

October 2, 2006

**BY ECFS**

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

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Dear Ms. Dortch:

The Commission has been asked to give close scrutiny to the AT&T/BellSouth merger's potential effect on the availability of wireless spectrum for broadband service.<sup>1</sup> In particular, the Commission has been asked to consider whether AT&T and BellSouth should be required to divest their spectrum holdings in the 2.3 and 2.5 GHz bands to assure the availability of this spectrum for WiMax and other new broadband wireless services. AT&T and BellSouth agree that such close scrutiny should take place, as such scrutiny will demonstrate once and for all that there simply is no plausible theory of harm to the broadband marketplace resulting from the merger. To the contrary, such scrutiny will reveal that a divestiture would disrupt the ongoing efforts of AT&T and BellSouth to utilize wireless broadband spectrum to bring innovative and beneficial broadband services to consumers, especially in rural and underserved areas, such as Alaska.

The AT&T/BellSouth merger will not lead to any substantial consolidation of holdings of wireless spectrum for WiMax or other broadband services and will not in any way affect the availability of such spectrum to other competitors. As demonstrated by Exhibit 1 to this letter, there is no material overlap in the two companies' holdings of this spectrum,<sup>2</sup> and therefore the merger does not change the competitive landscape. Moreover, the merged company will hold only a modest share of the spectrum available nationwide for fixed or mobile broadband services – no more than 16.1%, and under some calculations as little as 2.4%<sup>3</sup> – making clear that any

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<sup>1</sup> See Letter, dated Sept. 28 2006, from Sen. DeWine and Sen. Kohl to Thomas Barnett (DOJ) and Kevin Martin (FCC).

<sup>2</sup> Both AT&T and BellSouth hold 2.3 GHz spectrum, but these holdings do not overlap. BellSouth, but not AT&T, holds 2.5 GHz spectrum, and this 2.5 GHz spectrum does not overlap AT&T's 2.3 GHz spectrum, except in one corner of one county in rural southern Indiana. See Joint Ex Parte of AT&T Inc. and BellSouth Corporation, WC Docket No. 06-74, August 4, 2006, at n.4 (hereinafter "*AT&T/BellSouth Aug. 4 Ex Parte*").

<sup>3</sup> Reply Declaration of Dennis W. Carlton and Hal S. Sider, WC Docket No. 06-74, June 20, 2006, ¶ 77 (hereinafter "*Carlton/Sider Decl.*").

claim of harm to competition is spurious. Licensed spectrum that could support wireless broadband service includes 18 MHz of lower 700 MHz spectrum, 6 MHz of Upper 700 MHz spectrum, 5 MHz of 1.6 GHz WCS spectrum, 30 MHz of 2.3 GHz WCS spectrum, and 194-198 MHz of 2.5 GHz BRS/EBS spectrum, as well as the 90 MHz of 1.7-2.1 GHz AWS that the Commission just auctioned, 30 MHz of Upper 700 MHz spectrum expected to be auctioned in early 2008, and 30 MHz of Lower 700 MHz expected to be auctioned in 2008 or 2009. Even in the areas where it is claimed that the merged firm will have a relatively large share of the available spectrum, such as Atlanta, the merged firm will hold a smaller share than the Commission allowed Sprint and Nextel to accumulate in 26 markets in their recent merger, as shown in Exhibit 2 to this letter.<sup>4</sup>

Similarly, the assertions that the merged firm will warehouse spectrum that others might use for wireless broadband service in order to prevent cannibalization of DSL are untenable. Such behavior would make no economic sense for the combined company.<sup>5</sup> DSL already faces stiff competition from cable modem service and, increasingly, from mobile data services from CMRS carriers such as Verizon Wireless and Sprint Nextel.<sup>6</sup> More competition is coming: Sprint Nextel has amassed a near nationwide footprint of 2.5 GHz spectrum that averages more than 80 MHz<sup>7</sup> and, as evidenced by its recent actions initiating the process for migrating existing users pursuant to the Commission's revised band plan,<sup>8</sup> is committed to provide services that will be focused principally on stationary and portable consumer electronic and computing-oriented devices. Clearwire also has a 2.5 GHz footprint that covers 160 million people and has made clear its intent to offer similar services.<sup>9</sup> T-Mobile recently was declared the winning bidder for over \$4.18 billion worth of 1.7 and 2.1 GHz spectrum in Auction No. 66, a nationwide footprint that ranges in depth from 10 MHz to 50 MHz. SpectrumCo LLC, a joint venture of some of the country's largest cable television operators, accumulated a footprint of at least 20 MHz of AWS spectrum covering over 267 million POPs in the same auction. In this vigorously competitive environment, with new competitors, new technologies and new spectrum coming into play, any attempt by AT&T to warehouse spectrum would result in the loss of customers to rivals and would make no economic sense.

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<sup>4</sup> Even in the areas where opponents claim the merged firm will have a relatively large share of the available spectrum, such as Atlanta and New Orleans, the merged firm will hold a smaller share than the Commission allowed Sprint and Nextel to accumulate in 26 markets in their recent merger. See *AT&T/BellSouth Aug. 4 Ex Parte* at n.46. As the Commission found in the *Sprint/Nextel Merger Order*, the 2.5 GHz spectrum band does not constitute a relevant market. See *AT&T/BellSouth Aug. 4 Ex Parte* at 6-9. And, as noted above, this merger involves no increase in the merged firm's holdings of spectrum in any market nor does it cause any increase in concentration.

<sup>5</sup> *Carlton/Sider Decl.* at ¶¶ 54-84; Joint Opposition of AT&T and BellSouth to Petitions to Deny, WC Docket No. 06-74, June 20, 2006, at 70-74 (hereinafter "*Joint Opposition*").

<sup>6</sup> *Carlton/Sider Decl.* at ¶¶ 59.

<sup>7</sup> *AT&T/BellSouth Aug. 4 Ex Parte* at 18-20.

<sup>8</sup> Howard Buskirk, *Sprint, Clearwire, Prepare for Battle at 2.5 GHz*, Comm. Daily, July 24, 2006.

<sup>9</sup> *AT&T/BellSouth Aug. 4 Ex Parte* at 20-22.

More importantly, and contrary to the erroneous claims of opponents, the merging companies have been putting their wireless broadband spectrum to work to provide services for consumers and businesses. BellSouth has commercially launched wireless broadband systems using its fixed wireless spectrum for mass market customers in eight communities – Palatka, Florida; DeLand, Florida; Athens, Georgia; New Orleans, Louisiana; Greenville, Mississippi; Chattanooga, Tennessee; Charleston, South Carolina; and Melbourne, Florida.<sup>10</sup> Within the next six weeks, BellSouth plans to deploy service in more than a half dozen additional communities within its region. AT&T has launched wireless broadband systems for mass market customers in communities in Nevada and Texas.<sup>11</sup>

Wireless broadband has been especially significant for AT&T Alascom, which embarked on a project two years ago to utilize the evolving standards for broadband wireless access technologies in order to provide Internet access to un-served and underserved markets in Alaska. AT&T Alascom has started to deploy the technology in markets both large and small as a cost-effective and high quality method of providing a host of digital services to all segments, from residential to large business. Initial deployments in the rural Alaska communities of Aniak and Delta Junction utilized unlicensed spectrum, as the hardware to better deploy in the licensed spectrum has just started to reach the market.

AT&T Alascom is now deploying WiMAX service using fixed wireless in several other markets, most of which are in southeast Alaska, including the state capital, Juneau. AT&T Alascom's 2007 capital plan includes a substantially expanded program for WiMAX, which will add approximately 10 more markets, including a major effort to cover one of Alaska's larger markets. Beyond 2007, AT&T Alascom plans to continue its roll out of WiMAX service throughout Alaska utilizing fixed wireless spectrum that AT&T controls. WiMAX supported by the 2.3 GHz spectrum will be used to develop cost-effective, competitive, local networks that can support various communications services such as broadband Internet, fourth generation cellular and fixed telephony in Alaska's rural villages.

These efforts clearly refute the unsupported assertions that the merged company will warehouse spectrum. Rather, the merging companies are currently making use of that spectrum and will have every incentive to continue efforts like these in Alaska to put wireless broadband spectrum to use to provide innovative services to the public. After the merger, the combined company's spectrum holdings will be modest, especially in relation to the overall competitive landscape for broadband services, and warehousing will make no sense economically. AT&T's acquisition of BellSouth thus raises no competitive issues related to wireless broadband

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<sup>10</sup> *Joint Opposition* at 73-74.

<sup>11</sup> *Id.* at 72-73.

spectrum, and suggestions that divestiture of such spectrum should be required as a condition of the merger are groundless.

Sincerely,

/s/ Gary L. Phillips \_\_\_\_\_

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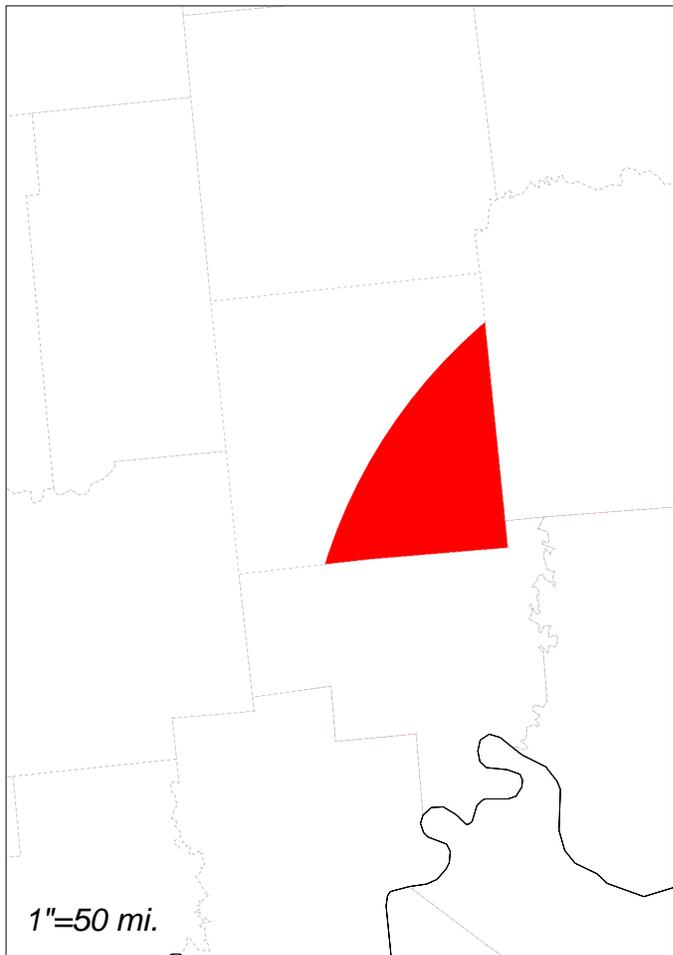
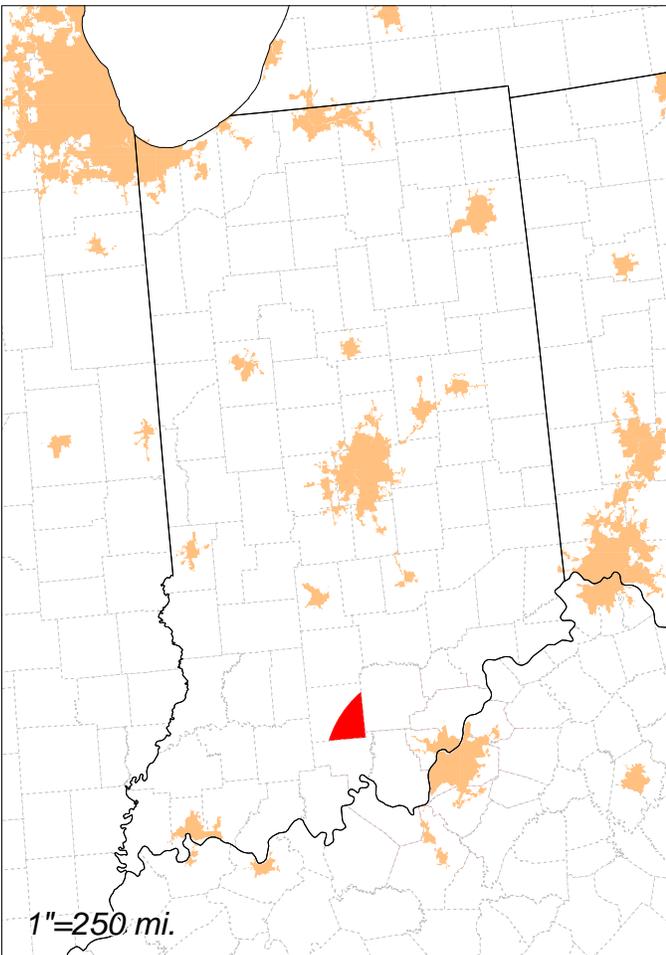
/s/ Bennett L. Ross \_\_\_\_\_

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

# Exhibit 1

## BellSouth/AT&T Overlap Areas



## Exhibit 2

**BTAs in Which Sprint Nextel Holds a Greater Percentage of BRS/EBS MHz/POPs  
than BellSouth\* Does in the Atlanta BTA**

