

REDACTED – FOR PUBLIC INSPECTION

September 14, 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,

The Cbeyond group's ("Cbeyond") campaign for self-serving "merger" conditions that have nothing to do with this merger continues to rely on misstatements and empty rhetoric and to ignore the overwhelming record evidence that the proposed merger will provide enormous public interest benefits and will not adversely affect competition in any relevant market. Cbeyond's latest submission is a 30-page slide deck that purports to catalogue BellSouth documents that "demonstrate that the proposed merger is both intended to and will materially reduce competition."¹ We have already addressed Cbeyond's distortions of many of these documents,² and Cbeyond's inexcusable misrepresentation of additional documents in its new filing suggests that there is no limit to how far it will stray from reality and responsible advocacy.³

Cbeyond continues to concentrate its advocacy on special access/local private line services.⁴ Cbeyond acknowledges that any reasoned analysis of that issue must focus on the "evidence" regarding "fiber networks" and "buildings served,"⁵ and then, as it has in all of its previous submissions, Cbeyond simply ignores that evidence. That is because the uncontraverted record evidence establishes that many other facilities-based CLECs serve the same dense urban areas as AT&T, that there is no metropolitan area in which the relatively few AT&T local fiber-served buildings are not already subject to actual or potential competition from

¹ See *Ex Parte* Letter from Denise M. Smith (Cbeyond attorney) to Marlene H. Dortch (FCC), WC Docket No. 06-74 (filed August 31, 2006) ("Cbeyond Aug. 31 Letter").

² See *Ex Parte* Letter from Gary L. Phillips (AT&T) and Bennett Ross (BellSouth) to Marlene H. Dortch (FCC), WC Docket No. 06-74 (filed Sep. 1, 2006) ("Applicants' Sep. 1 Letter").

³ Although each claim in Cbeyond's latest presentation is baseless and each of the documents cited in support of those claims is misrepresented, Cbeyond's distortions follow common themes and in the interest of brevity we provide representative responses in this submission.

⁴ The title of each slide is "AT&T as BS' Strongest Competitor In The Local Private Line Market." Cbeyond Aug. 31 Letter, Slide Presentation at 1-30.

⁵ *Id.* at Slide 5.

other CLECs, and that AT&T’s actual wholesale special access sales in the BellSouth region are trivial.⁶

Cbeyond insists that regardless of the underlying competitive facts, harm to special access competition can be divined from BellSouth’s documents, but that is a complete fabrication. Indeed, many of the documents Cbeyond cites in support of its special access rants do not even address those services. For example, in Slide 18 of its presentation, Cbeyond asserts that “BS documents show a concern over the existence of competitive AT&T metro networks in the Southeast.”⁷ Aside from the fact that the document Cbeyond cites for this proposition was prepared, not by BellSouth, but by an SBC network planning and engineering executive before SBC merged with AT&T, that document describes SBC’s national and international IP backbone, VoIP, and broadband network capabilities; it nowhere mentions BellSouth or AT&T, much less “AT&T metro networks in the Southeast.”⁸ And in support of the headline “AT&T as BS’ Strongest Competitor in the Local Private Line Market” Cbeyond cites two BellSouth documents that assess BellSouth’s performance in its “General Business” retail business segment and that have absolutely nothing to do with local private line services.⁹

The BellSouth documents Cbeyond cites that actually do mention special access services unequivocally confirm the overwhelming record evidence that the proposed merger will not harm competition in the provision of those services. In its Slide 9, for example, Cbeyond cites a BellSouth document **[begin highly confidential]**

⁶ See, e.g., Applicants’ Sep. 1 Letter at 1-8.

⁷ Cbeyond Aug. 31 Letter, Slide 18.

⁸ See *id.* (citing AT&T-FCC-00263816/17).

⁹ Cbeyond Aug. 31 Letter, Slide 8 (citing **[begin highly confidential]** **[end highly confidential]**; *id.*, Slide 17 (citing **[begin highly confidential]**

[end highly confidential]). One of the cited documents is a survey of 75 BellSouth General Business customers that includes the express caveat that, given the small sample size, **[begin highly confidential]**

[end highly confidential]. The other document, *BellSouth Information Response*, BLS-FCC-00128254, which analyzes churn **[begin highly confidential]**

[end highly confidential]

[end highly confidential] Far from “impeach[ing] the claims made by the applicants,”¹² this document thus confirms the Commission’s findings in the SBC/AT&T and Verizon/MCI merger proceedings and Applicant’s showings in this docket that the metro fiber transport market is highly competitive, that numerous facilities-based CLECs provide transport alternatives, and that IXCs are taking full advantage of this highly competitive marketplace.

Cbeyond’s mischaracterization of the document it cites in Slide 16 is equally egregious. **[begin highly confidential]**

[end highly confidential]. And, contrary to Cbeyond’s mischaracterization, Slide 6 is **[begin highly confidential]**

¹⁰ Cbeyond Aug. 31 Letter, Slide 9.

¹¹ See *BellSouth Information Response*, **[begin highly confidential]**

[end highly confidential]

¹² Cbeyond Aug. 31 Letter at 1.

¹³ *BellSouth Information Response*, **[begin highly confidential]**

[end highly confidential]

¹⁴ *BellSouth Information Response*, BLS-FCC-00007338, at 00007347 (emphasis added).

¹⁵ See, e.g., <http://www.fplfibernet.com/networks/contents/florida.shtml>;
<http://forbes.ccbn.com/releasetext.asp?ticker=atg&coid=79511&client=forbes&release=458173>.

[end highly confidential]¹⁸

The remaining documents that Cbeyond brings to the Commission's attention all unambiguously deal only with retail business services and each is entirely consistent with the Commission's findings in the SBC/AT&T and Verizon/MCI merger proceedings that the provision of these services is robustly competitive and that the sophisticated purchasers of these services have multiple alternative suppliers. Cbeyond, claims in Slide 7, for example, to have identified a BellSouth document that shows that BellSouth "feared the capability of the newly-merged AT&T/SBC to compete." In fact, the cited e-mail, [begin highly confidential]

[end highly confidential] And, as the BellSouth document that Cbeyond cites in Slide 14 makes clear, [begin highly confidential]

[end

highly confidential]

Finally, Cbeyond again erroneously asserts (in Slide 20) that BellSouth had extensive plans to provide retail enterprise services outside the BellSouth region. As Applicants have repeatedly shown, the actual facts refute that assertion, as the documents cited in Cbeyond's slides confirm. The first document (BLS-FCC-00187080) is merely a [begin highly confidential]

¹⁶ See *BellSouth Information Response*, BLS-FCC-00076925.

¹⁷ See *id.*

¹⁸ The document Cbeyond cites in support of its Slide 12 claim that [begin highly confidential]

[end highly confidential]

¹⁹ See, e.g., Public Interest Statement at 65-68.

[end

highly confidential].

Simply put, Cbeyond's August 31 submission adds nothing to a record that supports only one conclusion: the proposed merger of AT&T and BellSouth will serve the public interest and should be expeditiously approved.

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.

²⁰ See Boniface Decl. ¶ 20.

²¹ *Id.*

²² *Id.*