

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

_____ )	
In the Matter of )	
SBC Communications Inc. and AT&T Corp. )	WC Docket No. 05-65
Application for Consent to Transfer Control )	
_____ )	

**COMMENTS OF THE  
TELECOMMUNICATIONS CONSULTANTS COALITION**

Center for Communications Management Information, Econobill Corporation and Online Marketing Inc. (together, the “Telecommunications Consultants Coalition” or the “Coalition”) submit these comments (“Comments”) in response to the Commission’s March 11, 2005 Public Notice seeking comment on the proposed merger of SBC Communications Inc. (“SBC”) and AT&T Corp. (“AT&T”) (together, the “Applicants”).<sup>1</sup> Although the Coalition takes no position on the approval of the transfer of control application, its members request that the Commission impose a condition on any such approval to ensure the merged entity’s compliance with the Commission’s requirements regarding the public disclosure of service rates, terms and conditions. The Coalition seeks this condition because AT&T has refused for the past two years to comply with this longstanding disclosure rule, to the detriment of competition in the enterprise market.

---

<sup>1</sup> FCC Public Notice, *Commission Seeks Comment on Application for Consent to Transfer of Control Filed by SBC Communications Inc. and AT&T Corp.*, WC Dkt. No. 05-65, DA No. 05-656 (rel. Mar. 11, 2005).

## ARGUMENT

In their merger application, SBC and AT&T emphasize the competitive nature of the business enterprise market and argue that the merger will not result in any lessening of competition in this market.<sup>2</sup> In particular, the Applicants argue that the customers in this market are highly sophisticated and are able to “employ knowledgeable and experienced consultants to assist them in obtaining the best possible terms for their telecommunications needs.”<sup>3</sup> In fact, however, AT&T is simultaneously undercutting competition in the enterprise market by refusing to make available to these “knowledgeable and experienced consultants,” among others, the very information that the Commission has determined is necessary to ensure competition.

Section 42.10 of the Commission’s rules requires that long distance carriers publicly disclose the rates, terms and conditions of all telecommunications service offerings.<sup>4</sup> This requirement was established at the time of detariffing of interexchange services to ensure that consumers – including business consumers – have access to sufficient information to make informed decisions regarding their telecommunications services and providers.<sup>5</sup>

---

<sup>2</sup> *Application for Consent to Transfer Control Filed by SBC Communications Inc. and AT&T Corp.*, Description of Transaction, Public Interest Showing, and Related Demonstrations, WC Dkt. No. 05-65, at 90-93 (filed Feb. 21, 2005).

<sup>3</sup> *Id.* at 90.

<sup>4</sup> 47 C.F.R. § 42.10.

<sup>5</sup> *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Order on Reconsideration, 14 FCC Rcd 6004, 6014-15 n.60 (1999) (“[I]n order for this disclosure requirement to be meaningful, it must apply to all arrangements, including mass market services and individually-negotiated service arrangements.”); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 15 FCC Rcd 22321, 22329 (CCB 2000) (“We reiterate the requirement... that information on all services must be publicly disclosed, including information on services offered through individually negotiated contracts.”).

AT&T, however, unilaterally and inexplicably in mid-2003 stopped disclosing specific information about its individually negotiated customer agreements that focus on business customer needs. Specifically, AT&T stopped providing information that was sufficient to allow customers to make informed decisions about their long distance service and instead began posting meaningless ranges of rates and information so truncated that no customer could determine what custom service offerings were available from AT&T, let alone compare them to other carriers' offerings. Accordingly, the members of the Coalition filed a formal complaint with the Commission against AT&T for violation of the Section 42.10 public disclosure requirements (the "Complaint").<sup>6</sup> At this time, the Complaint remains pending at the FCC's Enforcement Bureau.<sup>7</sup>

The Commission repeatedly has emphasized the importance of sufficient information to ensure the competitiveness of the market. The Commission also explicitly has recognized that many business consumers retain consultants to gather and analyze information regarding

---

<sup>6</sup> Center for Communications Management Information, Econobill Corporation, and On Line Marketing Inc. v. AT&T Corp., Formal Complaint, File No. EB-04-MD-008 (filed May 26, 2004).

<sup>7</sup> Although these Comments seek only the imposition of a condition on the proposed merger, they raise issues closely connected to the pending complaint proceeding. Accordingly, to ensure that all parties to the complaint proceeding are aware of this filing, copies are being served upon the relevant Enforcement Bureau staff and in-house and outside counsel for AT&T in the complaint proceeding, as set forth on the attached service list. *See* 47 C.F.R. §§ 1.1202, 1.1206 (Presentations in restricted proceedings, such as formal complaint proceedings, are prohibited unless the presentation is served on the parties to the proceeding.).

Further, pursuant to Sections 1.720(g) and 1.721(a)(9) of the Commission's rules, 47 C.F.R. §§ 1.720(g), 1.721(a)(9), the Coalition asks that the Enforcement Bureau treat this filing as an update to information submitted in the complaint record, informing the Enforcement Bureau that a portion of the relief requested in the complaint proceeding is now being sought in this merger proceeding by the same complainants based upon the same set of facts.

carriers' rates, terms and conditions. The Commission noted that consultants also must have access to such information in order to fulfill the Commission's important competitive policies:

Businesses and consumer organizations that analyze and compare the rates and services of interexchange carriers perform a valuable function in assisting consumers to judge the specific carriers' rates and service plans that are best suited to their individual needs. The foregoing [disclosure] requirement will ensure that such businesses, many of which are small businesses, continue to have access to the information they need to provide their services.<sup>8</sup>

Most recently, in the *Truth-in-Billing Order and FNPRM* released last month,<sup>9</sup> the Commission again highlighted the importance of adequate information to the proper functioning of the marketplace:

Unless consumers are adequately informed about the service choices available to them and are able to make reasonable price comparisons between service offerings, they are unlikely to be able to take full advantage of the benefits of competitive forces.... [O]ne of the fundamental goals of the truth-in-billing principles is to provide consumers with clear, well-organized, and non-misleading information so that they will be able to reap the advantages of competitive markets.... [This] will help to ensure that wireless consumers receive the information that they require to make informed decisions in a competitive marketplace.... [T]he "proper functioning of competitive markets... is predicated on consumers having access to accurate, meaningful, information in a format that they can understand...." [I]n order to ensure that these obligations apply nationwide to all carriers, we tentatively conclude that carriers must disclose the full rate... For instance, providing only a wide range of potential surcharges... could be misleading....<sup>10</sup>

---

<sup>8</sup> See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, 11 FCC Rcd 20730, 20777-78 (1996) ("*Detariffing Order*") (subsequent history omitted).

<sup>9</sup> *Truth-in-Billing and Billing Format*, Second Report and Order, CC Dkt. No. 98-170, FCC 05-55 (rel. Mar. 18, 2005) ("*Truth-in-Billing Order and FNPRM*").

<sup>10</sup> *Id.* ¶¶ 3, 17, 43, 55 (quotations omitted).

The principles underlying the Commission's statements in the *Truth-in-Billing Order and FNPRM* apply equally to the business or enterprise market at issue in the present merger application.

### **REQUEST FOR CONDITION**

The Commission should ensure that AT&T's flouting of its public disclosure requirements does not continue to adversely affect competition in the enterprise market following any merger and does not expand to the merged entity. The Coalition accordingly requests that the Commission condition any approval of the pending merger upon Applicants' compliance with the Section 42.10 public disclosure requirements for the enterprise market. The condition should require the disclosure of precise rates and other relevant terms and conditions sufficient to permit enterprise customers to make comparisons among the various services offered by a carrier and those of other carriers in order to make informed choices regarding their individual telecommunications service needs.

Respectfully submitted,

/s/ Cheryl A. Tritt  
Cheryl A. Tritt  
Joan E. Neal  
Jennifer L. Kostyu  
MORRISON & FOERSTER LLP  
2000 Pennsylvania Ave., NW  
Washington, D.C. 20006-1888  
202.887.1500

Attorneys for the Telecommunications  
Consultants Coalition

Date: April 25, 2005

## CERTIFICATE OF SERVICE

I, Theresa Rollins, certify that the foregoing **COMMENTS** were served on this 25th day of April, 2005, by electronic mail on all of the following, and also served on those indicated by an asterisk (\*) by hand delivery (those located in Washington, D.C.) or by overnight delivery (those located outside of Washington, D.C.):

Alexander P. Starr\*  
Chief  
Market Disputes Resolution Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
Email: [Astarr@fcc.gov](mailto:Astarr@fcc.gov)

Radhika Karmarkar\*  
Deputy Chief  
Market Disputes Resolution Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
Email: [Radhika.Karmarkar@fcc.gov](mailto:Radhika.Karmarkar@fcc.gov)

Lisa Griffin\*  
Deputy Chief  
Market Disputes Resolution Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
Email: [Lisa.Griffin@fcc.gov](mailto:Lisa.Griffin@fcc.gov)

Rhonda Lien\*  
Market Disputes Resolution Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
Email: [Rhonda.Lien@fcc.gov](mailto:Rhonda.Lien@fcc.gov)

Gary Remondino  
Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5-C143  
Washington, D.C. 20554  
E-mail: [Gary.Remondino@fcc.gov](mailto:Gary.Remondino@fcc.gov)

Marcus Maher  
Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5-C360  
Washington, D.C. 20554  
E-mail: [Marcus.Maher@fcc.gov](mailto:Marcus.Maher@fcc.gov)

Bill Dever  
Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5-C266  
Washington, D.C. 20554  
E-mail: [William.Dever@fcc.gov](mailto:William.Dever@fcc.gov)

Mary Shultz  
Wireless Telecommunications Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, PA 17325  
E-mail: [Mary.Shultz@fcc.gov](mailto:Mary.Shultz@fcc.gov)

Jeff Tobias  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-A432  
Washington, D.C. 20554  
E-mail: [Jeff.Tobias@fcc.gov](mailto:Jeff.Tobias@fcc.gov)

David Krech  
Policy Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 7-A664  
Washington, D.C. 20554  
E-mail: [David.Krech@fcc.gov](mailto:David.Krech@fcc.gov)

JoAnn Lucanik  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 6-A660  
Washington, D.C. 20554  
E-mail: [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov)

Charles Iseman  
Office of Engineering and Technology  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 7-A363  
Washington, D.C. 20554  
E-mail: [Charles.Iseman@fcc.gov](mailto:Charles.Iseman@fcc.gov)

James Bird  
Office of General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-C824  
Washington, D.C. 20554  
E-mail: [James.Bird@fcc.gov](mailto:James.Bird@fcc.gov)

Jonathan Levy  
Office of Strategic Planning and Policy Analysis  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 7-C362  
Washington, D.C. 20554  
E-mail: [Jonathan.Levy@fcc.gov](mailto:Jonathan.Levy@fcc.gov)

Michael J. Hunseder\*  
Valerie L. Leatherwood\*  
Sidley Austin Brown & Wood LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
Email: [mhunseder@sidley.com](mailto:mhunseder@sidley.com)  
[vleatherwood@sidley.com](mailto:vleatherwood@sidley.com)

Lawrence J. Lafaro\*  
Peter H. Jacoby\*  
Dermot Bree\*  
AT&T Corp.  
One AT&T Way  
Bedminster, NJ 07921  
Email: [llafaro@att.com](mailto:llafaro@att.com)  
[jacoby@att.com](mailto:jacoby@att.com)  
[dbree@att.com](mailto:dbree@att.com)

*Counsel to AT&T Corp.*

Best Copy and Printing, Inc.  
Portals II  
445 12th Street, SW, Room CY-B402  
Washington, DC 20554  
E-mail: [www.bcpweb.com](http://www.bcpweb.com)

/s/ Theresa Rollins  
Theresa Rollins