NTCA
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

October 20, 2006

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, D.C. 20554

Re: *ExParte* Notice

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

Dear Ms. Dortch:

On Friday, October 20, 2006, Scott Bergmann, Legal Advisor to Commissioner Jonathan Adelstein, and Chris Reichman, FCC Intern, met with Daniel Mitchell, Vice President and Karlen Reed, Regulatory Counsel of the National Telecommunications Cooperative Association's (NTCA) Legal and Industry Division to discuss NTCA's positions regarding the above docket. The discussions were consistent with NTCA's positions in previously filed comments and pleadings in the above-referenced dockets. At the meeting NTCA presented the enclosed summary of NTCA's positions regarding merger conditions, special access merger conditions proposed by COMPTEL and others on September 22, 2006, and AT&T's October 13, 2006 proposed merger conditions.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2146.

Sincerely,

/s/ Daniel Mitchell
Daniel Mitchell
Vice President, Legal and Industry

/s/ Karlen Reed
Karlen Reed
Regulatory Counsel, Legal and Industry

KJR/kr
Enclosure
cc: Scott Bergmann

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
Phone/703.351.2000 • Fax/703.351.2001 • www.ntca.org

WC 06-74 NTCA vs. CompTel vs. ATT/BellSouth on merger conditions
Updated 10-20-06

NTCA – 6-20-06 Reply	**CompTel – 9-22-06 – ex parte**	**ATT/BellSouth 10-13-06 - for a period of thirty months from the Merger Closing Date and would automatically sunset thereafter.**
1. Provide rural ILECs and other small communications companies with the same wholesale terms, conditions and prices to interconnect and gain access to the merged company's facilities that comprise the public communications network (PCN) as the merged company offers to its affiliates and subsidiaries (e.g., access to long distance/toll facilities, access to the Internet backbone (including special access, DS1s, DS3s, and Internet protocol (IP) bandwidth), and access transiting services (including tandem switching and transport)).	(1) a special access service rate regulation and price cap condition that eliminates Phase II pricing flexibility[8] for DS1, DS3, certain Ethernet services and any other local transmission services that offer similar revenue opportunities in all areas in the Merged Firm's ILEC territory and re-establishes a lower price cap for special access services;	1. AT&T/BellSouth affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Act ("AT&T/BellSouth BOCs") will implement, in the AT&T andBellSouth Service Areas,[5] the Service Quality Measurement Plan for Interstate Special Access Services ("the Plan"), similar to that set forth in the SBC/AT&T Merger Conditions. The AT&T/BellSouth BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed therein. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T/BellSouth BOCs' monthly performance in delivering interstate special access services within each of the states in the AT&T and BellSouth Service Areas. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T and BellSouth section 272(a) affiliates, (ii) their BOC and other affiliates, and (iii) non-affiliates.[6] The AT&T/BellSouth BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The AT&T/BellSouth BOCs shall implement

		the Plan for the first full quarter following the Merger Closing Date. This condition shall terminate on the earlier of (i) thirty months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T/BellSouth files its 10th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.
2. To the extent that the newly formed merged company will provide and control distribution of video programming, the Commission should require the merged company to provide access to this video programming to rural ILECs and small companies utilizing shared headends with the same quality, terms, conditions and prices as the newly merged company offers to its affiliates and subsidiaries, as well as other companies similar in size to the merged company.	(2) a baseball-style, best and final offer arbitration procedure that may be invoked by those seeking to purchase special access service from the Merged Firm under volumeterm contracts rather than under price caps;	2. AT&T/BellSouth shall not increase the rates paid by existing customers (as of the Merger Closing Date) of DS1 and DS3 local private line services that it provides in the AT&T/BellSouth in-region territory pursuant to, or referenced in, TCG FCC Tariff No. 2 above their level as of the Merger Closing Date.
3. Provide Most Favored Nation (MFN) conditions on all of the merged company's contracts involving interconnection and access to the PCN, IP backbone, and video programming so that rural carriers and other small companies can obtain the same favorable terms, conditions and prices that large carriers, or affiliated carriers of the merged company, receive in their contracts with the merged company.	(3) a fast track (120 day) arbitration procedure for alleged breaches of resulting agreements and any other forms of unreasonable conduct by the applicants in the provision of special access service under a commercial agreement or tariff offering;	3. AT&T/BellSouth will not provide special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.

4. Disclose publicly the terms and conditions of contracts involving interconnection and access to the PCN, IP backbone and video programming. Prohibiting non-disclosure agreements will assist in ensuring that rural carriers and their customers receive the same quality service and reasonable prices for these facilities and services.	(4) a prohibition on the Merged Firm conditioning the availability of any discounts off of special access service tariffed prices on requirements that are not reasonably related to the efficiencies yielded by volume and/or term commitments;	4. To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified contract tariffed service under section 69.727(a) of the Commission's rules to its own section 272(a) affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates. AT&T/BellSouth also will not unreasonably discriminate in favor of its affiliates in establishing the terms and conditions for grooming special access facilities.
5. Cap the newly merged company's wholesale rates for wholesale DS1 and DS3 local private line services for a minimum of 5 years.	(5) a requirement that the Merged Firm permit a customer to "port" the entirety of an existing special access service plan or commercial agreement (except for state-specific rates) from a state in the Merged Firm's territory in which it currently is effective to any other state in the Merged Firm's territory;	5. AT&T/BellSouth shall not increase the rates in its interstate tariffs, including contract tariffs, for special access services that it provides in the AT&T/BellSouth in-region territory and that are set forth in tariffs on file at the Commission on the Merger Closing Date.
6. Cap the newly merged company's wholesale rates and tariffs for special access services, including contract tariffs that either company provides in its in-region territory, at AT&T's and BellSouth's current rates for these wholesale services for a minimum of 5 years.	(6) in order to ensure that the above conditions have a meaningful effect in the marketplace, (a) a limited one year fresh look option for affected special access service customers and (b) agreement by the Merged Firm that any grant of forbearance under Section 10 of the Communications Act, as amended, shall not diminish, alter or in any way	**Promoting Accessibility of Broadband Service** 1. By December 31, 2007, AT&T/BellSouth[1] will offer broadband Internet access service (*i.e.*, Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory. To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline

	affect the Merged Firm's obligations or responsibilities under these merger conditions.	technologies (the "Wireline Buildout Area"). The merged entity will make available broadband Internet access service to the remaining living units using alternative technologies and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.
7. Cap the newly merged company's rates and tariffs for transiting services, including contract tariffs that either company provides in its in-region territory, at AT&T's and Bell South's current rates for these services for a minimum of 5 years.		2. AT&T/BellSouth will provide an ADSL modem without charge (except for shipping and handling) to residential subscribers within the Wireline Buildout Area who, during calendar year 2007, replace their AT&T/BellSouth dial-up Internet access service with AT&T/BellSouth's ADSL service and elect a term plan for their ADSL service of twelve months or greater.
8. Require the newly merged company to maintain settlement-free peering arrangements with at least as many providers of Internet backbone services as it did prior to the merger for a minimum of 5 years.		3. AT&T/BellSouth will offer to retail consumers in the Wireline Buildout Area who have not previously subscribed to AT&T's or BellSouth's ADSL service broadband Internet access service at a speed of up to 768 Kbps at a monthly rate (exclusive of any applicable taxes and regulatory fees) of $10 per month. **Public Safety and Disaster Recovery** 1. By June 1, 2007, AT&T will complete the steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory in the event of an extended service outage caused by a hurricane or other disaster.

2. In order to further promote public safety, within thirty days of the Merger Closing Date, AT&T/BLS will donate $1 million to a section 501(c)(3) foundation or public entities for the purpose of promoting public safety.

UNEs

1. The AT&T and BellSouth incumbent LECs shall continue to offer and shall not seek any increase in State-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. This condition shall not limit the ability of the AT&T and BellSouth incumbent LECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.
2. AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (*i.e.*, own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.
3. AT&T/BellSouth shall terminate all pending audits of compliance with the Commission's EELs eligibility criteria

and shall not initiate any new audits.

Wireless

AT&T/BellSouth shall initiate ten new trials of broadband Internet access service using 2.3 GHz or 2.5 GHz spectrum by the end of 2007. At least five of those trials will be conducted in BellSouth's in-region territory.

Transit Service

The AT&T and BellSouth incumbent LECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T and BellSouth incumbent LECs provide in the AT&T/BellSouth in-region territory.

ADSL Service

1. Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the "implementation date" in that state. For purposes of this condition, the "implementation date" for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth's in-region territory in that state. Within twenty days after meeting the implementation date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.

2. AT&T/BellSouth will extend until thirty months after the Merger Closing

Date the availability within AT&T's in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the *SBC/AT&T Merger Order* (FCC 05-183).

ADSL Transmission Service

AT&T/BellSouth will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the combined AT&T/BellSouth territory that is functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date. Such wholesale offering will be at prices comparable to those available in the overall market for wholesale broadband services.

Net Neutrality

Effective on the Merger Closing Date, and continuing for thirty months thereafter, AT&T/BellSouth will conduct business in a manner that comports with the principles set forth in the FCC's Policy Statement, issued September 23, 2005 (FCC 05-151).

Forbearance

For thirty months from the Merger Closing Date, AT&T/BellSouth will not seek a ruling, including through a forbearance petition under section 10 of the Communications Act (the "Act") 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

Annual Certification

For three years following the Merger Closing Date, AT&T/BellSouth shall file annually a declaration by an officer of the

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

corporation attesting that AT&T/BellSouth has substantially complied with the terms of these conditions in all material respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, the second and third declaration shall be filed one and two years thereafter respectively.

In addition to those conditions, we also discussed the possibility of further conditions relating to the repatriation to BellSouth territory of jobs that had been expatriated to overseas locations, Internet backbone peering arrangements, network neutrality non-discrimination, and the impact of Commission forbearance decisions on any conditions that might be imposed.