>9</sup> VoIP services lack the brand name and consumer recognition of more established wireline service providers, and require consumers to have an independent broadband connection (which in turn is often provided by an ILEC such as AT&T or BellSouth).<sup>10</sup> Finally, all such intermodal competitors are heavily dependent on AT&T and BellSouth for important inputs to their respective operations within the AT&T and

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7-13 (June 5, 2006) ("Access Point Petition"); Petition to Deny of EarthLink, Inc., WC Docket No. 06-74, at 9-18 (June 5, 2006) ("EarthLink Petition"); Comments of Sprint Nextel Corp., WC Docket No. 06-74, at 2 (June 5, 2006) ("Sprint Nextel Comments"); Petition to Deny of Time Warner Telecom, Inc., WC Docket No. 06-74, at 16-25 (June 5, 2006) ("Time Warner Telecom Petition"); Petition to Deny of COMPTTEL, WC Docket No. 06-74, at 7 (June 5, 2006) ("COMPTTEL Petition").

<sup>5</sup> CBeyond Comments at 51-57; Access Point Petition at 10.

<sup>6</sup> Access Point Petition at 8-9; CBeyond Comments at 42-45; EarthLink Petition at 9-18.

<sup>7</sup> Access Point Petition at 12; CBeyond Comments at 55-56 (citing 2005 BellSouth 10-K and Yankee Group study to illustrate lack of competition from CLECs).

<sup>8</sup> CBeyond Comments at 58; Access Point Petition at 41-43.

<sup>9</sup> CBeyond Comments at 57.

<sup>10</sup> CBeyond Comments at 58-59; Access Point Petition at 45-47.

BellSouth territories, including special access services, interconnection, E911 interconnection, and other services.

While the applicants claim that they do not offer significant competition to each other, their own past statements demonstrate that this is not the case. While applicants claim that BellSouth does not have a significant presence in the business services market, BellSouth's own past statements suggest otherwise.<sup>11</sup> Similarly, AT&T's marketing information and regulatory filings tout its strong presence and intention to compete in the BellSouth region,<sup>12</sup> while BellSouth's regulatory filings note AT&T as a source of competition within its region.<sup>13</sup> Similarly, when AT&T wireless was an independent carrier, it noted the importance of special access services purchased from ILECs such as SBC and BellSouth within their respective territories.<sup>14</sup>

In addition to harming competition by eliminating actual and potential competition, the proposed merger would harm competition by decreasing benchmarks that are used by regulators and competitors to monitor anticompetitive behavior on the

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<sup>11</sup> CBeyond Comments at 53 (noting that BellSouth's 2004 10-K described its efforts to compete in the business and enterprise markets nationwide); Access Point Petition at 10-11 (citing BellSouth marketing information targeting business customers).

<sup>12</sup> CBeyond Comments at 54-55 (citing SBC's "national-local" strategy to compete in the BellSouth territory as one of the justifications offered for the SBC/AT&T merger); Access Point Petition at 10.

<sup>13</sup> CBeyond Comments at 52 (noting that BellSouth's 2005 10-K described AT&T as a significant source of potential in-region competition).

<sup>14</sup> COMPTTEL Petition at 9 ("Although wireless services are increasingly viewed as a form of intermodal competition to wired telephony services, including broadband services, the ironic fact is that wireless networks out of necessity consist largely of wireline facilities. . . . These [facilities] overwhelmingly are made with landline transport facilities purchased from ILEC special access tariffs." (citing Dec. 2, 2002 AT&T Wireless Comments filed in special access proceeding RM-10593)).

part of ILECs<sup>15</sup> and by increasing the incentive and ability of the merged company to discriminate against competitors.<sup>16</sup>

## **II. THE COMMENTS HIGHLIGHT THE THREAT POSED BY THE PROPOSED MERGER TO COMPETITION IN THE MARKET FOR SPECIAL ACCESS SERVICES**

Special access services represent a crucial input for most intermodal competitors; without access to such services and reasonable and nondiscriminatory rates, such competitors will face an extremely uphill battle in competing against large ILECs. Because they operate throughout an ILEC's region and not only in more competitive business districts, wireless carriers have no meaningful options for special access services other than incumbent LECs. Sprint Nextel notes that it relies on either AT&T or BellSouth for special access services used to interconnect more than 99 percent of its cell sites within the AT&T and BellSouth regions.<sup>17</sup> The proposed merger threatens independent wireless carriers by endangering competition for special access services, both by eliminating actual and potential sources of competition<sup>18</sup> and by giving the merged company the incentive and ability to discriminate in the provision of special

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<sup>15</sup> Access Point Petition at 13-20; CBeyond Comments at 78-88; Time Warner Telecom Petition at 49-72.

<sup>16</sup> Access Point Petition at 20-24; CBeyond Comments at 88-96; Time Warner Telecom Petition at 32-49.

<sup>17</sup> Sprint Nextel Comments at 9; *see also* COMPTTEL Petition at 9 (citing 2002 AT&T Wireless filing noting that 90% percent of its transport costs go to paying incumbents for special access services); *id.* at 10 ("T-Mobile confirmed that for many types of circuits it must purchase well over 90% of its demand from [ILECs].").

<sup>18</sup> Time Warner Telecom Petition at 16-25 (discussing how the proposed merger threatens special access competition by eliminating AT&T as a significant actual and potential competitor in the BellSouth region and BellSouth as a potential competitor in the AT&T ILEC region); Sprint Nextel Comments at 2 (noting that the merged company would combine the second and third largest providers of special access services and would control over 45 percent of total annual special access revenues reported by ILECs); CBeyond Comments at 77; COMPTTEL Petition at 7.

access services in favor of Cingular, whose ownership would be consolidated in the merged company.<sup>19</sup>

AT&T is perhaps the only source for meaningful region-wide special access competition within the BellSouth region.<sup>20</sup> Even if AT&T's facilities are not nearly as extensive as BellSouth's within the latter's territory, its size and resources make it a meaningful check on the rates charged by BellSouth.<sup>21</sup> During the SBC/AT&T merger proceeding, BellSouth noted that the effect of that merger would be to increase special access competition within its region — increased competition that would be eliminated with this proposed merger.<sup>22</sup>

Similarly, because special access services are such a vital input for wireless carriers (who use such services to connect their base stations to their switching centers and to interconnect to the PSTN), the merged company would have the incentive to favor its affiliate Cingular with respect to the provision of special access services.<sup>23</sup> Without regulatory oversight, the merged company would be able to offer discounts to Cingular that would not be available to other wireless carriers, making it almost impossible for independent wireless carriers to compete on an equal footing with Cingular.<sup>24</sup>

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<sup>19</sup> Sprint Nextel Comments at 5 (“[T]he expanded service territory of the merged company will increase its incentive and opportunities to engage in anticompetitive practices designed to harm national competitors . . . .”); *id.* at 6 (“[A] combined AT&T-BellSouth will be able to achieve greater benefits from a strategy designed to raise its rivals’ costs than either could achieve separately, thereby making it more likely that the combined entity will engage in such a strategy.”); CBeyond Comments at 77-78.

<sup>20</sup> CBeyond Comments at 63-64; COMPTTEL Petition at 7; Sprint Nextel Comments at 5, 11-12.

<sup>21</sup> CBeyond Comments at 65-66, 75-76; COMPTTEL Petition at 7-8; Sprint Nextel Comments at 12.

<sup>22</sup> CBeyond Comments at 60.

<sup>23</sup> CBeyond Comments at 77-78; COMPTTEL Petition at 9-11; Sprint Nextel Comments at 5, 9-11.

<sup>24</sup> COMPTTEL Petition at 10-11.

**III. IF THE COMMISSION DECIDES TO APPROVE THE PROPOSED MERGER, IT SHOULD DO SO ONLY UPON THE IMPOSITION OF STRINGENT AND ENFORCEABLE PROCOMPETITIVE CONDITIONS**

The commenting parties overwhelmingly note that if the Commission were to approve the proposed merger, it should do so only if it imposes significant conditions that will alleviate the threats to competition posed by the proposed merger. MSV supports the imposition of the various conditions suggested by the commenting parties, and in particular supports the conditions proposed by Sprint Nextel.<sup>25</sup> The conditions proposed by Sprint Nextel will ensure that the merged company does not use its near monopoly control over special access services within its region to discriminate against competitors that offer the greatest promise for true competition in the marketplace — independent wireless carriers. At minimum, the merged company should be required to commit affirmatively to continuing to provide special access tariffs and rates described in their application, and should be prohibited from increasing special access rates for a period of five years.<sup>26</sup> In addition, the merged company should be prohibited from discriminating in favor of Cingular and against non-affiliated carriers with respect to the provision of special access services.<sup>27</sup> The most effective way to prohibit such discrimination is to require the merged company to provide special access services on a “most favored nation” basis, under which it would be required to offer such services under the same rates, terms, and conditions which it offered equivalent services to its affiliates, including Cingular, or to Verizon or its affiliates.<sup>28</sup>

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<sup>25</sup> Sprint Nextel Comments at 12-15.

<sup>26</sup> Sprint Nextel Comments at 13; CBeyond Comments at 106-07; Comments of PAETEC Communications, Inc., WC Docket No. 06-74, at 9-10 (June 4, 2006) (“PAETEC Comments”).

<sup>27</sup> Sprint Nextel Comments at 13; CBeyond Comments at 107-08; PAETEC Comments at 9.

<sup>28</sup> Sprint Nextel Comments at 13; Access Point Petition at 74.

Finally, in order to enable meaningful intermodal competition from VoIP providers, the Commission should also require the merged company to offer stand-alone or “naked” DSL for a period of five years.<sup>29</sup>

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Respectfully submitted,

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<sup>29</sup> Access Point Petition at 73; Comments of the Georgia Public Service Commission, WC Docket No. 06-74, at 2-3 (June 5, 2006); Comments of the New Jersey Division of the Ratepayer Advocate, WC Docket No. 06-74, at 22 (June 5, 2006).