

REDACTED – FOR PUBLIC INSPECTION

September 1, 2006

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

Throughout this proceeding, the Cbeyond group (“Cbeyond”) has offered only rhetoric and reckless mischaracterizations in its dogged pursuit of self-serving conditions that have nothing to do with any legitimate issue in this merger proceeding. In our July 31, 2006 *ex parte* submission,¹ we provided a point-by-point refutation of Cbeyond’s claim that AT&T’s pre-merger actions and statements establish that AT&T’s merger with BellSouth will harm competition in the provision of wholesale special access services. Cbeyond’s August 22, 2006 “response”² does not even confront this showing or the key marketplace facts that foreclose its special access claims. Instead, Cbeyond simply parrots back the same inapposite pricing actions and statements that it relied upon in its prior submissions, confirming yet again that it has no answer to the dispositive facts that (i) AT&T is an insignificant supplier of wholesale special access services in the BellSouth franchise areas, and (ii) many other facilities-based suppliers compete aggressively and effectively with BellSouth in the few dense commercial areas where AT&T operates local networks. Cbeyond employs the same approach in claiming that the proposed merger will somehow harm competition in the provision of retail business services. Lacking any basis to challenge the Commission’s well-supported findings last year in approving the SBC/AT&T and Verizon/MCI mergers that the provision of business services is robustly competitive and that the sophisticated purchasers of these services have a “multitude of choices available to them,”³ Cbeyond ignores those findings.

The lack of substance to Cbeyond’s claims here are highlighted by its own public statements, which emphasize the highly competitive landscape in which it competes. For example, in Cbeyond’s Form 10-K filed with the SEC on March 31, 2006 – after the announcement of AT&T-BellSouth merger – Cbeyond points out that, “[i]n addition to the local

¹ *Ex Parte* Letter from Applicants to Marlene H. Dortch (FCC), WC Docket No. 06-74, at 3 (July 31, 2006) (“*Applicants’ July 31, 2006 Letter*”).

² *Ex Parte* Letter from Cbeyond Communications, et al., to Marlene H. Dortch (FCC), WC Docket No. 06-74, (Aug. 22, 2006) (“*Cbeyond Letter*”).

³ *SBC-AT&T Merger Order*, 20 FCC Rcd. 18290, ¶ 75 (2005); *Verizon-MCI Merger Order*, 20 FCC Rcd. 18433, ¶ 76 (2005).

REDACTED – FOR PUBLIC INSPECTION

telephone companies, we compete with other competitive carriers in each our markets. These competitive carriers include XO Communications, Inc., NuVox Communications, USLEC Corp., McLeod USA, Inc, Eschelon Telecom, Inc., and ITC^Deltacom, Inc., among many others.”⁴ In this same filing Cbeyond notes that “[w]e cannot predict future pricing by our competitors, but we anticipate that aggressive price competition will continue.”⁵ ITC^Deltacom is even more pointed in describing the impact of this merger on competition noting that, “[i]f completed, the pending acquisition of BellSouth by AT&T likely would result in more intense competition in our markets.”⁶

Just as telling is Cbeyond’s supposed “evidence” of competitive harm. Here, Cbeyond offers only mischaracterized snippets from a handful of documents that BellSouth submitted in response to the Commission’s information requests. As demonstrated below, none of those documents supports Cbeyond’s claims in any fashion. To the contrary, those documents, like the wealth of other record evidence support only one conclusion: the proposed merger promises enormous public interest benefits and will not harm competition in any market.

1. Cbeyond no longer contests that the handful of rate adjustments that it attempted to pass off as wholesale special access rate increases by AT&T *all* involved intrastate *retail* private line services that are marketed to businesses. Cbeyond continues to insist that competitors might pay higher wholesale prices indirectly by purchasing these retail services at a resale discount.⁷ Cbeyond, however, ignores that it may acquire access to these customers through other less expensive means.⁸ Further, even if resale of these intrastate retail private line services were a CLEC staple, which is not the case, we previously explained that a CLEC’s ability to compete against AT&T could not be affected, because CLECs would continue to receive the services under resale arrangements at the same percentage margin below the retail rates.⁹ Cbeyond does not even attempt a response. And, in truth, these intrastate retail private line services clearly are not important CLEC fare – only one member of the Cbeyond group purchases *any* of the intrastate retail private line services Cbeyond has identified and only in trivial amounts.

Having failed in its attempt to manufacture evidence that legacy SBC has raised wholesale special access/local private line rates, Cbeyond now attempts to manufacture evidence that legacy AT&T has done so. Here, Cbeyond’s “evidence” that “AT&T also has increased prices for local private line services,”¹⁰ is a single citation to price changes for a detariffed *long-*

⁴ Cbeyond Communications, Inc., Annual Report (Form 10-K), at 12 (March 31, 2006) (“*Cbeyond 10-K*”).

⁵ *Id.* at 29.

⁶ ITC^Deltacom, Inc., Annual Report (Form 10-K), at 8 (March 31, 2006).

⁷ *Cbeyond Letter* at 3.

⁸ *See Applicants’ July 31, 2006 Response* at 3.

⁹ *See id.*

¹⁰ *Cbeyond Letter* at 4.

REDACTED – FOR PUBLIC INSPECTION

haul private line service that AT&T offers in the intensely competitive long distance marketplace. The fact that a long-haul service is at issue is abundantly clear from the AT&T Business Service Guide that Cbeyond cites.¹¹ In short, Cbeyond has not provided and could not offer a shred of support for its assertion that AT&T raises special access prices whenever it is “not legally barred from doing so.”¹² In fact, in the wake of the AT&T/SBC merger, AT&T has used its special access pricing flexibility to provide its special access customers with *lower* rates through contract tariff arrangements.¹³

Cbeyond’s efforts to salvage its special access claims by reference to two documents BellSouth produced to the Commission fare no better. Both documents are fully consistent with the record in this proceeding that there are dozens of facilities-based special access competitors to BellSouth in the same areas where AT&T operates local networks and that removing AT&T as an independent supplier of wholesale special access services in those areas will have no meaningful impact on competition.¹⁴

The first document discussed by Cbeyond contains “Preliminary Findings” by a third party, purporting to identify competitors with the largest number of lit buildings in eight BellSouth cities. This “preliminary” report, which does not purport to be an exhaustive examination of special access competitors in the BellSouth franchise areas, identifies **[begin highly confidential]** [end highly confidential] “major competitors” – **[begin highly confidential]**

[end highly confidential]

[begin highly confidential] This third party report thus confirms that there are numerous other competitors, some of which have a greater presence in the BellSouth region than AT&T, and is fully consistent with the more exhaustive record analyses of CLEC activity which establish that many

¹¹ See AT&T Service Business Guide, available at <http://new.serviceguide.att.com/2006/04/20/bws.pdf>, pp. 1-2 (AT&T’s “Bandwidth Service” consists of private line service “going to Canada” or “Mexico” or “within the US Mainland;” service within the US Mainland is furnished “between two AT&T POPs”).

¹² Cbeyond Letter at 4.

¹³ See, e.g., Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas and AT&T Arkansas, Digital Link Service Tariff, § 18.5 (Aug. 25, 2006); AT&T California, SCHEDULE CAL. P.U.C. NO. D13, § 13.2.E (Aug. 25, 2006); Illinois Bell Telephone Company, ILL. C.C. NO. 20, § 4.E (Oct. 9, 2006); Indiana Bell Telephone Company, Inc., § 10.E (Aug. 25, 2006); Southwestern Bell Telephone, L.P., Topeka, Kansas, Private Line Service Tariff, § 2.2.19.E; AT&T Missouri, P.S.C. Mo. – No. 38, Digital Link Services Tariff, § 5.

¹⁴ See, e.g., Public Interest Statement, Carlton-Sider Dec. ¶¶ 104-105.

¹⁵ See BellSouth Information Response, BLS-FCC-00076925.

¹⁶ See *id.*

other CLECs compete [begin highly confidential]
[end highly confidential]¹⁷

The second document quoted by Cbeyond likewise confirms that the provision of special access services is highly competitive in all of the relevant areas and is growing even more so over time. As Cbeyond points out, this document states that [begin highly confidential]

[end highly confidential] And the document provides no support for Cbeyond's claim that AT&T is BellSouth's "foremost" or "most important" special access competitor. To the contrary, it discusses AT&T as only one of numerous competitors, [begin highly confidential]

[end highly confidential].

These facts, of course, are well known to Cbeyond, which, as noted, has itself disclosed to the SEC that there are numerous other competitors.²¹ Likewise, XO Communications, another signatory and one of the competitors identified by Cbeyond in its securities filings, just announced on August 28, 2006 that it "has deployed fixed broadband wireless in nine metropolitan markets – Atlanta, Chicago, Dallas, Houston, Los Angeles, Miami, San Diego, Tampa, and Washington, D.C.," and that this arrangement, "[i]n addition to expanding our [XO's] network, . . . also gives us a more cost-effective and scalable replacement to leased network elements that connect local switches to our own fiber network."²² As XO explained,

¹⁷ See, e.g., Public Interest Statement, Carlton/Sider Decl. ¶¶ 104-112.

¹⁸ See *Cbeyond Letter* at 5.

¹⁹ See *BellSouth Information Response*, BLS-FCC-00010277.

²⁰ See *BellSouth Information Response*, BLS-FCC-00010275. The single analyst report cited by Cbeyond (at 4 n.16) does not remotely establish that AT&T intends to raise special access prices after the merger. To begin with, the analyst's speculation that it might be possible to "get around FCC rate caps on special access prices" is based solely on a comment from an undisclosed Verizon official. Buckingham Research Group, at 2, July 6, 2006. Other than this stray comment, the remainder of this (two page) report appears to provide the analyst's views on wholesale voice and wholesale long distance services. *Id.* And Cbeyond fails to mention one of the principal conclusions of the report, which is that AT&T and Verizon "could lose about 5% of their enterprise/wholesale revenues over the next 12-24 months due to market share slippage" and that this slippage "will tend to benefit the remaining competitive carriers." *Id.* The report thus makes its strongest "buy" recommendations for the stock of Level 3 and Time Warner, not AT&T. *Id.* at 1.

²¹ *Cbeyond 10-K* at 12.

²² See Press Release, *XO Communications Deploys Fixed Broadband Wireless in Nine Cities to Expand Metro Coverage and Reduce Network Access Costs* (August 28, 2006), available at <http://www.xo.com/news/316.html>.

REDACTED – FOR PUBLIC INSPECTION

this solution allows XO to “extend [its] network wirelessly to reach customers we couldn’t serve before,” thereby “reducing the company’s network costs.”²³ This is additional evidence that competitors are bringing to market competitive facilities that will further bolster competition.

Cbeyond’s only other argument relating to special access (at 7-8) is that AT&T should not be allowed to merge with BellSouth because AT&T allegedly is a critical *purchaser* of special access services from CLECs. But there is no factual basis for this claim: Cbeyond offers no evidence that any CLECs in fact “depend upon AT&T as an anchor customer” or, more fundamentally, that any impact the merger might have on any CLEC’s private interests would in any way harm competition or the public interest. In all events, Cbeyond concedes that AT&T’s merger with SBC did *not* cause AT&T to stop purchasing special access services from CLECs. To the contrary, AT&T and SBC signed a new commercial agreement for the purchase of last-mile connectivity from Time Warner Telecom (through 2010), for example, during the time the SBC/AT&T merger approval was pending.²⁴

2. As the Commission recently explained, a “large number of carriers compete” in the provision of retail services to enterprise customers, and “these multiple competitors ensure that there is sufficient competition.”²⁵ Thus, both before and after the proposed merger, any customers dissatisfied with AT&T’s prices or services can turn to these “multiple competitors.” This is particularly true because “mid-sized and large enterprise customers tend to be sophisticated purchasers” that “are likely to make informed choices based on expert advice about service offerings and prices.”²⁶ Cbeyond’s claim that it now has “evidence” that retail business markets are not competitive and that the merger is likely to harm retail enterprise competition cannot be squared with these findings or the public comments of Cbeyond and other CLECs in their SEC filings and other public statements – *i.e.*, that “aggressive price competition will

²³ “Business Wireless in XO’s Embrace; Carrier’s Licensed Spectrum To Compete With AT&T’s Fiber,” Chicago Tribune, August 28, 2006.

²⁴ See http://www.twtelecom.com/Documents/Announcements/News/2005/TWTC_ATT_SBC_Renewal2005.pdf (“This agreement ensures that we will continue our valued business relationship with AT&T post-merger, and that we will be able to include SBC in that relationship, allowing us to be a viable competitor of and supplier to the merged entity,” said John Blount, executive vice president-field operations for Time Warner Telecom”). **[begin highly confidential]**

[end highly confidential]

²⁵ *SBC-AT&T Merger Order* ¶ 73.

²⁶ *Id.* ¶ 75.

REDACTED – FOR PUBLIC INSPECTION

continue” (Cbeyond 10-K at 29) and that the merger would likely “result in more intense competition” (ITC^Deltacom Annual Report at 8).

Cbeyond again ignores what it has told investors about the competitive nature of the market and resorts to highly misleading excerpts of BellSouth documents and comments made by AT&T executives in investor calls. As to the latter, Cbeyond’s out-of-context quotes are no more reliable than movie ads with “reviews” that tout a movie as “colossal” and “incredible” – but that omit the text of the full review describing it as “a colossal failure that is an incredible waste of time.” For instance, to support its claim that “AT&T itself says that it will continue raising prices wherever it can,” Cbeyond points to an AT&T executive who said that “wireline revenues showed considerable stability” and were “up slightly.”²⁷ But *revenue* stability does not mean *price* increases. The full transcript of the investor call makes clear that where AT&T has been able to expand revenues, it has done so not by raising prices “wherever it can” but by competing aggressively and winning new business in high growth areas.²⁸ Likewise, none of the recent comments by AT&T’s Chairman and CEO, Mr. Whitacre, remotely support Cbeyond’s pricing claims. A review of the full transcript of the investor conference shows that Mr. Whitacre observed that no carrier has “pricing power”²⁹ And Mr. Whitacre’s observation that “prices have stabilized in our judgment” obviously presents no competitive issue (and no merger-specific issue at all), but rather is perfectly consistent with a robustly competitive market, where prices can and do fluctuate according to market conditions.³⁰ Cbeyond also continues to assert erroneously that Mr. Whitacre has stated that the conditions imposed by the Department of

²⁷ *Cbeyond Letter* at 4.

²⁸ For example, the full transcript states that although AT&T’s enterprise revenues have declined over the past year, its *data* revenues increased due to “double-digit year-over-year growth in IP services,” which “includes virtual private networks, managed Internet services and hosting.” Final Transcript, T – Q2 AT&T Earnings Conference Call, at 6 (July 25, 2006) *available at* <http://72.14.209.104/search?q=cache:NdLMYvKMYrYJ:online.wsj.com/documents/transcript-t-20060725.pdf+T+%E2%80%93+Q2+AT%26T+Earnings+Conference+Call&hl=en&gl=us&ct=clnk&cd=10> (“Q2 AT&T Earnings Call”).

²⁹ Thompson Street Events: T-AT&T at Sanford Bernstein & Co. Strategic Decisions Conference at 9 (May 31, 2006) (“Strategic Decisions Conf.”), *available at* http://psc.ky.gov/pscpcf/2006-00136/5005500_efs/06302006/NuVox-Xspedius_PHB_063006_Exhibit_A.pdf#search=%22thompson%20street%20events%20t-AT%26T%22.

³⁰ *Id.* In this regard, Cbeyond does not address the most salient features of the investor calls with AT&T executives: although AT&T initially estimated that synergies from the SBC-AT&T merger would result in \$600 to \$700 million in operating expenses, AT&T now estimates, based on several months of experience, that the actual savings will be much greater: “We are ahead of plan, and I’m comfortable in saying that we expect to achieve savings of \$700 million to \$900 million this year.” Q2 AT&T Earnings Call at 4. Similar cost reductions are expected from the BellSouth merger. *See, e.g.*, Public Interest Statement at 5-54; Joint Opp. at 1-12.

REDACTED – FOR PUBLIC INSPECTION

Justice in the previous merger are not meaningful.³¹ That is simply wrong, as we have previously explained and as the actual transcript confirms.³²

Cbeyond's claims that BellSouth documents show that the merger will eliminate BellSouth's "most important" competitor and allow the merged entity to raise prices for all retail enterprise services are equally absurd. For example, Cbeyond (at 6) relies heavily on a **[begin highly confidential]**

[end highly confidential] The document does not state, as Cbeyond claims (at 5-6), that BellSouth "views AT&T as its foremost competitor;" to the contrary, the document contains a detailed competitive analysis showing the geographic availability of numerous competitors' services, **[begin highly confidential]**

[end highly confidential]

Cbeyond also attempts to support its claim (at 6-7) that AT&T is BellSouth's "primary" retail business competitor by pointing to **[begin highly confidential]**

[end highly confidential] Indeed, the report identifies *dozens* of competitors in addition to AT&T and BellSouth.

Cbeyond also relies on an internal survey of 75 BellSouth customers as evidence that the AT&T "brand name positions AT&T uniquely to compete against" BellSouth.³⁴ This flatly misrepresents the key findings of the survey, **[begin highly confidential]**

³¹ *Cbeyond Letter* at 5.

³² *Applicants' July 31, 2006 Letter* at 4 n.17. The full transcript makes clear that the actual question to which Mr. Whitacre responded 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." Strategic Decisions Conf. at 6. Mr. Whitacre responded that he did not think any such transfer payments would have to be made because "we really did not on the AT&T merger." *Id.* In light of the question, Mr. Whitacre's response clearly refers to the state merger review process which in some instances (not present here) requires sharing of merger savings with ratepayers.

³³ *BellSouth Information Response*, BLS-FCC-00011788.

³⁴ *Cbeyond Letter* at 6-7.

[end highly confidential]

In sum, Cbeyond's letter adds nothing of consequence to the record other than to further confirm that the proposed merger of AT&T and BellSouth will serve the public interest and should be expeditiously approved.

This letter quotes from and describes documents that have been submitted in this proceeding pursuant to the Second Protective Order.³⁷ These quotations and descriptions are being designated as "Highly Confidential" under the Second Protective Order. We are providing five unredacted paper copies and fifteen unredacted CD-ROM copies of this letter and its exhibits to the Staff; we are filing one unredacted CD-ROM copy with your office; and we are filing a redacted copy via ECFS. The unredacted letter and exhibits will be made available for inspection, pursuant to the terms of the Second Protective Order, at the offices of Crowell &

³⁵ See *SBC-AT&T Merger Order* ¶ 75; see also *id.* ¶¶ 56, 65, 78.

³⁶ *BellSouth Information Response*, BLS-FCC-00271277. Cbeyond (at 10) also argues that BellSouth's documents show that BellSouth intended to become active in AT&T's ILEC territory. This is a complete misrepresentation of the facts; Applicants have already fully explained that BellSouth was not a significant actual or potential competitor in out-of-region markets. See, e.g., Public Interest Statement at 65-68. Cbeyond's discussion of BellSouth's plans with Sprint provides no new evidence. AT&T and BellSouth fully discussed this partnership in the Public Interest Statement. Public Interest Statement, Carlton/Sider Decl. ¶ 100 & Boniface Decl. ¶ 20. As explained by BellSouth's Chief Strategy & Development Officer – and as confirmed by the BellSouth documents relied on by Cbeyond – this arrangement was intended to "help [BellSouth] stem losses from large business customers who increasingly demand MPLS services across all of their locations, but will not provide BellSouth with the ability to become a significant competitor for enterprise customers whose locations are not predominantly within [the BellSouth 9-state region]." Boniface Decl. ¶ 20. Indeed, under the arrangement, BellSouth would not deploy any new facilities in the SBC region; rather BellSouth would rely on Sprint facilities. *Id.* Consequently, the arrangement does not "support a full suite of services or allow BellSouth to control the quality of service on the Sprint network. *Id.*

³⁷ *In re AT&T Inc. & BellSouth Corp. Applications for Approval of Transfer of Control*, WC Dkt No. 06-74, Second Protective Order, DA 06-1032 (rel. July 7, 2006).

REDACTED – FOR PUBLIC INSPECTION

Moring LLP. Counsel for parties to this proceeding should contact Jeane Thomas of that firm at (202) 624-2877 to coordinate access.

Sincerely,

/s/ Gary L. Phillips

AT&T Inc.
1120 Twentieth Street, N.W.
Suite 1000
Washington, D.C. 20036
Tel: (202) 457-3055

/s/ Bennett L. Ross

BellSouth Corporation
1133 Twenty-First Street, N.W.
Suite 900
Washington, D.C. 20036
Tel: (202) 463-4113

cc: Nicholas Alexander
William Dever
Donald K. Stockdale, Jr.