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October 24, 2006

Via ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: AT&T and BellSouth Merger Application, WC Docket No. 06-74
Public Notice Seeking Comments, DA 06-2035
Written *ex parte* presentation
Proposed Merger Condition Regarding Microwave Collocation**

Dear Ms. Dortch:

The Commission seeks comments on the proposals of AT&T Inc. and BellSouth Corporation dated October 13, 2006, for a set of merger conditions that would be appropriate were the Commission to approve the proposed merger of AT&T and BellSouth in this docket.¹ XO Communications (“XO”), in addition to comments responsive to the Public Notice which it submitted jointly with other carriers under separate cover, hereby reiterates its request for a condition related to microwave collocation. The proposed terms of AT&T and BellSouth contained no merger condition related to this form of collocation.

On September 18, 2006, undersigned counsel for XO submitted a written *ex parte* presentation in this docket requesting, as an *additional* condition of merger if the Commission approves the merger, that AT&T be required to adopt and adhere to the microwave collocation terms and conditions contained in the XO-BellSouth interconnection agreements in Florida, Georgia, North Carolina, and Tennessee throughout the post-merger company’s

¹ Public Notice, DA 06-2305, October 13, 2006 (“Public Notice”). See also 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).

Marlene H. Dortch
October 24, 2006
Page Two

territory.² The basis for XO's request was a benchmark analysis demonstrating that AT&T was engaging in anticompetitive activity to frustrate XO's attempts to achieve microwave collocation under Section 251(c)(6) as an alternative to fiber-based entrance facilities. This contrasted with its merger partner, BellSouth, which entered into plain and comprehensive interconnection agreement procedures to govern and facilitate microwave collocation.

AT&T questioned XO's motives for requesting collocation and accused XO of raising ordinary business disputes in this proceeding on September 25 and October 5, 2006.³

XO, on October 4, 2006, clarified that it was not seeking the resolution of a business dispute in this proceeding that is more appropriately addressed through adjudication or litigation.⁴ Rather XO offered the circumstances of its experience to demonstrate that AT&T was acting anti-competitively and that there was a real risk, post-merger, that this behavior would extend to the BellSouth territory without a merger condition. XO also reiterated that it sought microwave collocation only at central offices where XO is already collocated for the express purpose of accessing unbundled network elements or interconnecting with AT&T's network.

XO hereby reiterates its request for this merger condition. As demonstrated in its September 18 and October 4, 2006, *ex parte* submissions, AT&T is erecting obstacles XO's attempts to introduce intermodal competition in the form of wireless entrance facilities to its Section 251(c)(6) collocations. Recently, on October 13, 2006, AT&T affirmed that it would not treat XO's application as a Section 251(c)(6) request for collocation, despite XO's clear statements of its purpose to access unbundled elements in AT&T's central offices and provide backhaul therefrom.⁵ There, AT&T categorically concludes that XO is seeking an arrangement not available in the parties' interconnection agreements. As XO demonstrated in its September 18 and October 4, 2006, *ex parte* submissions, such arrangements should be available. It is

² Letter of Brad E. Mutschelknaus and Edward A. Yorkgitis, Jr., Kelley Drye & Warren, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in WC Docket No. 06-74 (dated Sep. 18, 2006).

³ Letter of Gary Phillips, AT&T, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in WC Docket No. 06-74 (dated Sep. 25, 2006); Letter of Gary Phillips, AT&T, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in WC Docket No. 06-74 (dated Oct. 5, 2006) ("October 5 letter").

⁴ Letter of Brad E. Mutschelknaus and Edward A. Yorkgitis, Jr., Kelley Drye & Warren, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in WC Docket No. 06-74 (dated Oct 4, 2006).

⁵ See Letter from Ed Ewing, AT&T, to Bob Beurrosse, XO Communications, dated October 13, 2006 and appended hereto as *Attachment 1*.

KELLEY DRYE & WARREN LLP

Marlene H. Dortch
October 24, 2006
Page Three

AT&T's continuing anti-competitive behavior confirmed by this most recent response and in contrast with BellSouth's openness to negotiating comprehensive provisions that would facilitate similar arrangements, that prevents XO from achieving its legitimate collocation objectives. To ensure that this practice does not persist, the Commission should impose the microwave collocation merger condition outlined in XO's September 18 and October 4, 2006, *ex parte* submissions, to the post-merger company.

This *ex parte* written presentation is being filed pursuant to the Commission's Rules.

Do not hesitate to contact the undersigned if there are any questions or if the Commission desires any further information on the subjects discussed in this letter.

Respectfully submitted,



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Attachment

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October 13, 2006

Bob Buerrosse, Senior Manager-Carrier Relations
XO Communications, Inc.
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Jacksonville, FL 32220

VIA EMAIL TO: bob.buerrosse@xo.com

Dear Mr. Buerrosse,

AT&T Missouri is providing this acknowledgement of the Bona Fide Request (BFR) submitted by XO Communications, Inc. on October 3, 2006, in which XO Communications "proposes mounting 2' microwave antenna on LSO [local service office] roof to provide backhaul to an XO fiber fed LSO."

Pursuant to the Appendix Network Interconnection Methods and the General Terms and Conditions of XO Communications' interconnection agreement for the state of Missouri, AT&T finds no contractual terms to support this type of arrangement. However, AT&T is reviewing the merits of XO Communications' proposal and will continue to evaluate the offer. AT&T Missouri will provide a more definitive response to this BFR on or by November 3, 2006.

If you have any questions regarding this matter, please feel free to contact me at (312) 335-4752.

Sincerely,

Ed Ewing
Sr. Account Manager