

Andrew D. Lipman
 Direct Phone: (202) 373-6033
 Direct Fax: (202) 424-7647
 andrew.lipman@bingham.com

December 11, 2006

Via ECFS

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

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

Re: AT&T and BellSouth Merger Application, WC Docket 06-74

202.424.7500

202.424.7647 fax

Dear Ms. Dortch:

bingham.com

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

On behalf of FiberTower Corporation (NASDAQ: FTWR), we are writing to express public interest concerns regarding the proposed merger between AT&T and BellSouth. . In particular, FiberTower is concerned that if the Commission approves the merger without appropriate conditions, AT&T will undermine the more pro-competitive terms and conditions in its merger partners' interconnection agreements regarding Microwave Collocation. FiberTower urges the Commission to impose an additional condition to the proposed merger that would benefit competition and enhance national security by prohibiting AT&T from further impeding microwave collocation at its central offices in both its own region and the current BellSouth territory.¹

FiberTower is a leader in delivering wireless backhaul and access services to mobile carriers and the enterprise and government markets. FiberTower's extensive spectrum assets cover nearly 99 percent of the U.S. population, positioning FiberTower to provide facilities-based high capacity connectivity to the vast majority of cell sites and office buildings that may not have access to fiber, seek a wireless redundancy solution or lack a competitive alternative to RBOC special access services for their backhaul needs. The connectivity FiberTower provides advances a number of critical Commission objectives, including promoting the availability of reliable and robust competitive wireless broadband services that are increasingly viewed as substitutes for traditional wired network services.

¹ Fibertower notes that XO had previously proposed a related merger condition. See Letter of Brad E. Mutschelknaus and Edward A Yorkgitis, Jr., to Marlene H. Dortch, (filed Sep. 18, 2006) ("*XO Sep. 18 Ex Parte*"); Letter of Brad E. Mutschelknaus and Edward A Yorkgitis, Jr., to Marlene H. Dortch, (filed Oct. 4, 2006); Letter of Brad E. Mutschelknaus and Edward A Yorkgitis, Jr., to Marlene H. Dortch, (filed Oct. 24, 2006).

CLARIFY MICROWAVE COLLOCATION RIGHTS

FiberTower is concerned that a combined AT&T and BellSouth could use their aggregated market power to impede access to rooftop collocation on AT&T and BellSouth central offices that wireless backhaul providers need to provide their competition-enhancing services. As detailed in *Ex Parte* letters from XO, it appears that AT&T maintains policies and procedures that frustrate competitors' access to AT&T's central offices for microwave collocation.² In particular, FiberTower is concerned that AT&T allegedly treats requests for microwave collocation as non-standard requests despite the fact that both AT&T and its merger partner appear to have established terms and conditions providing for such access. Any AT&T refusal to process such requests under standard interconnection agreement provisions, and through the Bona Fide Request process will lead to substantial delays in network and customer provisioning.

Furthermore, FiberTower is alarmed that AT&T will export these practices and policies to the BellSouth region where BellSouth has established pro-competitive policies and interconnection agreements that provide for microwave collocation. To that end, FiberTower proposes that, to the extent the Commission approves the merger application, it should include an additional condition prohibiting AT&T from exporting its practices that impede microwave collocation from the AT&T region to BellSouth territory and should further adopt BellSouth's practices and policies for use in AT&T's current 13-state region on a going forward basis.

The Commission, relying on its substantial public interest authority,³ must adopt this condition not only to ensure that the merger yields public interest benefits regarding competition, but also so that the merger yields public interest benefits in regards to national security.

PHYSICALLY DIVERSE NETWORKS & NATIONAL SECURITY

Because of national security concerns regarding this country's telecommunications infrastructure, Congress has expressed a strong preference for establishing physically-diverse telecommunications networks. For example, Congress mandated that any telecommunications service procured for any Federal Government-owned building "use ... physically diverse local network facilities for the provision of such telecommunications services."⁴

The Federal Government has recognized that microwave systems were instrumental in maintaining and restoring services in lower Manhattan in aftermath of the tragic events of September 11, 2001. Additionally, microwave, satellite and other wireless technologies

² See *XO Sep. 18 Ex Parte*, pp. 4-6.

³ See 47 U.S.C. §§ 214(a), 303(r), 310(d).

⁴ Pub. L. 108-447, Div. H, § 414, 118 Stat. 3260 (2004) ("Section 414").

assisted in the restoration and recovery from the Gulf Coast Hurricanes, particularly Katrina.

It thus follows, that it is in the public interest to ensure that the largest telecommunications company in the nation (post-merger AT&T and BellSouth) may not erect barriers to advanced telecommunications technologies and infrastructure that provide the redundancy currently missing from the national telecommunications infrastructure. It is also in the public interest that AT&T provide to all carriers, pursuant to the proposed merger condition, a pragmatic, easily verifiable, technology neutral, method for allowing physically diverse networks to collocate at AT&T central offices.

Bingham McCutchen LLP
bingham.com

The Commission can also discount AT&T's opposition to this condition. While AT&T seeks with one hand to promote the development of fixed wireless competition as support for its merger application,⁵ it acts with the other hand to impede the effectiveness of such competition by erecting artificial barriers such as those detailed by XO.⁶ Throughout this proceeding, AT&T has claimed that the AT&T and BellSouth face competition from CLECs using fixed wireless and are "rapidly expanding their fixed wireless footprints" to compete with AT&T and BellSouth.⁷ If AT&T's assertions regarding fixed wireless competition are to be credited, the Commission must take reasonable steps to ensure that AT&T is not allowed to thwart such competition in the event its merger application is approved.

The Commission has consistently required the RBOCs to provide rooftop space for competitors to collocate microwave facilities. Section 51.323 of the Commission's rules requires that ILECs "[p]ermit physical collocation of microwave transmission facilities."⁸ In addition, the Commission has adopted Expanded Interconnection rules providing that "Interconnectors shall have the right, under expanded interconnection, to interconnect their fiber optic systems and, where reasonably feasible, their microwave transmission facilities."⁹ These rules also clearly state that collocators have the right to place their equipment "within or upon the local exchange carrier's buildings."¹⁰

⁵ See AT&T and BellSouth Reply Comments, at pp. 16, 41, 93 (filed June 20, 2006) (arguing that "carriers are increasingly using fixed wireless to provide dedicated transmission services" to rebut allegations that AT&T and BellSouth retain market power for dedicated access services.)

⁶ See *XO Sep. 18 Ex Parte*, at p. 8.

⁷ AT&T and BellSouth Reply Comments at pp. 41.

⁸ 47 C.F.R. § 51.323(d)(4).

⁹ 47 C.F.R. § 64.1402 (b).

¹⁰ 47 C.F.R. § 64.1401(a).

The Honorable Marlene H. Dortch, Secretary
December 11, 2006
Page 4

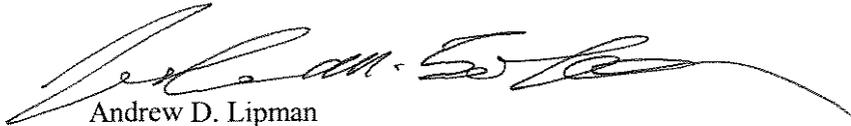
AT&T and BellSouth possess substantial microwave licenses and systems and routinely utilize those systems in their networks, so little technical objection exists for embracing microwave collocation.

CONCLUSION

Before the Commission is the issue of whether to approve the creation of the largest telecommunications company in the nation and whether this new company may thwart the public interest, competition, and national security interests by stifling the collocation of physically diverse, facilities based microwave networks.

Consistent with its charter, the Commission should adopt the condition proposed herein so that AT&T is not allowed to continue undermining these rules (as it has apparently managed to do within its existing territory); and so that AT&T's practices post-merger (to the extent the merger application is granted) conform to the requirements established by Congress and the Commission.

Respectfully submitted,



Andrew D. Lipman
Joshua M. Bobeck

Counsel for FiberTower

cc: Michelle Carey
Ian Dillner
Scott Bergmann
Scott Deutchman
John Hunter
Gary Remondino
Nicholas Alexander
Bill Dever
Renee Crittendon

Bingham McCutchen LLP
bingham.com