

REDACTED – FOR PUBLIC INSPECTION

September 15, 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 both the SBC/AT&T and Verizon/MCI merger proceedings, Global Crossing complained that the parties' pre-merger DS1 and DS3 special access prices were too high and that their volume discount offerings contained unreasonable terms, and it urged the Commission to condition both mergers on mandatory "final offer" or "baseball style" arbitration of disputes over special access terms.¹ The Commission refused to do so, recognizing that such generic special access allegations "are the subject of pending rulemaking proceedings" and are "unrelated to the merger[s]."² And the Commission expressly rejected Global Crossing's arbitration proposal as "not a merger-specific concern to be addressed in [a merger] proceeding."³ Global Crossing initially heeded these Commission decisions and shifted its arbitration advocacy to the Commission's ongoing special access rulemaking proceedings.⁴ But now, without even acknowledging the Commission's prior admonitions, Global Crossing seeks to subvert this merger proceeding with the same generic (and entirely baseless) special access complaints and the same baseball arbitration proposal.⁵ The Commission should summarily reject Global Crossing's arguments.

¹ See, e.g., Comments of Global Crossing North America, Inc., *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, at 25 (filed April 25, 2005); Comments of Global Crossing North America, Inc., *Verizon Communications Inc. and MCI Applications for Approval of Transfer of Control*, WC Docket No. 05-75, at 23 (filed May 9, 2005).

² *SBC-AT&T Merger Order*, 20 FCC Rcd. 18290, ¶ 55, n. 161 (2005); *Verizon-MCI Order*, 20 FCC Rcd. 18433, ¶ 55, n. 157 (2005).

³ See *SBC-AT&T Merger Order*, ¶ 177, n. 499; *Verizon-MCI Order*, ¶ 189, n. 511 (2005).

⁴ See, e.g., *Ex Parte* Letter from Steven W. Wall (Global Crossing Counsel) to Marlene H. Dortch (FCC), WC Docket No. 05-25, at Slide 9 (filed March 2, 2006) ("All carriers . . . should submit to 'baseball-style' arbitration").

⁵ *Ex Parte* Letter from Alfred E. Mottur (Global Crossing) to Marlene H. Dortch (FCC), WC Docket No. 06-74 (filed Sep. 8, 2006) ("Global Crossing Sep. 8 Letter").

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As an initial matter, Global Crossing has its facts wrong. Global Crossing complains that the prices for BellSouth's DS1 and DS3 special access prices have been increasing in pricing flexibility areas. Global Crossing made an identical claim (supported by nearly identical charts) in the prior merger proceedings,⁶ and even apart from the complete absence of merger-specificity, the claim is as false now as it was then. The rates that customers actually pay BellSouth for DS1 and DS3 special access circuits – as opposed to the “rack” rates upon which Global Crossing's analysis is improperly based – have steadily and quite dramatically *declined* in recent years.⁷ **[begin highly confidential]**

[end highly confidential] Global Crossing's generic complaints about the terms of BellSouth and AT&T volume discount plans are equally baseless. As both companies have explained in the rulemaking proceedings that are the only proper fora for these allegations, these optional discount plans, which are available on a nondiscriminatory basis, provide valuable risk-sharing benefits to both customer and carrier.⁹

⁶ Compare Global Crossing Sep. 8 Letter to June 2, 2005 *Ex Parte* Letter from Teresa D. Baer (Global Crossing) to Marlene H. Dortch, WC Docket Nos. 05-65 (SBC-AT&T) and 05-75 (Verizon-MCI).

⁷ Global Crossing is wrong about the rack rates as well. As BellSouth has explained in the special access rulemaking proceeding, the rack rates for these services have been declining, not increasing, in real inflation-adjusted dollars. See Reply Comments of BellSouth, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, at 10-12 (filed July 29, 2005) (“BellSouth Special Access Reply Comments”) (demonstrating that month-to-month rates for “special access service have declined in real dollars from January 2001 to present”). BellSouth has also demonstrated the invalidity of Global Crossing's observation that local special access rates are higher than Global Crossing's *long-haul* rates (per DSO circuit mile). See BellSouth Special Access Reply, Furchtgott-Roth/Hausman Dec., at 14 (one cannot “expect the price” of long-haul and local circuits “to be the same” because “[d]emand, technology, and competitive conditions would be different along the routes”; this is especially true with respect to Global Crossing's long-haul rates, which reflect a substantial proportion of international long-haul circuits, because “[s]ubstantial excess capacity was built on international routes” and “conditions [on those routes] became especially difficult because the marginal cost of service was low and companies with excess capacity competed for the available traffic”).

⁸ **[begin highly confidential]**

[end highly confidential].

⁹ See Reply Comments of SBC Communications, Inc., *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, at 57-58 (filed July 29, 2005) (“SBC Special Access Reply Comments”); BellSouth Special Access Reply Comments, at 43-45.

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In any event, none of these generic issues has anything to do with this merger. Applicants have demonstrated that AT&T's wholesale special access sales in the BellSouth region are trivial, that AT&T operates local fiber networks only in areas in which there are many other competitive suppliers, and that the merger will not impact special access competition in *any* BellSouth-served city.¹⁰ In these circumstances, the Commission's AT&T/SBC and Verizon/MCI findings of no merger specificity apply with particular force here.

Global Crossing's only attempt to suggest otherwise relies entirely upon fabricated data. Based upon a table that purports to list the number of "AT&T-only" buildings in eight of the eleven metropolitan areas in the BellSouth region in which AT&T operates local networks, Global Crossing claims that the proposed merger will be a "merger to monopoly" in more than half of the BellSouth region buildings to which AT&T has local fiber connections.¹¹ The numbers in the table – for which Global Crossing identifies no source – are completely wrong. As AT&T has documented to both the Commission and to the Department of Justice,¹² other CLECs already have fiber connections to more than 70% of the approximately 300 AT&T local fiber-lit buildings in the BellSouth region.¹³ The remaining buildings raise no competitive issue for other reasons that Applicants have documented and that Global Crossing simply ignores (*e.g.*, the buildings have enormous OCn-level demand and are in very close proximity to other CLECs' fiber networks, are vacant, or are accessed by AT&T only to reach network equipment).¹⁴ On this record, there is no basis to conclude that the merger will have *any* measurable impact on special access competition *anywhere* in the BellSouth region, much less "exacerbate" the pre-merger region-wide pricing and volume discount policies to which Global Crossing objects. Indeed, Global Crossing's own presentation reinforces this conclusion: **[begin highly confidential]**

[end highly

confidential].

Because there is no special access problem to remedy, *none* of the self-serving special access conditions proposed by opponents of the merger could be appropriate. Moreover, as the Commission recognized in the AT&T/SBC and Verizon/MCI merger orders, Global Crossing's special access arbitration proposal would be out of bounds as a merger condition regardless of

¹⁰*Public Interest Statement*, at 55-56; *Joint Opposition*, at 21; AT&T Response to FCC Initial Information And Document Request Nos. 5, 6, 12; *Ex Parte* Letter from Gary L. Phillips (AT&T) to Marlene H. Dortch, WC Docket No. 06-74 (filed September 1, 2006 ("Applicants' Sep. 1 Letter").

¹¹ See Global Crossing Sep. 8 Letter, Slide 11.

¹² See, *e.g.*, Applicants' Sep. 1 Letter.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See Global Crossing Sep. 8 Letter, Slide 6.

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the special access facts. Global Crossing’s arbitration proposal is motivated by its belief that the Commission’s section 208 complaint processes are too costly, but, as the Commission held: “to the extent that the resources required for Global Crossing to pursue a section 208 complaint against [an incumbent LEC] outweigh the possible benefits in particular instances, that is not a merger-specific concern to be addressed in this proceeding.”¹⁶ And even apart from the complete lack of merger-specificity (and supporting evidence), Global Crossing’s arbitration proposal is, to say the least, odd. Global Crossing seeks arbitration only with respect to special access terms offered in areas that are subject to pricing flexibility – *i.e.*, the areas in which the Commission has determined that special access offerings are subject to the *strongest* competitive forces. Global Crossing is, of course, free to continue to advocate changes to the pricing flexibility rules in the Commission’s industry-wide special access rulemaking proceedings, but there is no possible basis for the Commission to entertain those arguments in this merger proceeding.

This letter is being designated as “Highly Confidential” pursuant to the Second Protective Order.¹⁷ 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 & 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

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¹⁶ *SBC-AT&T Merger Order*, ¶ 177, n.499.

¹⁷ *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).