December 4, 2006

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-325
445 12th Street, S.W.
Washington D.C. 20554

Re: In the Matter of AT&T Inc. and BellSouth Corporation
Applications for Approval of Transfer Of Control,
WC Docket No. 06-74

Dear Ms. Dortch:

The undersigned parties hereby file a clarification to their September 22 Ex Parte letter\(^1\) to address a serious issue that many purchasers of special access would encounter if, as is appropriate, the FCC requires the merged AT&T and BellSouth to reduce special access tariffed rates as a required condition of the Commission’s merger approval. The discrete clarification described in this letter is intended to clarify the September 22 Ex Parte proposal only to the extent explicitly described herein. In all other respects, the September 22 Ex Parte proposal remains unchanged.

The issue is as follows. Many entities purchase special access from both AT&T and BellSouth under individually negotiated volume/term contracts. The contract price for each special access component is often a fixed discount off of generally available tariffed rates. Where this is the case, a merger condition reducing the generally available tariffed rates will flow through to special access contract price reductions.

To obtain discounts in volume/term contracts, purchasers must often agree to a minimum annual revenue commitment (“MARC”) for “eligible services” (which sometimes include both special access and other services) that must be reached in order to obtain the discounts and avoid substantial penalties. If the generally available tariffed rates were reduced as the result of a merger condition, but the MARC was not reduced by an amount equal to the resulting reduction in spending on “eligible services,” purchasers would likely miss their MARCs and be forced to pay substantial penalties. This outcome would obviously cancel out part or all of the intended benefit of reducing the absurdly high prices AT&T and BellSouth currently charge for tariffed services.

\(^1\) See Letter of Karen Reidy et al., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-74 (Sept. 22, 2006) (“Sept. 22 Ex Parte”).
Accordingly, the merger condition proposed by the parties to this letter that would require the merged AT&T-BellSouth to reduce its tariffed special access service rates pursuant to a reinitialization and subsequent application of an X Factor, must include the requirement that the merged AT&T-BellSouth reduce the MARCs in volume/term agreements. The amount of such reductions should be equal to the amount by which a customer's purchase of eligible services would be reduced as a consequence of the merger condition.

The following example illustrates the manner in which this requirement would work. Assume that AT&T’s contract with customer A provides that customer A purchase $10 million of eligible services from AT&T between January 1, 2007 and December 31, 2007 in order for customer A to qualify for the volume/term discount. Assume also that customer A is on course by the end of the year to purchase $2 million in eligible, non-special access services and $8 million in eligible special access services, the price of which will be reduced by 25 percent by the merger condition reducing generally available tariffed special access rates. If the merger condition reducing special access rates by 25 percent were to go into effect on January 1, 2007, customer A would miss its $10 million MARC by $2 million (25 percent of $8 million). To avoid this outcome, the merged AT&T-BellSouth would be required to set the MARC at $8 million for 2007 and reduce the MARC for the following year by $2 million. Similarly, if the merger went into effect on June 30, 2007, customer A would miss its MARC by $1 million in 2007. To avoid this outcome, the merged AT&T-BellSouth would be required to set the MARC at $9 million for 2007 but reduce the MARC by $2 million in the following year (as if the 25 percent discount applied to the whole year).

Please let us know if you have any questions in connection with this submission.

Respectfully submitted,

__________________________
Karen Reidy
Vice President, Regulatory Affairs
COMPTEL
1900 M Street, NW, Suite 800
Washington, DC  20036
(202) 872-5740

---

2 See Sept 22 Ex Parte, Exhibit A, Condition (2), Exhibit B at 11-12 (describing rate reinitialization and X Factor condition proposal).

3 The 25 percent rate reduction is used herein solely to provide a simplified illustration of the manner in which the MARC reduction should be accomplished. The reinitialization proposed in the September 22 Ex Parte could result in a rate reduction that is smaller than 25 percent.
Colleen Boothby  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, NW, Suite 900  
Washington, DC 20036  
(202) 857-2250  
Counsel for AdHoc Telecommunications Users Committee

Jennifer A. Manner  
Vice President, Regulatory Affairs  
MOBILE SATELLITE VENTURES SUBSIDIARY LLC  
10802 Parkridge Boulevard  
Reston, VA 20191  
(703) 390-2700

Don Shepheard  
Vice President, Federal Regulatory Affairs and Policy  
Time Warner Telecom Inc.  
228 Blanchard Road  
Braintree VT 05060  
(802) 728-5489

cc: Michelle Carey  
Ian Dillner  
Scott Deutchman  
Scott Bergmann  
Thomas Navin  
Renee Crittendon  
Nick Alexander  
Don Stockdale