

October 5, 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 October 4, 2006 *ex parte* submission by XO Communications (“XO”) complaining yet again about its ongoing negotiations with AT&T over the placement of microwave antennas on AT&T’s rooftops further confirms that this issue is both beyond the proper scope of this merger proceeding and unripe for Commission consideration in any context.¹ In its September 25, 2006 response to XO’s first letter on this subject, AT&T explained that it denied XO’s initial requests for what XO called “microwave collocation,” because XO was unable to demonstrate that it sought these arrangements for either of the purposes for which regulated collocation is available: interconnection or access to unbundled network elements (“UNE”).² XO now recognizes that its prior requests to and communications with AT&T were anything but clear and may have caused AT&T to “misapprehend XO’s intentions.”³ In a business-to-business letter that XO sent to AT&T the same day it filed its *ex parte* letter with the Commission, XO promises that its “representatives will be promptly reinitiating XO’s requests with their contacts at AT&T.”⁴ And XO states that it plans to “persist with AT&T through intercompany discussions regarding specific collocation disputes” and that if it is dissatisfied with any aspect of the parties’ resolution of these issues, it will “seek resolution of those specific disputes before an appropriate forum.”⁵ In short, this is precisely the sort of ongoing business discussion, unrelated to the transaction under review, that the Commission has consistently admonished parties *not* to

¹ See *Ex Parte* Letter from Brad E. Mutschelknaus (counsel for XO) to Marlene Dortch (FCC) (Oct. 3, 2006) (“*Oct. 4 XO Ex Parte*”).

² See *Ex Parte* Letter from Gary L. Phillips (AT&T) to Marlene Dortch (FCC) (September 25, 2006).

³ *Oct. 4 XO Ex Parte*, Attachment 2 (Oct. 4 Letter from Bob Buerrosse (XO) to Brian Hernandez (AT&T)) (“AT&T has misapprehended XO’s intentions. It is possible that XO’s initial communications were (mistakenly) interpreted to support the conclusion that XO was interested in locating the antennas on the roof-tops without any tie-in to the XO collocated equipment already in place at the AT&T central offices”).

⁴ *Id.*

⁵ *Oct. 4 XO Ex Parte* at 3,4.

raise in a merger review proceeding⁶ – especially since XO may avail itself of complaint processes in an appropriate forum if and when an interconnection dispute actually does arise in the future.⁷

In the meantime, it is far from clear that any business dispute even exists. AT&T has made clear to XO its willingness to consider any concrete request by XO, whether for legitimate regulated collocation or for other unregulated arrangements. If XO can demonstrate that its new requests are for legitimate collocation purposes, AT&T will, of course, provide regulated collocation in accordance with governing law and the terms of the parties’ interconnection agreements.⁸ If not, AT&T stands ready to negotiate alternative terms on a business-to-business basis. Either way, nothing that has transpired or may transpire in the future in these microwave discussions between XO and AT&T has anything to do with the proposed merger of AT&T and BellSouth.

Sincerely,

/s/ Gary L. Phillips _____

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⁶ Although XO repeatedly claims that its interconnection agreements with BellSouth contain “much more favorable” terms than XO’s agreements with AT&T, see *Oct. 4 XO Ex Parte* at 2, XO never identifies *any* such terms. As AT&T explained in its prior response to XO, the BellSouth and AT&T agreements, consistent with settled law, *all* expressly limit regulated collocation (including microwave collocation) to that necessary for interconnection or access to UNEs. XO contends that BellSouth “has accommodated XO’s intentions to implement microwave collocations,” *id.* at 1, but the reality is that XO has *no* microwave collocation arrangements in BellSouth’s region today.

⁷ See, e.g., *Applications of Craig O. McCaw & Am. Tel. & Tel. Co.*, Memorandum Opinion and Order, 9 FCC Rcd. 5836, 5904 ¶ 123 (1994) (refusing to “consider arguments in this proceeding that are better addressed in other Commission proceedings, or other legal fora”).

⁸ It is worth noting that the e-mails attached to XO’s latest submission confirm that its own business representatives continue to harbor doubts about whether the arrangements they seek are for legitimate collocation purposes. See Attachment 1 to *Oct. 4 XO Ex Parte* (AT&T: “Will XO be using the microwave for interconnection or accessing UNEs?” XO: “That’s sort of a trick question. Basically this is the same thing as entrance fiber at the street level. . . . So I guess the answer is interconnection to access the UNE’s we have. Make sense?”).

cc: Nicholas Alexander
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