July 31, 2006

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:

In their Reply Comments in this proceeding, Cbeyond Communications, *et al.* ("Cbeyond") continue to insist that the AT&T/BellSouth merger will "seriously weaken competition" in the provision of wholesale special access services and that "stringent" merger conditions are necessary to "remedy" this harm.[1] AT&T and BellSouth have previously shown that their merger will result in no such harm and that there is no justification for the merger conditions proposed by Cbeyond (or any others). Given AT&T's limited local fiber facilities and minuscule wholesale special access sales in the BellSouth franchise areas and the existence of many other facilities-based providers in the same dense commercial areas of the same metropolitan areas – indeed, in or very near almost all of the same buildings that are connected to AT&T's local fiber networks – the elimination of AT&T as an independent wholesale special access supplier cannot have a significant adverse impact on competition.[2]

For the most part, the Cbeyond Reply simply rehashes arguments that the Applicants have already rebutted and that mirror claims that both the Commission and the Department of Justice properly rejected in the SBC-AT&T and Verizon-MCI merger proceedings. Cbeyond repeats the familiar litany of complaints about special access returns, rates, performance and tariffed terms of service that the Commission has repeatedly held are not merger-specific and

[1] Reply Comments of Cbeyond Communications, *et al.*, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from BellSouth Corporation, Transferor to AT&T Inc., Transferee*, FCC WC Docket No. 06-74, at 1 (filed June 20, 2006) ("Cbeyond Reply").

[2] *See, e.g.*, Description of Transaction, Public Interest Showing and Related Demonstrations, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from BellSouth Corporation, Transferor to AT&T Inc., Transferee,* WC Docket No. 06-74, at 55-62 (filed March 31, 2006) ("Public Interest Statement"); Joint Opposition of AT&T Inc. and BellSouth Corporation to Petitions to Deny and Reply Comments, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from BellSouth Corporation, Transferor to AT&T Inc., Transferee,* WC Docket No. 06-74, at 12-27 (filed June 20, 2006) ("Joint Opposition").

must be raised, if at all, in the Commission's ongoing special access rulemaking proceedings.[3] Cbeyond speculates that the merger will foster tacit or informal coordination between AT&T and Verizon, without even acknowledging the Commission's express rejection of the same baseless arguments in the SBC/AT&T and Verizon/MCI mergers.[4] And Cbeyond proclaims that "AT&T remains the *only* strong competitor in the BellSouth region," and that there are "few, if *any*, alternative providers of special access services in the BellSouth region with a similar market presence as AT&T,"[5] notwithstanding Applicants' submission of detailed record evidence proving that many other CLECs operate robust local networks in each of the areas that AT&T serves and that only a truly *de minimis* number of AT&T "lit" buildings remain after applying the competitive criteria used by the Department of Justice and the Commission in the prior mergers.[6]

Cbeyond's only new argument is equally baseless. Cbeyond asserts that it now has "evidence" that the proposed merger will result in "material increases in wholesale prices" for special access services and that such increases are "in fact occurring" in the SBC franchise areas in the wake of the SBC/AT&T merger.[7] That is false. AT&T's in-region wholesale special access prices have not increased since the merger; nor could they, as AT&T and SBC made voluntary commitments in the SBC/AT&T merger proceeding not to raise such prices.[8] In fact, as AT&T and BellSouth have previously demonstrated with actual data and economic analyses,

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[3] *See, e.g.*, *SBC/AT&T Merger Order*, 20 FCC Rcd. 18290, ¶ 55 (2005); *Verizon/MCI Merger Order*, 20 FCC Rcd. 18433, ¶ 55 (2005); *Cingular/AT&T Wireless Merger Order*, 19 FCC Rcd. 21522, ¶ 183 (2004) ("To the extent that certain incumbent LECs have the incentive and the ability under our existing rules to discriminate against competitors, whether such carriers are wireless or wireline, in the provisioning of special access services, such a concern is more appropriately addressed in our existing rulemaking proceedings on special access performance metrics and special access pricing").

[4] *See, e.g.*, *SBC/AT&T Merger Order*, 20 FCC Rcd. 18290, ¶ 54 (2005); *Verizon/MCI Merger Order*, 20 FCC Rcd. 18433, ¶ 54 (2005).

[5] Cbeyond Reply at 6-7.

[6] *See, e.g.*, Public Interest Statement at 56-59; Joint Opposition at 14-17, Response of AT&T Inc. to Initial Information and Document Request Dated June 23, 2006 at 28-31, 33-49 and accompanying Exhibits. Most of the CLECs in the Cbeyond group do not purchase *any* wholesale local private line services from AT&T in the BellSouth franchise areas; the others purchase only very small amounts of those services.

[7] Cbeyond Reply at 11-12.

[8] *See SBC-AT&T Merger Order*, App. F. at 123 ("For a period of thirty months after the Merger Closing Date, SBC/AT&T shall not increase the rates paid by existing customers . . . of the DS1 and DS3 local private line services that AT&T provides in SBC's in-region territory pursuant, or referenced to, its TCG FCC Tariff No. 2 above their level as of the Merger Closing Date"); *id.* at 124 ("SBC/AT&T shall not increase the rates in SBC's interstate tariffs, including contract tariffs, for special access services that SBC provides in its in-region territory and that are set forth in tariffs on file at the Commission on the Merger Closing Date").

the highly discounted prices that customers actually pay for wholesale special access and local private line services have been falling for years.[9]

Cbeyond cites no evidence to the contrary. Rather, as the "Accessible Letters" cited by Cbeyond make clear on their face, Cbeyond's supposed new "evidence" relates solely to a handful of instances where AT&T has adjusted rates for intrastate *retail* services "designed to meet the private line communications requirements of *business customers*."[10] The fact that AT&T, like every other supplier in the dynamic and robustly competitive enterprise services business, from time to time adjusts its rates for particular retail services – both up and down – is as unremarkable as it is irrelevant to the issues at hand. As the Commission recognized in the *SBC/AT&T Merger Order*, "for all groups of business customers, there are multiple services and multiple providers that can meet their demand."[11]

Cbeyond's suggestion that such retail rate increases for local exchange services threaten to force purchasers of *wholesale* special access service "out of business,"[12] is nonsensical. Although CLECs may purchase these retail local exchange services at a discount for resale,[13] they generally purchase wholesale special access services that are specifically designed for carriers' access needs. And when CLECs do purchase these retail services for resale, their price is generally a fixed percentage discount off the retail price.[14] As a result, the CLEC's ability to compete against AT&T is unaffected by retail price changes, because the CLEC continues to receive the service at the same percentage margin below AT&T's retail rates.[15] Thus, Cbeyond's

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[9] *See* Joint Opposition at 31.

[10] *See, e.g.*, SBC Digital Link Services Tariff, Megalink 1.5 High Capacity Digital Service, P.S.C.Mo., No. 38, § 4.3.2.1 (Effective March 29, 2002) (emphasis added) (Megalink 1.5 High Capacity Digital service is designed "primarily" for "business customers" and, as such, the service includes "assisting the customer in ordering and provisioning of private line services" which "includes, but is not limited to, advice as to which private line service best meets the customer's requirements, taking into consideration the customers' present and future communications needs").

[11] *SBC/AT&T Merger Order*, 20 FCC Rcd. 18290, ¶ 77 (2005); *Verizon/MCI Merger Order*, 20 FCC Rcd. 18433, ¶ 78 (2005) (same). It is also worth noting that Cbeyond's entire argument is based on timing – *i.e.*, because there were retail price increases *after* the merger, those price increases must have been *because of* the merger. Correlation, of course, is not the same thing as causation, and it would be as improper to conclude that the SBC's merger with AT&T "caused" increases in a few of its intrastate retail local exchange services as it would be to conclude that the merger caused recent increases in oil prices.

[12] Cbeyond Reply at 12.

[13] *See* 47 U.S.C. §§ 251(c)(4).

[14] *See id.* § 252(d)(3).

[15] Indeed, in Illinois, the CLEC purchaser's competitive position is actually improved by retail rate increases. *See* AT&T Accessible Letters dated April 25, 2006, April 24, 2006, January 6, 2006, January 10, 2006, December 21, 2005, available at https://clec.att.com/clec/accletters/

claim that the retail rate adjustments it has identified "amply demonstrate" the need for the dozens of wholesale special access conditions it proposes,[16] is empty rhetoric.

In short, Cbeyond's reply adds nothing of consequence to a record that amply demonstrates that the elimination of AT&T as independent supplier of wholesale special access services in the BellSouth franchise areas will not harm competition or the public interest in any way.[17]

Sincerely,

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home.cfm ("per the Illinois Commerce Commission Alternative Regulation Plan, increases in Retail rates will not result in an increase in Resale rates").

[16] Cbeyond Reply at 12, 15-22.

[17] One further – and particularly irresponsible – assertion by Cbeyond merits a response. In attempting to justify its plea that the Commission should respond to the much less significant (indeed, *de mimimis*) special access issues here with much more onerous special access conditions that were imposed in the prior mergers, Cbeyond claims that AT&T's Chairman and CEO stated that the conditions imposed in the SBC/AT&T merger were not "meaningful." Mr. Whitacre said no such thing nor in any way disparaged the Commission's or the DOJ's actions in the prior merger. The actual question to which Mr. Whitacre responded in the investor conference cited by Cbeyond was "how much of the merger savings do you anticipate the regulators are going to demand get returned to customers as part of the approval process." Cbeyond Reply, Exhibit A (Final Transcript, T-AT&T at Sanford C. Bernstein & Co. Strategic Decisions Conference at p. 6). Thus, when Mr. Whitacre responded that he did not think any such payments would have to be made in this merger and that "we really did not [have to make such payments] on the AT&T merger," *id.*, he was obviously referring to the state merger review process which in certain circumstances (not present here) may require sharing of merger savings with ratepayers.