Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 06-74
AT&T Inc. and BellSouth Corporation	)	
Application for Transfer of Control	)	

Comments of Global Crossing North America, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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	)	WC Docket No. 06-74
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Comments of Global Crossing North America, Inc.

Pursuant to the Public Notice released October 13, 2006, Global Crossing North America, Inc., on behalf of its U.S. operating subsidiaries (collectively, "Global Crossing"), submits its Comments to in response to AT&T's *Supplemental Filing*[1] which set forth proposals to ameliorate the competitive harms resulting from its proposed acquisition of BellSouth Corporation. As one of AT&T and BellSouth's largest consumers of special access services, spending over $150 million annually with the combined companies, Global Crossing has a particularly keen interest in developing appropriate measures to address AT&T's increased market power in the special access market that will result from its proposed acquisition of BellSouth.

[1] *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).

Final Offer Arbitration is an Effective Remedy to AT&T's Burdensome Terms and Conditions for Special Access Services

Numerous parties to this proceeding have previously detailed the myriad concerns with AT&T's special access offerings.[2] For Global Crossing, the most critical concerns include –

1. ***Excessive mileage charges for special access services.*** In contrast to the predominant trend among competitive special access service providers, AT&T continues to charge a mileage component in its special access pricing. Most competitive providers have eliminated the mileage component and instead offer a flat rate regardless of distance in recognition of the fact that costs for special access are no longer distance sensitive. AT&T's continued pricing on a distance-sensitive basis runs counter to overall pricing trends in the industry and keeps AT&T's special access rates artificially high. Again, however, due to AT&T's dominance of the special access market, Global Crossing has little choice but to pay these artificially high rates.

2. ***Extreme volume and term commitment requirements.*** AT&T typically requires customers to commit 90-95% of their existing base of special access circuits in order to qualify for modest discounts. The effect of this minimum commitment is to prevent Global Crossing from availing itself of competitive alternatives, *even if the competitor's price for the same service is lower than AT&T's.* This is so because the penalty Global Crossing faces under its contracts with AT&T for failing to meet the minimum commitment is far greater than the savings Global Crossing would realize by availing itself of alternative offerings provided by competitive carriers. In addition to these extreme volume commitments, AT&T often demands extremely lengthy terms for contracts, typically in the 5-7 year range (actually locking in growing profits in a cost declining marketplace). This is in contrast to competitive carriers who seek contracts that are usually 2-3 years in duration. AT&T is able to extract these extreme volume and term commitment requirements due to its dominant market position, and, despite years of network optimization, Global Crossing has little choice but to rely on AT&T as the predominant provider of special access services.

3. ***No service level agreements ("SLAs").*** In contrast to competitive special access service providers, AT&T does not provide SLAs. As a result, if AT&T fails to provision a service before the scheduled

[2] *See*, e.g., Petition to Deny of Time Warner Telecom; Comments of Cbeyond Communications, et. al.; Comments of Sprint/Nextel Corporation; Comments of Paetec Corporation.

> installation date or the circuit fails for any period of time, AT&T is not liable for any penalty and Global Crossing is not entitled to any refund or monetary compensation. Accordingly, AT&T has no incentive to provision, maintain, or repair special access services quickly, let alone in a high quality manner.

Throughout this proceeding, Global Crossing has asked the Commission to provide carriers with the right to request commercial, baseball-style or final offer arbitration in order to facilitate the negotiation of special access arrangements and improve upon the non-negotiable terms and conditions as described above and in the Comments of other parties. Global Crossing strongly believes an arbitration procedure would relieve the Commission of the burden of addressing these inter-carrier contract disputes, would shine the light of commercial reasonableness on AT&T's practices with regards to special access services, and would serve as an effective remedy to AT&T's increased market power in the special access market that will result from its proposed acquisition of BellSouth.

Moreover, final offer arbitration will facilitate interconnection negotiations for advanced IP and Ethernet-based services which are increasingly being utilized as substitutes for special access services. Throughout its Application, AT&T argues one of the benefits of its proposed acquisition of BellSouth will be its improved ability to invest in IP technology and support the seamless integration of AT&T, BellSouth and Cingular Wireless ***at the IP level***[3]. Third parties will no doubt seek interconnection with AT&T at the IP level and final offer arbitration will be a useful mechanism to resolve the inevitable disputes that will arise during those negotiations. Because it is a much more rapid and efficient means of dispute resolution than current Commission processes, final offer

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[3] "Description of the Transaction, Public Interest Showing and Related Demonstration" of the Application for Consent to Transfer Control of BellSouth Corporation to AT&T, Inc. (p. 11)

arbitration can help accelerate the deployment of advanced broadband infrastructure by dramatically reducing the amount of time and resources parties spend on dispute resolution.[4]

When faced with equivalent circumstances in other contexts[5], the Commission did not hesitate to create this arbitration right. In both the *Hughes/News* and *Adelphia* cases, the Commission recognized the parties' dominance of the regional sports programming market and afforded competitors the right to seek arbitration in the event private, commercial negotiations failed, stating,

> "To mitigate potential harms from uniform price increases, as well as other strategies discussed below, we impose a remedy based on commercial arbitration such as that imposed in the *News Corp.-Hughes Order*. The arbitration remedy, as set forth in Appendix B, will constrain Comcast's and Time Warner's ability to increase rates for RSN programming uniformly or otherwise disadvantage rival MVPDs via anticompetitive strategies." (*Adelphia* Order at para. 156)

Global Crossing submits the circumstances of AT&T's proposed acquisition of BellSouth are at least equivalent to the circumstances extant in the *Hughes/News* and *Adelphia* cases only this time the stakes are even greater. In the *Adelphia* case, the Commission found that market shares ranging from 42% to 80% were sufficient to justify the imposition of a final offer arbitration remedy.[6] AT&T's share of the special access

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[4] It has been estimated that the telecommunications industry spends more on litigation and dispute resolution than research and development. Dr. Charles H. Ferguson, Brookings Institution, "Broadband Policy and the Future of American Information Technology," Testimony Before the Senate Commerce Committee, Apr. 28, 2004.

[5] See, e.g., *General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee, for Authority to Transfer Control*, 19 FCC Rcd 473 (2004) ("*Hughes/News*") and *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee*, Memorandum Opinion and Order, MB Docket No. 05-192, FCC 06-105 (rel. July 21, 2006) ("Adelphia").

[6] *Adelphia Order* at paras. 112-114.

market is greater than 80% throughout its service territory. Virtually every carrier in the industry relies on special access services to deliver services to end-user customers. Thus, unreasonable terms and conditions for special access services cause direct consumer harm as the price and quality of finished end-user products and services are dependant on the price and quality of special access services inputs.[7]

Final Offer Arbitration Compliments the Commission's Existing Special Access Policies

In 1999 the Commission initiated a process that has led to the continued deregulation of special access services.[8] At the time it adopted the *Pricing Flexibility Order*, the Commission rightly believed that the investment boom in telecommunications would result in robust competition for special access services. However, the telecom bust and subsequent spate of bankruptcies and consolidations have reversed the early progress of competitive forces, resulting in a market for special access services that is largely dominated by the Bell Companies. With its acquisition of Bell South, AT&T will control the majority of special access lines in the entire continental United States. In light of this unforeseen consolidation, the Commission would be justified in choosing to re-impose price cap regulation for special access services – and certainly numerous parties to this proceeding have suggested just that.[9] While Global Crossing would support renewed price cap regulation for special access services, a final offer arbitration procedure such as that adopted in the *Hughes/News* and *Adelphia* cases is an effective measure to address

[7] As a new entrant in the video marketplace, AT&T will be able to avail itself of the arbitration remedy created in the *Hughes/News* and *Adelphia* cases to facilitate its negotiations for regional sports programming. It is only appropriate to provide AT&T's captive customers similar rights.
[8] *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order, 14 FCC Rcd 14,221, 14,260 (1999), *aff'd*, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001) ("*Pricing Flexibility Order*").
[9] *See*, *Ex Parte* from Comptel et. al. filed September 22, 2006.

both price and non-price disputes and is consistent with the Commission's underlying goal of continued deregulation of special access services.

AT&T's ability to impose monopoly rent conditions on its special access services results from a lack of competitive alternatives and a consequent lack of any negotiating leverage on the part of special access consumers such as Global Crossing. For instance, BellSouth is not Global Crossing's preferred provider of special access services, yet over 80% of Global Crossing's special access purchases in the BellSouth region are with BellSouth. BellSouth knows that Global Crossing has no alternative so the "negotiations" for special access discounts and contractual terms and conditions are wholly one-sided.

However, if Global Crossing had available the *Hughes/News* and *Adelphia* final offer arbitration procedure, some balance would be restored to the negotiation process and the Commission's experiment in deregulation could continue. Whether the Commission prefers price cap regulation or final offer arbitration, public policy and the public welfare is ill served by an unregulated monopoly. And despite AT&T's self-serving claims to the contrary, once this proposed acquisition is complete, AT&T will effectively have an unregulated monopoly over special access services throughout its enormous service footprint

AT&T's Proposed Remedies Are Wholly Inadequate

In its *Supplemental Filing*, AT&T proposes to "freeze" special access rates for a period of 24 months. In a cost-declining industry such as the telecommunications industry, a price freeze is actually a *de facto* price increase. The Commission should readily recognize AT&T's proposal as lacking merit and offering no real solution to the harms that will result from its proposed acquisition of BellSouth. Moreover, as described above, AT&T typically locks its customers into long-term contracts, some as long as five to seven years. For these customers, they already have an effective rate freeze that extends far beyond the 24 months proposed by AT&T. AT&T's proposal therefore represents nothing more than the proverbial sleeves off its vest.

AT&T also proposes to implement a Service Quality Measurement Plan for Interstate Special Access Services. This too is inadequate to the task. While AT&T is supposed to have filed at least two reports with the Commission detailing its service quality performance, those reports are not public and it is unknown whether they provide any meaningful information.

As for its commitments to non-discrimination and equal treatment of its competitors and its affiliates, the fact of the matter is there is no effective method of policing AT&T's compliance. Considering AT&T's history of compliance (really non-compliance) with previous merger conditions ordered by this Commission,[10] Global Crossing does not have any faith in AT&T's future adherence to this proposal, nor should the Commission. Moreover, even in the instance of effective Commission enforcement, it is highly likely that AT&T will simply choose to "pay the fine" rather than come into compliance and afford greater access at reasonable terms to its competitors.

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[10] *See*, e.g., *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5,22,24,25,63,90,95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279 (rel. Oct. 8, 1999); *Applications of Pacific Telesis Group, Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Pacific Telesis Group and its Subsidiaries*, Report No. LB-96-32, Memorandum Opinion and Order, 12 FCC Rcd 2624 (1997); *Applications for Consent to Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-25, Memorandum Opinion and Order, 13 FCC Rcd 21292 (1998).

Conclusion

In light of the utter lack of meaningful proposals contained in AT&T's *Supplemental Filing*, Global Crossing urges the Commission to adopt a final offer arbitration process as a narrowly tailored, market-oriented remedy to AT&T's dominance in the special access market. It is a remedy the Commission has used twice before involving mergers of a much smaller scale and import and will ensure that consumers of AT&T's special access services have some meaningful relief from the overwhelming market power that will accrue to AT&T as a result of its proposed acquisition of BellSouth.

Respectfully submitted,

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_/s/_______________________________

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October 24, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of Global Crossing North America, Inc. was served via electronic mail this 24th day of October, 2006, upon the following:

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