PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 06-2035
October 13, 2006

APPLICATION FOR CONSENT TO TRANSFER OF CONTROL FILED BY AT&T INC. and BELLSOUTH CORPORATION

COMMISSION SEEKS COMMENT ON PROPOSALS SUBMITTED BY AT&T INC. AND BELLSOUTH CORPORATION

WC Docket No. 06-74

Comments due: October 24, 2006

AT&T Inc. ("AT&T") and BellSouth Corporation ("BellSouth") (collectively, "the Applicants") have filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended[1] and section 2 of the Cable Landing License Act.[2] In these applications, the Applicants seek Commission approval of the transfer of control to AT&T of licenses and authorizations held directly and indirectly by BellSouth.

On October 13, 2006, AT&T submitted a supplemental filing, attached hereto, setting forth proposals made by the Applicants at the request of members of the Commission.[3] The Commission hereby seeks public comment this filing and the proposals contained therein.

Interested parties must file comments no later than October 24, 2006. Persons and entities that file comments become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. All filings concerning matters referenced in this Public Notice should refer to **DA 06-2035** and **WC Docket No. 06-74**.

Under the Commission's current procedures for the submission of filings and other documents,[4] comments and responses to this public notice may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

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[1] 47 U.S.C. §§ 214, 310(d).

[2] *Id.* § 35; *see generally An Act Relating to the Landing and Operation of Submarine Cables in the United States*, 47 U.S.C. §§ 34-39 (Cable Landing License Act).

[3] *See* Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T, to Kevin Martin, Chairman, FCC, WC Docket No. 06-74 (filed Oct. 13, 2006).

[4] *See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 16 FCC Rcd 21483 (2001); *see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for*

- **If filed by ECFS,**[5] comments shall be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

- **If filed by paper**, the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each filing must be sent to each of the following:

1. The Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail www.bcpiweb.com;

2. Gary Remondino, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C143, Washington, D.C. 20554; e-mail: Gary.Remondino@fcc.gov;

3. Nicholas Alexander, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C235, Washington, D.C. 20554; e-mail: Nicholas.Alexander@fcc.gov;

4. William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: William.Dever@fcc.gov;

5. John Branscome, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Room 6415, Washington, D.C. 20554; e-mail: John.Branscome@fcc.gov;

6. David Krech, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-A664, Washington, D.C. 20554; e-mail: David.Krech@fcc.gov;

General Correspondence, Public Notice, 16 FCC Rcd 22165 (2001); *Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, Public Notice, 18 FCC Rcd 16705 (2003).

[5] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

7. Sarah Whitesell, Media Bureau, 445 12th Street, S.W., Room 3-C458, Washington, D.C. 20554; e-mail: Sarah.Whitesell@fcc.gov; and

8. Jim Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: Jim.Bird@fcc.gov.

Parties are reminded that this proceeding has been designated as "permit but disclose" for purposes of the Commission's *ex parte* rules.[6] Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.[7] More than a one- or two-sentence description of the views and arguments presented is generally required.[8] Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.[9] We urge parties to use the Electronic Comment Filing System ("ECFS") to file *ex parte* submissions.[10]

Parties are further reminded of the continuing effectiveness of the protective orders adopted in this proceeding.[11] Any party seeking access to confidential documents subject to the *First Protective Order* or *Second Protective Order* shall request access pursuant to the terms of those Orders and must sign the appropriate Acknowledgements of Confidentiality.

This action is taken pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, and is effective upon its adoption.

For further information, contact Nicholas Alexander, Competition Policy Division, Wireline Competition Bureau, at (202) 418-2173.

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[6] *See Commission Seeks Comment on Application For Consent to Transfer of Control Filed By AT&T Inc. and BellSouth Corp.*, Public Notice, WC Docket No. 06-74, DA 06-904 (rel. Apr. 19, 2006); *see generally* 47 U.S.C. §§ 1.1200-1.1216.

[7] *See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings*, Public Notice, 15 FCC Rcd 19945 (2000).

[8] *See* 47 C.F.R. § 1.1206(b)(2).

[9] *Id.* § 1.1206(b).

[10] *See* discussion *infra*.

[11] *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer Of Control*, WC Docket No. 06-74, Order, DA 06-1032 (rel. May 12, 2006) (*First Protective Order*); *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer Of Control*, WC Docket No. 06-74, Order, DA 06-1415 (rel. July 7, 2006) (*Second Protective Order*).

Robert W. Quinn, Jr.
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October 13, 2006

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 Twelfth Street, SW, 8th Floor
Washington, DC 20554

Re: *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74
Notice of Ex Parte Filing

Dear Chairman Martin:

On October 12, 2006, Jim Cicconi, Wayne Watts, Gary Phillips, Jack Zinman, and I participated in a series of telephone conversations with, and initiated by, Michelle Carey, Senior Legal Advisor to Chairman Martin, and Tom Navin, Chief of the Wireline Competition Bureau, to respond to questions regarding objections raised and potential merger conditions that were proposed by parties in this proceeding in order to obtain unanimous approval of this transaction. This letter memorializes the substance of those conversations.

As an initial matter, we reiterated our firm conviction that the merger should be approved promptly without any conditions whatsoever. We noted that, throughout the course of this proceeding, AT&T and BellSouth have demonstrated that the merger will decidedly advance the public interest by bringing together two companies with complementary assets and strengths, thereby creating a more efficient, more innovative company capable of accelerating and expanding the delivery of high quality advanced technologies and services to all classes of customers, large and small. We have shown that the merger will solidify and secure the nation's status as a world leader in telecommunications and that it will strengthen national security. And we have shown that all of these benefits will be realized without any cognizable harm to competition.

We further noted that our steadfast belief in the consumer benefits of this transaction has been corroborated by the findings of 18 state commissions and three foreign countries, all of which approved the merger without imposing any conditions. It also has been confirmed by the Department of Justice, which subjected the transaction to months of exacting scrutiny and likewise found no anticompetitive effects that warranted any merger conditions.

Nevertheless, in response to an inquiry from Commission staff, we indicated that, in the interest of facilitating the speediest possible approval of the merger by the Commission, we would not object to the imposition of certain merger conditions previously proposed by certain parties in this proceeding and requested by the Democratic Commissioners, in order to obtain expeditious unanimous approval of the merger. All of these discussions were oral and in

response to questions raised by Staff and no writings reflecting these conditions were received from the Commission or any Commission Staff.

Listed below are potential conditions which the Company discussed.

Potential Merger Conditions

For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of thirty months from the Merger Closing Date and would automatically sunset thereafter.

Promoting Accessibility of Broadband Service

1. By December 31, 2007, AT&T/BellSouth[1] will offer broadband Internet access service (*i.e.*, Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory.[2] To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the "Wireline Buildout Area"). The merged entity will make available broadband Internet access service to the remaining living units using alternative technologies and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.[3]

2. AT&T/BellSouth will provide an ADSL modem without charge (except for shipping and handling) to residential subscribers within the Wireline Buildout Area who, during calendar year 2007, replace their AT&T/BellSouth dial-up Internet access service with AT&T/BellSouth's ADSL service and elect a term plan for their ADSL service of twelve months or greater.

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[1] AT&T/BellSouth refers to AT&T Inc., BellSouth Corporation, and their affiliates that provide domestic wireline services.

[2] As used herein, the AT&T/BellSouth "in-region territory" means the areas in which an AT&T or BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i).

[3] For purposes of this commitment, a low income living unit shall mean a living unit in AT&T/BellSouth's in-region territory with an average annual income of less than the $35,000, determined consistent with Census Bureau data, *see* California Public Utilities Code section 5890(j)(2) (as added by AB 2987) (defining low income households as those with annual incomes below $35,000), and a rural area shall consist of the zones in AT&T/BellSouth's in-region territory with the highest deaveraged UNE loop rates as established by the state commission consistent with the procedures set forth in section 51.507 of the Commission's rules. 47 C.F.R. § 51.507.

3. AT&T/BellSouth will offer to retail consumers in the Wireline Buildout Area who have not previously subscribed to AT&T's or BellSouth's ADSL service broadband Internet access service at a speed of up to 768 Kbps at a monthly rate (exclusive of any applicable taxes and regulatory fees) of $10 per month.

Public Safety and Disaster Recovery

1. By June 1, 2007, AT&T will complete the steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory in the event of an extended service outage caused by a hurricane or other disaster.

2. In order to further promote public safety, within thirty days of the Merger Closing Date, AT&T/BLS will donate $1 million to a section 501(c)(3) foundation or public entities for the purpose of promoting public safety.

UNEs

1. The AT&T and BellSouth incumbent LECs shall continue to offer and shall not seek any increase in State-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. This condition shall not limit the ability of the AT&T and BellSouth incumbent LECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.

2. AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (*i.e.*, own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.

3. AT&T/BellSouth shall terminate all pending audits of compliance with the Commission's EELs eligibility criteria and shall not initiate any new audits.

Special Access

1. AT&T/BellSouth affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Act ("AT&T/BellSouth BOCs")[4] will implement, in the AT&T

[4] For purposes of these conditions, AT&T Advanced Solutions, Inc. and the Ameritech Advanced Data Services Companies, doing business collectively as "ASI," shall not be considered a BOC.

and BellSouth Service Areas,[5] the Service Quality Measurement Plan for Interstate Special Access Services ("the Plan"), similar to that set forth in the SBC/Ameritech Merger Conditions. The AT&T/BellSouth BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed therein. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T/BellSouth BOCs' monthly performance in delivering interstate special access services within each of the states in the AT&T and BellSouth Service Areas. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T and BellSouth section 272(a) affiliates, (ii) their BOC and other affiliates, and (iii) non-affiliates.[6] The AT&T/BellSouth BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The AT&T/BellSouth BOCs shall implement the Plan for the first full quarter following the Merger Closing Date. This condition shall terminate on the earlier of (i) thirty months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T/BellSouth files its 10th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.

2. AT&T/BellSouth shall not increase the rates paid by existing customers (as of the Merger Closing Date) of DS1 and DS3 local private line services that it provides in the AT&T/BellSouth in-region territory pursuant to, or referenced in, TCG FCC Tariff No. 2 above their level as of the Merger Closing Date.

3. AT&T/BellSouth will not provide special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.

4. To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified contract tariffed service under section 69.727(a) of the Commission's rules to its own section 272(a) affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates. AT&T/BellSouth also will not unreasonably discriminate in favor of its affiliates in establishing the terms and conditions for grooming special access facilities.

5. AT&T/BellSouth shall not increase the rates in its interstate tariffs, including contract tariffs, for special access services that it provides in the AT&T/BellSouth in-region

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[5] For purposes of this condition, "AT&T and BellSouth Service Areas" means the areas in which the AT&T and BellSouth Bell operating company subsidiaries, as defined in 47 U.S.C. § 153(4)(A), are incumbent local exchange carriers.

[6] BOC data shall not include retail data.

territory and that are set forth in tariffs on file at the Commission on the Merger Closing Date.

Wireless

AT&T/BellSouth shall initiate ten new trials of broadband Internet access service using 2.3 GHz or 2.5 GHz spectrum by the end of 2007. At least five of those trials will be conducted in BellSouth's in-region territory.

Transit Service

The AT&T and BellSouth incumbent LECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T and BellSouth incumbent LECs provide in the AT&T/BellSouth in-region territory.[7]

ADSL Service

1. Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the "implementation date" in that state. For purposes of this condition, the "implementation date" for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth's in-region territory in that state.[8] Within twenty days after meeting the implementation date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.

2. AT&T/BellSouth will extend until thirty months after the Merger Closing Date the availability within AT&T's in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the *SBC/AT&T Merger Order* (FCC 05-183).

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[7] Tandem transit service means tandem-switched transport service provided to an originating carrier in order to indirectly send intraLATA traffic subject to § 251(b)(5) of the Communications Act of 1934, as amended, to a terminating carrier, and includes tandem switching functionality and tandem switched transport functionality between an AT&T/BellSouth tandem switch location and the terminating carrier.

[8] After meeting the implementation date in each state, AT&T/BellSouth will continue deployment so that it can offer the service to all ADSL-capable premises in its in-region territory within twelve months of the Merger Closing Date.

ADSL Transmission Service

AT&T/BellSouth will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the combined AT&T/BellSouth territory that is functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date. Such wholesale offering will be at prices comparable to those available in the overall market for wholesale broadband services.

Forbearance

For thirty months from the Merger Closing Date, AT&T/BellSouth will not seek a ruling, including through a forbearance petition under section 10 of the Communications Act (the "Act") 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

Annual Certification

For three years following the Merger Closing Date, AT&T/BellSouth shall file annually a declaration by an officer of the corporation attesting that AT&T/BellSouth has substantially complied with the terms of these conditions in all material respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, the second and third declaration shall be filed one and two years thereafter respectively.

In addition to those conditions, we also discussed the possibility of further conditions relating to the repatriation to BellSouth territory of jobs that had been expatriated to overseas locations, Internet backbone peering arrangements, network neutrality non-discrimination, and the impact of Commission forbearance decisions on any conditions that might be imposed.

In accordance with Section 1.1203, 1.1204 and 1.1206 of the Commission's rules, this letter is being filed electronically with your office for inclusion in the public record.

Sincerely,

/s/ Robert W. Quinn, Jr.

cc: Thomas Navin
Michelle Carey