

Philip J. Macres
Direct Phone: (202) 373-6770
Direct Fax: (202) 424-7647
philip.macres@bingham.com
Our File No.: 4128840089

VIA ECFS

September 28, 2006

Bingham McCutchen LLP
Suite 300
3000 K Street NW
Washington, DC
20007-5116

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Portals
Washington, DC 20554

202.424.7500
202.424.7647 fax

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

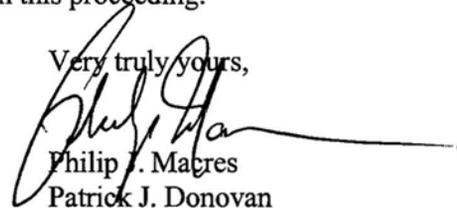
bingham.com

Dear Secretary Dortch:

Boston
Hartford
London
Los Angeles
New York
Orange County
San Francisco
Silicon Valley
Tokyo
Walnut Creek
Washington

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on September 27, 2006, Gavin McCarty, Chief Legal Office of Globalcom, Inc., Theodore Price, Director of Regulatory Affairs of One Communications Corp., and the undersigned representing a group of CLECs,¹ as well as the aforementioned, met with Scott Deutchman, Legal Advisor to Commissioner Copps, Ian Dillner, Legal Advisor to Commissioner Tate, Scott Bergmann, Legal Advisor to Commissioner Adelstein, and Chris Reichman, Intern to Commissioner Adelstein. During the meetings, we presented the views set forth in the attached document and discussed why the UNE and special access conditions proposed by COMPTTEL on September 22, 2006 should be imposed on the AT&T/BellSouth merger if approved.² Our discussion of the harms associated with the merger was consistent with the views set forth in the petition to deny the application of BellSouth Corporation and AT&T, Inc. filed by Access Point *et al.* on June 5, 2006 in this proceeding.

Very truly yours,


Philip J. Macres
Patrick J. Donovan

Attachment

¹ Access Point, Inc., ACN Communications Services, Inc., Deltacom, Inc., Florida Digital Network, Inc. D/B/A FDN Communications, Lightyear Network Solutions, Inc., McLeodUSA Telecommunications Services, Inc., Pac-West Telecomm, Inc., Smart City Networks, Inc., and US LEC Corp.

² See letter from Karen Reidy, Vice President, Regulatory Affairs, COMPTTEL, to Marlene Dortch, Secretary, FCC, WC Doc. No. 06-74 (filed Sep. 22, 2006) (discussing UNE conditions that should be imposed); see letter from Karen Reidy, Vice President, Regulatory Affairs, COMPTTEL, *et al.* to Marlene Dortch, Secretary, FCC, WC Doc. No. 06-74 (filed Sep. 22, 2006) (discussing special access conditions that should be imposed).

Marlene Dortch
September 28, 2006
Page 2

cc: Scott Deutchman (all via E-mail)
Ian Dillner
Scott Bergmann
Chris Reichman

Bingham McCutchen LLP
bingham.com

Competitive Harms Found in Previous BOC Mergers Remain Valid

- **Enhanced Incentives to Discriminate.** Because discrimination in a region harms competitors that compete across regions, the Merged Company would have an enhanced incentive to discriminate against competitors in both the AT&T and BellSouth regions.
- **Loss of Competitive Benchmarks.** Regulators will have a substantially reduced range of options for determining carrier best practices and customers will have fewer measures for comparing and determining the best rates, terms and conditions for service offerings.
- **Elimination of A Major Competitor in the BellSouth Region.** AT&T is a significant competitor in the BellSouth region.

Proposed Conditions

I. UNE Conditions

- Forbearance
- Access to Loops
- 251 UNE Pricing
- 271 UNE Pricing
- Wire Center Recalculations
- Transit Service
- EELs Eligibility Criteria
- Portability of Interconnection Agreements
- Multi-State Interconnection/Resale Agr.
- Reasonable Winback Practices
- OSS Change Process

II. Special Access Conditions

- Special Access Rate Regulation
 - Appl. of Price Caps and Elim. of Phase II Price Flex.
 - Reinitialization of Rates
 - Appl. of X-Factor After Reinitialization
 - Reassessment of Plan After Seven Years
- Commercial Arbitration Remedy for Entry Into a Special Access Service
- Prohibited Contract Terms
- Availability of Special Access Service Contract or Tariff Arrangements Throughout the Merged Firm's Territory
- Fresh Look for Existing Special Access Service Customers
- Forbearance Prohibition

III. Additional Conditions

- Performance Measures for UNEs and Special Access (*Access Point et al.* 6/5/06 at 67-68)
- Facilitate Competitive Tandem Switching and Transit Service (*Id.* at 69).
- Impose Safeguards for IP-Enabled Marketplace (*Id.* at 70)
 - Any IP network should be allowed to peer with Merged Firm
 - Merged Firm should provision interconnection to the IP backbone and transit service to non-peering ISPs and CLECs at LRIC
- Reasonable Terms and Conditions of Transfer of Traffic from Incumbent to a CLEC (*Id.* at 72)