

Andrew D. Lipman
Direct Phone: (202) 373-6033
Direct Fax: (202) 373-6001
andrew.lipman@bingham.com

October 25, 2006

Via Email

The Honorable Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Bingham McCutchen LLP
Suite 300
3000 K Street NW
Washington, DC
20007-5116
202.424.7500
202.424.7647 fax

bingham.com

**Re: Ex Parte Notice Application Pursuant to Section 214 of the
Communications Act of 1934 and Section 63.04 of the
Commission's Rules for Consent to the Transfer of Control
of BellSouth Corporation to AT&T, Inc. WC Docket No.
06-74, DA 06-2035**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this letter serves to provide notice that, on October 24, 2006, the undersigned, along with James B. Fleming, Jr. of Columbia Capital, James F. Wade of M/C Venture Partners and Rand G. Lewis of Centennial Ventures, met separately with Commissioner Jonathan S. Adelstein and his legal advisor Scott Bergmann; Scot Deutchman, Legal Advisor to Commissioner Michael J. Copps, and Thomas Navin, Chief of the Wireline Competition Bureau.

In their meetings, the participants discussed their views on the pending merger application submitted by AT&T and BellSouth, and in particular the proposed conditions that would partially offset the substantial public interest harms arising from the merger. The discussion was consistent with, and focused on, the issues raised in the Comments filed on October 24, 2006 in this Docket by Messrs. Fleming, Wade and Lewis.

Pursuant to the Commission's Rules, this letter is being filed in the above-captioned proceedings for inclusion in the public record along with a copy of the Comments filed on October 24, 2006. Should you have any questions, please do not hesitate to contact the undersigned.

Boston
Hartford
London
Los Angeles
New York
Orange County
San Francisco
Silicon Valley
Tokyo
Walnut Creek
Washington

The Honorable Marlene S. Dortch
October 25, 2006
Page 2

Respectfully submitted,

A handwritten signature in cursive script that reads "Andrew D. Lipman". The signature is written in black ink and includes a long horizontal flourish at the end.

Andrew D. Lipman

Encl.

cc: The Honorable Jonathan S. Adelstein
Scott M. Deutchman
Scott Bergmann
Thomas Navin

Bingham McCutchen LLP
bingham.com

M/C Venture Partners
Meritage Funds
McCullen Capital
Wachovia Capital Partners

Columbia Capital
Centennial Ventures
Quadrangle Group, LLC
J.H. Whitney & Co.

October 24, 2006

The Honorable Kevin J. Martin, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: AT&T/BellSouth Merger Application — WC Dkt No. 06-74, DA 06-2035:
Proposed Remedial Conditions

Dear Chairman Martin:

As investors in competitive wireline communications companies, we are writing to comment on the proposed remedial conditions filed by AT&T in the above-referenced docket¹ and to express our support for COMPTEL's alternative set of conditions.² COMPTEL's filing referred to the substantial record evidence demonstrating that the merger of AT&T and BellSouth is likely to have material anti-competitive effects, and suggested remedial conditions relating to interconnection and access to last mile facilities intended to partially offset the anticipated harms to telecommunications competition.

We represent private equity firms that have made substantial investments in the telecommunications sector. Our portfolio companies include competitive local exchange carriers ("CLECs") operating within the AT&T and BellSouth regions. These companies deliver their services using a mix of their own network facilities and loop/transport facilities leased from AT&T, BellSouth and other incumbent local exchange carriers as unbundled network elements ("UNEs") or special access.

Critics of the proposed merger have provided evidence that the ability of CLECs to obtain loop and transport facilities from third party carriers — both now and in the future — would be substantially undermined by a merger that will allow AT&T and BellSouth to combine rather than compete. In particular, the merger will eliminate both the present ability and future prospect of CLECs to purchase access to AT&T's metro fiber facilities in the BellSouth region as a replacement for delisted UNEs or as an

¹ Letter of Robert Quinn of AT&T to Hon. Kevin Martin, submitted Oct. 13, 2006.

² Letters from Karen Reidy, Vice President – Regulatory Affairs, COMPTEL to Marlene Dortch, Secretary, Federal Communications Commission, submitted Sept. 22, 2006.

The Honorable Kevin Martin, Chairman

October 24, 2006

Page 2

alternative to overpriced ILEC special access services. Obviously, this material reduction in competition in the market for wholesale last-mile facilities would make it significantly more difficult for CLECs to compete with BellSouth in its region. Similarly, the merger's large footprint will increase incentives for the merged AT&T and BellSouth to discriminate against competitors in both the BellSouth region as well as AT&T's region. Nothing short of disapproving the proposed merger can completely restore the level of wholesale competition lost if the proposed combination occurs, but the set of remedial UNE and special access-related conditions crafted by the COMPTTEL members significantly offset the likely harm, and we strongly urge you to adopt them in full.

In reliance upon the pro-competitive tenets of the Telecom Act and the Commission's unbundling and interconnection rules implementing it, we have made substantial investments in competitive carriers that rely on the availability of reasonably priced wholesale loop and transport facilities to supplement the network facilities that they can economically construct. Unfortunately, a steady stream of ILEC-driven litigation and FCC backtracking already have substantially reduced the availability of unbundled facilities that CLECs require. We do not seek here to second guess those decisions, but we do ask for your assistance in stopping the steady erosion in the availability of efficiently priced wholesale facilities. The Commission recognizes the harm to investment and innovation arising from uncertainty regarding the FCC's unbundling regime, and restoring certainty to stabilize investment and innovation in local competition should partially alleviate the substantial harms the merger will inflict on competition.

Because the record demonstrates that unqualified approval of the AT&T/BellSouth merger would result in the loss of a critical existing and potential source of wholesale supply, we think it vital that the Commission impose conditions on the proposed merger that would help assure that reasonably priced unbundled facilities and special access services remain available from AT&T and BellSouth. That is precisely what the remedial conditions proposed by the COMPTTEL members would accomplish, and we strongly support making them a condition of approval.

Although we support the full suite of conditions proposed by COMPTTEL, we would like to emphasize several conditions regarding unbundling that we find particularly critical to stabilizing the market for investment and innovation in local competition. First, the proposed freeze on both of the availability and pricing of existing Section 252 UNEs is essential. With the elimination from the market of the alternative facilities controlled by AT&T, it is important that the Commission declare "UNE peace" with respect to the remaining Section 251 UNEs available under the FCC's rules. Thus, the conditions should require that AT&T and BellSouth continue to provide all existing UNEs (including a bar on additional forbearance petitions) and impose a price ceiling at current UNE rates. Second, the merged AT&T/BellSouth should be required to make available Section 271 elements (under the terms proposed by COMPTTEL) throughout their 22 state combined operating region. The loss of AT&T facilities as a source of alternative wholesale supply substantially undercuts the notion that CLECs can purchase facilities from third party carriers where Section 251 UNEs are eliminated. The availability of Section 271 elements would help significantly to remedy that situation.

The Honorable Kevin Martin, Chairman

October 24, 2006

Page 3

Finally, the special qualification criteria imposed on the use of enhanced extended links (“EELs”) need to be eliminated. Those restrictions were adopted to foreclose abusive wholesale migration of special access services used to provide long distance services by AT&T and MCI. The elimination of AT&T and MCI as independent competitors has made the EEL qualification rules obsolete, and the record makes clear that ILECs are now using them simply to harass CLECs and undercut their competitive capacity by driving up their costs.

We observe that AT&T has made proposals that overlap with several of the conditions proposed by COMPTTEL, and we applaud those that could at least partially offset the anti-competitive effects of the proposed merger. However, we believe that the 30 month merger condition period that AT&T has proposed is an inadequate period in which to remedy the harms that will result from the merger. In particular, it is an insufficient period for providing the stability necessary to encourage new investment in innovative facilities-based local competition to replace the competition eliminated by the merger. We further believe that, with corrections made to the language as proposed by COMPTTEL, the following three conditions in particular proposed by AT&T could at least partially offset the material harm to competition likely to be caused by the merger: (i) the proposed freeze on UNE rate levels; (ii) the termination of BellSouth’s practice of auditing compliance with obsolete EEL qualification criteria; and (iii) the commitment not to seek forbearance from the application of unbundling rules. While these conditions alone are not adequate, they are a material step in the right direction, and we strongly urge the Commission to adopt them (with the corrections sought by COMPTTEL), and supplement them with COMPTTEL’s other proposed conditions.

Sincerely,

/s/
James F. Wade
M/C Venture Partners

/s/
Tracy O. Kerr
Meritage Funds

/s/
Joseph T. McCullen
McCullen Capital

/s/
Scott B. Perper
Wachovia Capital Partners

/s/
James B. Fleming, Jr.
Columbia Capital

/s/
Rand G. Lewis
Centennial Ventures

/s/
Michael A. Huber
Quadrangle Group, LLC

/s/
William Laverack, Jr.
J.H. Whitney & Co.

The Honorable Kevin Martin, Chairman

October 24, 2006

Page 4

cc: The Honorable Michael J. Copps
The Honorable Jonathan S. Adelstein
The Honorable Deborah Taylor Tate
Michelle Carey
Scott M. Deutchman
Scott Bergmann
Ian Dillner
Thomas Navin
Julie Veach
Donald Stockdale
Bill Dever
Nicholas Alexander