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October 5, 2006

**ORIGINAL**

**RECEIVED**

*Via Hand Delivery*

Ms. Marlene H. Dortch  
Federal Communications Commission  
The Portals, TW-A325  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

OCT 5 2006

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Notice of *Ex Parte* Presentation - WC Dkt. 06-74, In the Matter of Application for Consent to Transfer of Control Filed by AT&T and BellSouth Corporation

Dear Secretary Dortch:

On Tuesday, October 4, 2006, the attached written materials were provided to Jessica Rosenworcel, Senior Legal Advisor to Commissioner Copps, in connection with the above captioned proceeding.

Pursuant to the Commission's rules, the original and four copies of this memorandum are being filed in the above-referenced docket for inclusion in the public record. Please do not hesitate to contact me directly if you have any questions.

Respectfully submitted,



Joanna I. Georgatsos

cc: Jessica Rosenworcel  
Gary Remodino  
Nicholas Alexander  
William Dever  
Renée Crittendon

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*Privileged and Confidential*

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Donald Stockdale  
Mary Schultz  
John Branscome  
Erin McGrath  
Jeff Tobias  
David Krech  
JoAnn Lucanik  
Sarah Whitesell  
Tracy Waldon  
Jim Bird  
Leslie Marx

**9. Use of Service.**

(a) New Edge Networks and its end users may use the Service to access their choice of legal Internet content; run applications of their choice; and attach any devices or equipment of their choice, subject to the provisions of Sections 9(b), (c), (d) and (e), below.

(b) The characteristics and methods of operation of any circuits, facilities, devices or equipment provided by New Edge Networks or any other third party and used in connection with or otherwise associated with the Service shall not interfere with or impair any other service provided by BellSouth, its affiliated companies, or any carrier, including a competitive local exchange carrier, that is using BellSouth's network; cause damage to BellSouth facilities; impair the privacy of any communications carried over BellSouth facilities; or create hazards to the employees of BellSouth; its affiliated companies; or any carrier, including a competitive local exchange carrier (CLEC), that is using BellSouth's network; or the public.

(c) The Service shall not be used for any illegal or unlawful purpose. BellSouth reserves the right to immediately disconnect Service, with or without notice to New Edge Networks, at a location where BellSouth becomes aware that the Service is being used for an unlawful purpose.

(d) Excessive use of bandwidth is not permitted. The Service is designed to handle traffic that is bursty in nature. Although some of the Services are best effort services, and other Services have minimum guaranteed speeds, the data rates, actual throughput and latency of all Services are affected by excessive use of bandwidth. Applications such as file sharing, peer to peer traffic, and video streaming can result in degradation of services being provided by BellSouth and third parties as well as loss of quality of service experienced by the end users of BellSouth and third parties. BellSouth will monitor its network for excessive use. Excessive use of bandwidth shall be determined on the basis of the percentage of bandwidth on the Service used at a particular location, upstream or downstream, over a period of time. BellSouth reserves the right to immediately disconnect Service, upon notice to New Edge Networks, at any location that BellSouth determines is adversely affecting BellSouth's network.

(e) In the event BellSouth determines the Service is being used in such a manner as to invade the privacy or cause harm to third parties by such means as propagation of a virus or worm; hacking; spamming; or threat of violence, BellSouth reserves the right to immediately disconnect Service, upon notice to New Edge Networks, at the location where the Service is being used in such manner.

(f) The Service is not subject to resale. End user products that use or incorporate the Service must be sold, supported, and billed by New Edge Networks.