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December 29, 2006

VIA ECFS

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

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

Dear Ms. Dortch:

I have been asked by Cbeyond Communications, Nuvox Communications and XO Communications (hereafter, the "CLECs") to comment briefly on the revised set of "Merger Commitments" filed by AT&T in the above-referenced docket very late last evening. Letter of Robert Quinn of AT&T to Marlene Dortch of the FCC, filed in Docket No. 06-74 (dated December 28, 2006) ("Revised AT&T Merger Commitments"). As a general matter, we again endorse the full slate of merger commitment modifications filed by CompTel on October 25, 2006. The record is clear that the proposed merger creates numerous substantial harms to competition, and that much more robust conditions than those proposed by AT&T are required before such merger can be found to be in the public interest. However, we limit our comments at this time to the most glaring problems posed by the Revised AT&T Merger Commitments filed last night.

1. TERM: The term of the UNE-related commitments is 42 months, while the term of special access-related conditions is 48 months. The term of UNE-related conditions should be at least as long as those relating to special access.¹

¹ See Revised AT&T Merger Commitments, p. 1.

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2. UNE RATE FREEZE: The following newly inserted language is a loophole that applicants can exploit to grossly undercut the spirit of their commitment to not increase UNE rates: "...unless such new or increased surcharge is authorized by the applicable interconnection agreement or tariff, and by the relevant state commission." This language can be read to state that the applicants will not raise UNE rates unless they can convince a state commission to allow a surcharge. That cannot be the intention, and the language of the proviso quoted above must be stricken. At an absolute minimum, the terms "or tariff" must be stricken, as tariff filing is essentially a unilateral action of the applicants.²

3. WIRE CENTER RECALCULATION: The wire center recalculation criteria still erroneously permits the applicants to include UNEs when calculating the business lines used to determine qualifying wire centers. Thus, subsection (iii) of UNE condition number 2, needs to be revised to provide "UNEs and special access lines obtained by AT&T..."³ In addition, clarification should be added that where wire centers are added back to those which are impaired, CLECs can convert special access circuits to UNEs without charge.⁴

4. ICA PORTABILITY: Condition number 1 in the interconnection agreement section should be expanded to include special access volume and term agreements as well as interconnection agreements. The loss of benchmarking as a tool to discipline RBOC behavior applies equally to both. The purchase of BellSouth by AT&T should not be permitted to export AT&T's anticompetitive form of special access volume and term agreement to the prior BellSouth territory.⁵

5. SPECIAL ACCESS: A glaring omission from the special access relief is the failure to require AT&T adopt the BellSouth practice of permitting circuit portability in their special access volume and term agreements. This is especially true with respect to the loop portion of special access circuits. The following language should be added: "AT&T/BellSouth will permit customers to port individual channel terminations as necessary to satisfy volume commitments."⁶

² See Id., p. 2.

³ See Id., p. 3.

⁴ See Id.

⁵ See Id.

⁶ See Id., pp. 3-6.

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We emphasize that these comments are not intended to be exhaustive. They simply reflect the most glaring mistakes and omissions identified overnight.

Sincerely,



Brad E. Mutschelknaus

BEM:tem

cc: Scott Bergmann
Dan Gonzalez
Ian Dillner
Scott Deutchman
Michelle Carey