

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

AT&T Inc. and BellSouth Corporation)	
Applications for Approval of)	WC Docket No. 06-74
Transfer Of Control)	

**SUPPLEMENTAL COMMENTS
of
CONSUMER FEDERATION OF AMERICA,
CONSUMERS UNION,
FREE PRESS,
and
U.S. PUBLIC INTEREST RESEARCH GROUP**

To: The Commission

Consumer Federation of America, Consumers Union, Free Press and U.S. Public Interest Research Group (CFA *et al.*) respectfully submit these Supplemental Comments in the above-captioned proceeding. These comments respond to the Commission's Public Notice (DA 06-2035) of October 13, 2006 seeking input on the proposals made by AT&T and BellSouth in a letter filed with the Commission on that same date.

At the outset, it is important to remember the context in which the AT&T/BellSouth letter must be evaluated. The companies propose merger conditions to a merger which expands market dominance over wireline, wireless and broadband services throughout the Southeast United States, likely leading to inflated local, long distance, broadband and cell phone prices for the majority of consumers in this region. In light of the fact that, as AT&T continues to expand its efforts to virtually recreate key

elements of the old Ma Bell monopoly, with its profits soaring,¹ it is imperative that the Commission ensure that merger conditions truly create market conditions which preserve and enhance the possibility of growing competition for all telecom services provided to all consumers in the region. Unfortunately, the AT&T/BellSouth merger conditions look like short-term "monopoly concessions" from a consolidated dominant market firm, rather than meaningful steps to preserve and enhance consumer choices from competitors who could help ensure that AT&T/BellSouth build out further broadband access, drive down prices and improve service to consumers.

The potential merger conditions outlined in AT&T's supplemental filing are insufficient to protect the public interest. The proposed conditions do little, if anything, to mitigate the negative effects the merger will have on consumers and competitors alike. In some cases, the proposed "conditions" represent nothing more than garden-variety "salute the flag" sloganeering. In others, the "conditions" outlined by AT&T appear to be little more than marketing strategies designed to entice existing customers to buy new services.

In this proceeding, the Commission has the opportunity to acknowledge the existence of network bottlenecks that this merger would further constrict and the increasing risk of discrimination by network operators against competitive online content and service providers. The Commission must take appropriate steps to preserve and strengthen the already minimal competition in telephony and broadband services.

Network Neutrality. AT&T's proposed network neutrality condition is vague, insubstantial and unenforceable. Perhaps in some parallel universe a pledge to "conduct

¹ AT&T Inc. reported \$2.17 in profits during the 3rd quarter, exceeding expectations. *See, e.g.*, "AT&T earnings rise 74 percent" <http://www.businessweek.com/ap/financialnews/D8KUJ7Q82.htm> (last visited October 24, 2006).

business in a manner that comports with the principles set forth in the FCC's Policy Statement" on net neutrality is meaningful. But in *this* world, and especially when the "new AT&T" appears before this Commission, such a pledge amounts to nothing. In our earlier filings, CFA/CU and others have documented the long trail of broken promises and missed commitments extending in an unbroken line from SBC/Ameritech to the present. Given this history, it is particularly important that the Commission insist that AT&T conduct its business in compliance with a clearly articulated, measurable and enforceable set of standards built upon the four "net neutrality" principles.

In addition, the Commission should require AT&T to comply with an additional fifth principle of non-discrimination with respect to both content and services. The Internet remains one of the last arenas in the telecom/information services market where consumers can still choose from among competing service providers and where independent producers of content can hope to find a market. This relatively free market must remain available to consumers and content producers alike. The bottleneck that an even more powerful AT&T can create to competitive services becomes an even greater concern as AT&T begins acquiring content for IPTV and other services. A fifth "principle of non-discrimination" (*with* a clearly articulated set of performance standards and a meaningful enforcement mechanism) should remain in effect for no fewer than seven years following the merger closing date. A shorter period, such as thirty months with automatic sunset as proposed by AT&T, would not provide opportunities for competitive broadband providers to emerge and offer an alternative to AT&T's broadband services.

Stand-alone DSL. The merging parties should be required to offer broadband service to all ADSL-capable consumers without requiring those consumers to also purchase

circuit switched telephone service, as the merging parties appear to be proposing under the heading “ADSL Service.” However, the merging parties’ proposal that the commitment terminate after only 30 months does not provide enough time for competitive broadband and VOIP service providers to gain a foothold in the marketplace. Adequate time to deploy competing facilities based networks is particularly important now, given the limited availability of spectrum for competitive wireless broadband providers.

The second problem with the proposed condition offered by AT&T/BellSouth for “ADSL Service” is the lack of any commitment to offer the stand-alone service available at reasonable prices *to all retail consumers throughout the Wireline Buildout Areas of both parties*. The \$10 a month price commitment set forth elsewhere in the proposed conditions (under the heading “Promoting Accessibility of Broadband Service”) applies only to bundles of phone service and ADSL service purchased by retail consumers “who have not previously subscribed to AT&T’s or BellSouth’s ADSL service.”

Without reasonably priced services, consumers will not have meaningful access to stand-alone DSL service, allowing the merged entity to reduce or eliminate the viability of competitive, independent voice-over-Internet-protocol phone service providers. VOIP customers must first have access to broadband before they can use low-cost VOIP services. Pricing stand-alone DSL services at a sufficiently high level as to eliminate any incentive for consumers to buy stand-alone DSL does nothing to mitigate the anti-competitive effects of this merger on residential phone service.

Our concern with anti-competitive pricing is not based on mere speculation. It is based upon on AT&T’s conduct following the SBC/AT&T merger. As reported in the *San Francisco Chronicle* on June 17th of this year, AT&T did not publicize the availabil-

ity of stand-alone DSL, nor advertise the rate. But when it began to take telephone orders for stand-alone DSL from those consumers who somehow learned of its availability, the quoted rate was \$44.99 per month, *one dollar less than the least expensive regular bundle of DSL and phone service.*

The Commission should insist that AT&T price stand-alone DSL services offered to all retail customers reasonably and at rates no higher than the rates for AT&T's lowest available discounted DSL service offered to new or existing customers for a significant period of time. Thus, stand-alone DSL service should be available for \$10 in markets where AT&T is also offering its bundled broadband Internet service for \$10 per month, as it proposed in its supplemental filing. This condition would have the added advantage of preventing AT&T from squeezing out competitive broadband providers by offering predatory price discounts on bundled DSL service.

Special Access. The existing mechanisms for resolving disputes between the ILECs and competing service providers are costly, cumbersome and time-consuming. By the time a competitive carrier manages to "win" a decision in a dispute over special access fees, it may have already been forced out of the market. Exorbitant and unregulated special access fees have served as anticompetitive barriers and have resulted in increased costs to competitors, costs that are passed on to their residential and business customers.

As we explained in our earlier comments, this proceeding provides an opportunity for the Commission to require AT&T to agree to a more streamlined, less costly and fairer dispute resolution process. To protect competitive providers and the business and residential customers who use the services both in and out of the merger territory, the Commission should require that special access rates and charges be just and reasonable

and that negotiations over special access fees be subject to baseball-style binding arbitration. Baseball-style binding arbitration would protect the smaller carriers and their customers from continued exposure to costs and delays associated with mounting a case against the legions of attorneys and experts that AT&T can afford, and also provide incentives for AT&T to engage in good-faith commercial negotiations to avoid the uncertain outcome of the arbitration process.

Spectrum Divestiture. The “Wireless” condition proposed by AT&T and BellSouth is plainly inadequate to address the problem identified in our earlier comments – the lack of availability of sufficient spectrum that a serious new entrant could use to launch a third broadband service in the combined AT&T/BellSouth territory. For a company with the geographic reach, financial and spectrum resources of the combined AT&T/BellSouth, “initiat[ing] ten new trials of broadband Internet access service using 2.3 GHz or 2.5 GHz spectrum by the end of 2007” could well be nothing more than a commitment to launch the same number of trials as they would have launched without the merger. The wireless trials proposed by AT&T in its supplemental filing have nothing to do with the merger and do not mitigate the anticompetitive effects of this merger. The proposal does nothing to make spectrum available for use by alternative broadband competitors. It merely provides AT&T, already the dominant provider of wireline and wireless broadband services in its region, a second “wireless broadband pipe” over which to offer an additional service to its customers.

To mitigate AT&T’s market power with respect to in-region broadband and wireless markets, AT&T/Bell South should be required to divest sufficient spectrum to make

it possible for one or more unaffiliated broadband competitors to offer wireless broadband service as a competitive alternative to AT&T's wireline DSL service.

The core conditions outlined above address the fundamental concerns about the anticompetitive network bottlenecks that a combined AT&T/Bell South would further constrict. The Commission should impose conditions that directly address these core issues and reject terms that do not mitigate the adverse impacts of the merger itself.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing “Supplemental Comments of Consumer Federation of America, Consumers Union, Free Press, and U.S. Public Interest Research Group” were sent this 24th day of October, 2006 via first class United States mail, postage prepaid, to the following:

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