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February 25, 2005

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Federal Communications Commission
Office of Secretary

By Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: Application Seeking Consent of Merger of SBC Communications, Inc. and AT&T Corp. dated February 22, 2005

Dear Ms. Dortch:

On February 21, 2005, SBC Communications, Inc. ("SBC") and AT&T Corp. ("AT&T") (together, "Applicants"), submitted an application to the Commission seeking approval of the transfer of control of AT&T to SBC ("Application"). Covad Communications, Comp. ("Covad"), Eschelon Telecom, Inc. ("Eschelon"), NuVox Communications ("NuVox"), and XO Communications, Inc. ("XO"), by their attorneys, hereby requests the Commission refrain from issuing a *Public Notice* accepting the Application, until the Applicants supplement their Application with additional information needed by the Commission and interested parties to analyze the merits of the Application. In light of the complexity of the issues raised by the Application, not to mention the importance of their proper resolution for the future of competitive telecommunications markets in the United States, Covad, Eschelon, NuVox, and XO further requests that once such additional information is provided to the Commission – or in the event that such information is not requested by the Commission – that Petitions to Deny and other Comments on the Application be due no sooner than 60 days after release date of the *Public Notice*, and that Replies to the potential Opposition to Petitions to Deny be due no sooner than 30 days after filing of any Opposition to Petitions to Deny.

The Applicants have proposed an unprecedented merger of the country's largest facilities-based competitive local-exchange carrier and also its largest interexchange carrier with

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an entity that represents the combined strength of three of the original seven Regional Bell Operating Companies. This transaction, if consummated, will have a permanent, far-reaching impact on the provision and use of telecommunications services throughout the United States. The Applicants, however, have not provided adequate information with the Application for the Commission or interested parties to review, analyze and comment on the impact the proposed merger will have on relevant competitive markets. For example, although the Application contains some qualitative information regarding the Applicants' view on the impact the potential merger will have on retail markets, there is very little, if any, supporting quantitative information.

Even more egregious, the Application is devoid of both data and discussion regarding the merger's impact on wholesale telecommunications markets which are central to the development of competitive local telecommunications services. More specifically, Applicants fail to provide information of meaningful detail regarding the parties' current provisioning and potential overlap of local exchange facilities. While the application includes a discussion of the potential combination of Internet assets,¹ the impact of combining these two leading facilities-based local exchange carriers, and a specific discussion of areas in which overlapping co-location facilities will exist, is not addressed in a manner to afford parties the ability to assess how they may be impacted or assist the Commission in its public interest analysis. Similarly, while "mass market customers" and the provision of services to businesses is discussed, at least at a superficial level, there is essentially no discussion whatsoever of how the potential merger will affect wholesale customers, especially in light of recent Commission decisions that relied, at least in part, upon the presence of AT&T's CLEC facilities as an element in finding CLECs not to be impaired with regard to certain network elements in certain locations. Further, while costs efficiencies relevant to SBC are discussed in some detail, there is no substantive discussion of the economic impact to competing, facilities-based, local exchange carriers.

Therefore, in order for the Commission to review the Application as part of its public interest analysis, Covad, Eschelon, NuVox, and XO hereby requests the Commission require additional information from Applicants to cure the aforementioned deficiencies before issuing a *Public Notice* and establishing a pleading schedule.

Furthermore, whether the Commission requests additional information or not, Covad, Eschelon, NuVox, and XO requests that when the Commission releases its *Public Notice*, it provide that that Petitions to Deny the Application be due no sooner than 60 days after release date of the *Public Notice*. The Commission should also allow Replies to any Opposition to Petitions to Deny up to 30 days after filing of any Opposition to Petitions to Deny. The reason for these time periods relates both to the complexity of the Applications involved and to the potential significance of the contemplated merger. Both companies are in markets throughout

¹ Merger of SBC Communications, Inc. and AT&T Corp., Declaration of Marius Schwartz.

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the United States. SBC is the leading incumbent LEC in over a dozen states, including some of the most populous such as California, Texas, Illinois, Michigan, Ohio, and Missouri. SBC represents the combination of three of the original seven Regional Bell Operating Companies. AT&T, of course, is a facilities-based local exchange competitor of SBC in a large number of markets. In fact, AT&T is the nation's largest CLEC. It also remains this country's largest interexchange carrier, despite recent declines in its subscribership, over twenty-years after it divested the predecessor companies to SBC, and their sisters. The Application, despite its deficiencies, makes clear the need to examine the potential impact of the merger in numerous product and geographic markets. Moreover, the Application was filed very quickly after the merger was publicly announced on January 31, 2005, affording interested parties little opportunity to advance prepare for an analysis of, and Commission submissions regarding, the proposed merger. This is especially germane considering the Commission's recent release of several major decisions affecting the telecommunications industry. For all of these reasons, extended time frames for Petitions to Deny and Replies are justified.

Thank you for your attention to this matter. If there are any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



Brad E. Mutschelknaus 
Attorney for
Covad Communications, Comp.
Eschelon Telecom, Inc.
NuVox Communications
XO Communications, Inc.

cc: Wayne Watts, Senior Vice President and Assistant General Counsel, SBC Communications, Inc.
Lawrence J. Lafaro, Federal Regulatory Vice President, AT&T Corp.
Bryan Tramont, Chief of Staff, Office of FCC Chairman Michael K. Powell
Christopher Libertelli, Senior Legal Advisor, Office of FCC Chairman Michael K. Powell
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