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ORIGINAL

August 31, 2006

VIA HAND DELIVERY

RECEIVED

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

AUG 31 2006

Federal Communications Commission
Office of Secretary

Re: Notice of Ex Parte Presentation, WC Docket No. 06-74

Dear Secretary Dortch:

Yesterday, Brad Mutschelknaus and Tom Cohen of Kelley Drye & Warren LLP met with members of the Commission staff on behalf of Cbeyond Communications, Nuvox Communications, XO Communications, Talk America Inc. and Xspedius Communications. The Commission staff in attendance were: Jim Bird and Joel Rabinovitz of the Office of General Counsel and William Dever, Ben Childers, Carrier Collier-Brown, Jerry Duvall, Michael Goldstein, Adam Kirschenbaum, Tim Stelzig and Cathy Zima of the Wireline Competition Bureau.

The primary purpose of the meeting was to discuss how documents produced by AT&T and BellSouth in response to Commission information requests support the comments filed in the above-referenced docket by competitive carriers, and impeach the claims made by the applicants. Specifically, they explained how documents produced by the applicants demonstrate that the proposed merger is both intended to and will materially reduce competition in the relevant product and geographic markets. They also summarized arguments made in comments and reply comments previously filed by the companies sponsoring the presentation in the proceeding. Since the presentation included numerous references to material that has been designated as confidential or highly confidential by the applicants, a copy of the presentation materials used during the meeting is being filed under seal pursuant to the First and Second Protective Orders in Docket 06-74. A redacted copy of the presentation is submitted for inclusion in the public file.

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Please direct any questions regarding this matter to the undersigned.

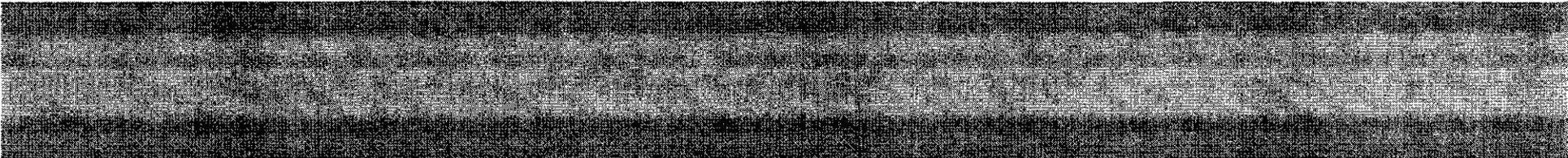
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Denise N. Smith".

Denise N. Smith

cc: Gary Remondino

REDACTED



Competitive Harms from the Proposed Merger of AT&T/BS and Conditions Necessary to Partially Offset Such Harms

**Cbeyond Communications, NuVox Communications, XO
Communications, TalkAmerica, Inc. and Xspedius Communications**

**Dockets 06-74
August 30, 2006**

REDACTED VERSION FOR PUBLIC INSPECTION

Ed Whitacre Opines on the Proposed Merger & the Odds of Regulatory Approval

Business Week Chicago Bureau Chief:

Is it a possibility that SBC would acquire BellSouth?

Ed Whitacre, AT&T CEO:

It sure would be nice, but it doesn't have much chance of happening because of market power, size, etc. I think it would be real hard to do. I don't think the regulators would let that happen, in my judgment.

MARKETS DEFINED

RELEVANT MARKETS:

PRODUCT:

LOCAL PRIVATE LINE – WHOLESALE & RETAIL

GEOGRAPHIC:

MSAs THROUGHOUT AT&T AND BS REGIONS

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COMPETITIVE HARMS FROM THE PROPOSED MERGER

- The proposed merger would eliminate the strongest actual – and potential – competitor (AT&T) to BS in the local private line market in the BS region.
- The proposed merger would eliminate an actual – and potentially much stronger – competitor (BS) to AT&T in the local private market in the AT&T region.
- The loss of Cingular as an independent contractor would materially reduce competition in the local private line market.
- The proposed merger would frustrate the ability of regulators to use comparative oversight to implement and enforce the market opening provisions of the 1996 Act.
- The proposed merger would increase the incentive and ability of the combined AT&T/BS to discriminate against rivals and decrease the ability of regulators to police this discrimination.

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AT&T AS B'S STRONGEST COMPETITOR IN THE LOCAL PRIVATE LINE MARKET

EVIDENCE =

- **AT&T'S 11 METRO FIBER NETWORKS AND OTHER NETWORK FACILITIES**
- **AT&T'S BUILDINGS SERVED**
- **AT&T'S CUSTOMER BASE**
- **AT&T'S USE OF OTHER CLECS**
- **AT&T'S FINANCIAL RESOURCES**
- **AT&T'S BRAND**

REDACTED VERSION FOR PUBLIC INSPECTION

AT&T AS [REDACTED]

HIGHLY CONFIDENTIAL

(REDACTED)

REDACTED VERSION FOR PUBLIC INSPECTION

AT&T AS [REDACTED]

HIGHLY CONFIDENTIAL

(REDACTED)

REDACTED VERSION FOR PUBLIC INSPECTION

AT&T AS [REDACTED]

HIGHLY CONFIDENTIAL

(REDACTED)

REDACTED VERSION FOR PUBLIC INSPECTION

AT&T AS [REDACTED]

HIGHLY CONFIDENTIAL

(REDACTED)

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AT&T AS [REDACTED]

CONFIDENTIAL

(REDACTED)

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HIGHLY CONFIDENTIAL

(REDACTED)

REDACTED VERSION FOR PUBLIC INSPECTION

AT&T AS [REDACTED]

HIGHLY CONFIDENTIAL

(REDACTED)

REDACTED VERSION FOR PUBLIC INSPECTION

BS IS [REDACTED]

EVIDENCE =

- BS's CURRENT AGREEMENT WITH Q**
- BS's NEW AGREEMENT WITH SPRINT NEXTEL**
- BS's DISCUSSIONS WITH AT&T**
- BS's BUSINESS PLANS**

REDACTED VERSION FOR PUBLIC INSPECTION

BS IS [REDACTED]

HIGHLY CONFIDENTIAL

(REDACTED)

REDACTED VERSION FOR PUBLIC INSPECTION

BS IS [REDACTED]

CONFIDENTIAL

(REDACTED)

REDACTED VERSION FOR PUBLIC INSPECTION

BS IS [REDACTED]

CONFIDENTIAL

(REDACTED)

REDACTED VERSION FOR PUBLIC INSPECTION

BS IS [REDACTED]

HIGHLY CONFIDENTIAL

(REDACTED)

REDACTED VERSION FOR PUBLIC INSPECTION

CINGULAR, AS AN INDEPENDENT ENTITY, PROVIDES A CHECK ON ANTICOMPETITIVE ACTIVITIES OF AT&T/BS

- While owned by AT&T and BS, Cingular is an independent entity, operating at arms' length from its parents.
- Cingular has the nation's largest digital and voice network and is a major purchaser of special access services from AT&T and BS.
- AT&T and BS have made it a priority to provide special access services to wireless carriers and not to lose these providers to competitive carriers.
- Cingular thus has leverage today to provide a check on the wholesale prices, including the special access prices of AT&T and BS.

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THE PROPOSED MERGER WILL SIGNIFICANTLY WEAKEN THE EFFECTIVENESS OF BENCHMARKING

- The Commission itself noted in the *SBC/Ameritech Merger Order* that “there will be some point at which further reduction in the benchmark firms renders such comparisons ineffective.” If this proposed merger is approved, we will have reached that point. With only two major BOCs remaining, current distinguishing practices will be lost, and there is little chance that major “new practices” will be developed.
- Examples of Current Differing Practices
 - Xspedius – BS requires special construction for unconditioned loops when no facilities are available; AT&T does not. BS requires the payment of large security deposits; AT&T does not. BS rarely honors expedite requests; AT&T usually fulfills reasonable requests.
 - XO – BS’s terms governing volume and term special access agreements are far more favorable than those of AT&T. BS pays stipulated damages when it fails to meet a state performance metric; AT&T does not.

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THE PROPOSED MERGER WILL INCREASE THE INCENTIVE AND ABILITY OF THE COMBINED FIRM TO DISCRIMINATE AGAINST RIVALS

- Post-merger, the value to the combined firms from capturing the benefits of external (spillover) effects will increase significantly – resulting in either higher costs for end users or a reduction in competition.
- Because of the loss of a benchmarking firm, the Commission is less likely to be able to detect this discriminatory behavior.

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LAST YEAR'S MERGERS DEMONSTRATE THAT THE COMPETITIVE HARMS LEAD TO PRICE INCREASES TO CUSTOMERS

- Commenters in Last Year's SBC/AT&T and VZ/MCI Mergers Predicted Rates Would Rise Because of Loss of Entities with Major Market Presence.
- AT&T Raised Prices for SBC Local Private Line Services Post Merger.
- AT&T's Senior Executives have Touted these Increases on Wall Street:
 - Ed Whitacre (5/31/06) – “Prices [which had been declining] have stabilized in our judgment and even in some cases, believe it or not, there's some upside to pricing, which is a good thing.”
 - Rick Linder (7/25/06) – “...pricing is at a point in terms of point-of-sale pricing where we are still seeing some declines, but at a much reduced level from where we were seeing even a few quarters ago.”

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PROPOSED CONDITIONS TO PARTIALLY OFFSET COMPETITIVE HARMS

- **Conditions Related to UNE Loops and Transport**
 - UNE Rate Cap
 - UNE Availability Freeze
 - Establishment of Rates for Section 271 Checklist Elements
 - Removal of DS1 Loops and Transport Caps
 - Provision of DS1 Loops Required, Regardless of Loop Plant
 - Required Escalation Procedures for Chronic Loop Problems

- **Wire Center Related Conditions**
 - Recalculation of Business Lines and Fiber-Based Collocators and Eliminate the One-way Ratchet
 - Recalculation to Exclude Non-Fiber-Based Collocators
 - Business Line Recalculation to Exclude AT&T Special Access Lines
 - Recalculation to Address AT&T's New Affiliation with BS
 - Permit Commingling of UNEs and 271 elements

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PROPOSED CONDITIONS TO PARTIALLY OFFSET COMPETITIVE HARMS

- **Conditions Related to Other UNEs and 252 Interconnection Arrangements**
 - Eliminate EEL Eligibility Criteria
 - Ensure Access to Decommissioned Copper Loops
 - Require Line Sharing
 - Permit Interconnection Agreement Portability
 - Freeze SQM/PMAP/SEEMS Performance Measurement Plans
 - Ensure Continued Availability of “Katrina” Caused Loop Upgrades
 - Change Control Related to OSS

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PROPOSED CONDITIONS TO PARTIALLY OFFSET COMPETITIVE HARMS

- **Conditions Related to Special Access and other Wholesale Services**
 - Special Access Rate Cap
 - Fresh Look
 - Non-Discrimination in the Provision of Special Access Circuits
 - File Pursuant to Section 211 all Special Access/Wholesale Carrier Contracts
 - Continue Offering AT&T's Wholesale Services in BS territory
 - Implement a Service Quality Measurement Plan for Special Access
 - Permit Special Access and Commercial Agreement Plan Portability

- **Divestitures**
 - Divest all Overlapping Metro Private Line Assets
 - Divest Wireless Spectrum

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