

July 11, 2006

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

On June 14, 2006, OPASTCO filed an *ex parte* letter claiming that the AT&T/BellSouth merger will give AT&T “increased market power” in the provision of “wholesale network services” and proposing merger conditions with respect to wholesale long distance services; Internet backbone access; transiting services; and special access.¹ Although it proposes a lengthy list of merger conditions, OPASTCO does not even attempt to substantiate its claims regarding market power. It offers no facts, no evidence, and no serious analysis, just a handful of bald, unsupported, conclusory statements, based on which it asks the Commission to impose a slew of merger conditions. The Commission should give short shrift to OPASTCO’s claims. They are not only unsupported, but at odds with the unrefuted facts in the record and recent, as well as longstanding, Commission precedent.

In the Public Interest Statement (“PIS”) and Joint Opposition, we demonstrated with empirical evidence and rigorous analysis that the merger will have no effect on competition for wholesale long distance services, Internet backbone access and special access services.² OPASTCO does not dispute any of this evidence, nor does it point to any flaws in our analysis. It simply claims, without explanation, that the merger will increase AT&T’s market power because “of the removal of AT&T and BellSouth as actual and potential competitors in each other’s regions” and “through the tremendous increase in its retail customer base.” With respect to Internet backbone access, specifically, it throws in just a bit more speculation, claiming that “AT&T’s need to

¹ Letter from Stuart Polikoff, Director of Government Relations, OPASTCO, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-74 (June 14, 2006) (“OPASTCO Letter”).

² Joint Opposition at 12-34 (special access), 61-63 (foreclosure of opportunities for wholesale long distance and special access competitors), 74-82 (Internet backbone); Carlton/Sider Reply Decl. ¶¶ 9-53 (special access); Schwartz Reply Decl. *passim*; PIS at 55-62 (special access), 98-105 (Internet backbone); Carlton/Sider Decl. ¶¶ 103-18 (special access).

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 . . . , and those very large providers will charge smaller backbone providers to deliver their traffic.”³

These wholly unsubstantiated, conclusory allegations and bald speculation are woefully insufficient to rebut the substantial body of fact-based contrary evidence that AT&T and BellSouth have submitted. Accordingly, in lieu of responding here to OPASTCO’s claims and demonstrating that its proposed conditions are unnecessary, AT&T and BellSouth simply refer the Commission to the PIS and Joint Opposition.⁴ AT&T and BellSouth observe, however, that OPASTCO’s proposal that wholesale access to AT&T’s network be provided to rural ILECs on a “most favored nation basis” is, not only wholly unnecessary, but contrary to years of Commission precedents recognizing that volume discounts are pro-competitive and in the public interest.⁵ OPASTCO does not even attempt to explain why the Commission should abandon those precedents or on what basis such a condition would even be lawful.

OPASTCO’s request for a merger condition relating to transiting is based entirely on its claim that consolidated ownership of Cingular Wireless “gives AT&T an incentive to increase its transiting rates, even if it means raising them for Cingular as well.”⁶ This

³ OPASTCO Letter at 3.

⁴ Aside from a brief refutation of concerns that the merger would foreclose opportunities of competing carriers to sell services to AT&T and BellSouth, the PIS and Joint Opposition did not actually address the impact of the merger on wholesale long distance competition because any claim of an adverse impact would have no credibility. Now that OPASTCO has proffered this claim, we note that it is flatly at odds with more than ten years of Commission precedent including, most recently, the *SBC/AT&T* and *Verizon/MCI Merger Orders*. See *Applications of SBC Commc’ns Inc. & AT&T Corp.*, Memorandum Opinion and Order, 20 FCC Rcd. 18290, 18369-71 ¶¶ 149-51 (2005) (“*SBC/AT&T Merger Order*”); *Applications of Verizon Commc’ns Inc. & MCI, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd. 18433, 18510-11 ¶¶ 148-50 (2005).

⁵ See, e.g., *1998 Biennial Regulatory Review-Review of Accounts Settlement in the Maritime Mobile & Maritime Mobile-Satellite Radio Servs. & Withdrawal of the Comm’n as an Accounting Authority in the Maritime Mobile & Maritime Mobile-Satellite Radio Servs.*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 20703, 20712 ¶ 20 n.26 (1999); *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 14221, 14289 ¶ 124 (1999); *David S. Poole & Mich. Multimedia Telecomms., Inc. v. Michiana Metronet, Inc. & Lucas J. Caruso*, Memorandum Opinion and Order, 15 FCC Rcd. 9944, 9950 ¶ 16 (1999); *Implementation of the Pay Tel. Reclassification & Compensation Provisions of the Telecomms. Act of 1996*, Report and Order, 11 FCC Rcd. 20541, 20655 ¶ 227 (1996).

⁶ OPASTCO Letter at 3.

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claim is simply a variant of claims made by others that consolidated ownership of Cingular will increase the likelihood of a special access price squeeze.⁷ AT&T and BellSouth addressed those claims in detail in the Joint Opposition. We noted the Commission has repeatedly recognized that “price squeeze” or “raising rivals’ costs” arguments should not be addressed in merger proceedings, but rather in ongoing industry-wide rulemaking proceedings “based on a full record that applies to all similarly-situated LECs.”⁸ Just as special access issues have been raised in a pending rulemaking proceeding, so too have transiting issues.⁹ We further noted that these claims ignore that ILECs have been vertically integrated providers of wireless service for years and that AT&T, BellSouth, Verizon, and Sprint initially had complete ownership of their wireless affiliates. Notwithstanding those ownership interests, wireless competition has thrived throughout the country.¹⁰ In all events, AT&T and BellSouth have been providing transiting arrangements on commercially negotiated terms to other carriers, including both wireless and CLEC competitors. OPASTCO’s one sentence of groundless speculation provides no basis for the Commission to begin regulating these arrangements for the first time, particularly through a merger condition that applies to AT&T only.

Sincerely,

/s/ Gary L. Phillips

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⁷ See, e.g., Petition to Deny of CompTel at 9-10; Sprint Nextel Comments at 9-11.

⁸ Joint Opposition at 27-28 (citing *SBC/AT&T Merger Order*, 20 FCC Rcd. at 18320 ¶ 55 and *Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp.*, Memorandum Opinion and Order, 19 FCC Rcd. 21522, 21592 ¶ 183 (2004)).

⁹ The Commission has specifically sought comment on how transiting arrangements should be treated for regulatory purposes in the *Intercarrier Compensation* proceeding, and rural ILECs have specifically commented on those issues. See, e.g., Comments of the Rural Alliance at 13, 15, 22, 119-26 (May 23, 2005) in *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92.

¹⁰ Joint Opposition at 28.