

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

In the Matter of:)	
)	
AT&T Corp.)	WT Docket No. 05-65
)	
and)	
)	
SBC Communications Inc.)	
)	
Application Pursuant to Section 214 of)	
the Communications Act of 1934 and)	
Section 63.04 of the Commission's Rules)	
for Consent to the Transfer of Control of)	
AT&T Corp. to SBC Communications)	
Inc.)	

**COMMENTS OF THE
TEXAS OFFICE OF PUBLIC UTILITY COUNSEL
ON SBC COMMUNICATIONS INC. AND AT&T CORP. APPLICATIONS
FOR APPROVAL OF TRANSFER OF CONTROL**

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COMMENTS OF TEXAS OFFICE OF PUBLIC UTILITY COUNSEL

Pursuant to Public Notice PA 05-656, released March 11, 2005, the Texas Office of Public Utility Counsel (OPC) hereby submits these Comments concerning the merger between SBC Communication Inc.'s (SBC) and AT&T Corp.'s (AT&T) Application Pursuant to Section 214 of the Communication Act and Section 63.04 of the Commission's Rules for consent to Transfer Control of AT&T Corp to SBC Communications Inc.

I. INTEREST OF OPC

OPC is the Texas State agency designated by its state laws specifically to represent residential and small commercial utility interests of the state. It is responsible for representing these interests before Texas and federal regulatory agencies, as well as the courts. In Texas, SBC provides local and long distance telephone service through approximately 6 million residential access lines in the state. SBC also provides wireless services in Texas through its 60% equity ownership of Cingular Wireless.

II. OPC'S COMMENTS

The proposed merger between AT&T Corp. (AT&T) and SBC Communications Inc. (SBC) will be detrimental to the public interest unless both Companies are required to adhere to several conditions and performance standards. This merger will bring together two of the largest telephone companies in the U.S., and has the potential to stifle the already limited amount of competition present in the U.S. telephone services market.

SBC and AT&T claim that the merger is necessary because new technologies are rapidly competing with and displacing traditional telecommunication services. The Companies cite the development of VOIP or circuit switched telephone services by cable television operators, the growth of both wireless service and competitive long distance service, as well as the proliferation of broadband networks as evidence of the pressures faced by traditional wireline carriers. The applicants note the declining number of jobs and the declining market capitalization and investment occurring in the telecommunications industry since 2000, asserting that this declining environment can be reversed through the proposed merger. The Companies assert that intermodal competition from wireless and cable providers makes the existence of separate local and long distance companies uneconomical and of no benefit to consumers. Neither SBC nor AT&T standing alone has the assets and expertise necessary to assemble a nationwide end-to-end broadband network. The merger will, therefore, ensure a strong and vibrant industry.

OPC finds it ironic that while SBC bemoans the decline in jobs and investment over the past five years, SBC (and other RBOCS) have been largely responsible for these industry trends. The recent finding by the D.C. Court of Appeals that removed the unbundling requirements of 47 U.S.C. 25(C)(2) will allow CLEC's to have access to ILEC's networks at "market based" prices. This will further remove the potential for job gains and additional investment in the telephone sector. In Texas, for instance, the potential for increases in UNE-P prices at market based rates could have a chilling effect on competition. Over 75% of

Texas CLEC customers are served via UNE-P.¹ Substantial price increases for UNE-P network elements will cause formerly viable local exchange and other telephone service competitors to cease providing service to residential customers, close sales offices, and liquidate their capital investments. SBC promised more investment, more jobs and a more competitive telephone market in its previous merger applications with Pacific Telephone and Ameritech.² Instead, the result has been less competition, higher prices, and less availability of affordable advanced telephone services to mass market customers. This proposed merger will lead to increased market concentration, with the result that telephone services will become even more unaffordable for consumers.

The merger of SBC and AT&T will combine the largest U.S. long distance carrier with the largest carrier of both long distance and local service. As noted by Consumers Union and the Consumer Federation of America,³ SBC has about an 80% market share for local service in its combined 13 state region, and about a 40% market share in the residential long distance market within its region. After the merger, SBC's regional market share of the long distance market may approach 70% and its share of local service will rise to 90%. The merger would also join two of the largest providers of broadband service in the U.S., as well as two competitors that provide VOIP service. As noted by the National Association of State Utility

¹ Report to the 79th Texas Legislature, *Scope of Competition in Telecommunications Market of Texas*, Public Utility Commission of Texas, January 2005, p. 11.

² See *Petition to Deny, or in the Alternative Petition to Impose Conditions, of Texas Office of Public Utility Counsel, In Re Applications of Ameritech Corp. and SBC Communications, Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses*, CC Docket No. 98-141, October 14, 1998.

³ Statement of Gene Kimmelman on Behalf of Consumers Union and the Consumer Federation of America on *SBC, AT&T and Verizon Mergers, Remaking the Telecommunications Industry, Part II*, Senate Judiciary Committee, April 19, 2005, pp. 6-8.

Consumer Advocates (NASUCA), the merger would also significantly recombine major piece parts of the national carrier that was AT&T prior to the 1984 divestiture of the Regional Bell Operating Companies.⁴ As OPC noted previously, the applicants unabashedly assert that consumers are no longer benefiting from the existence of separate local and long distance companies.

Consumers Union, the Consumer Federation of America and NASUCA describe the current bleak competitive landscape in the telecommunications industry.⁵ The 1996 Telecommunications Act, and its promise of vibrant new competition for telephone services has been turned on its head by the removal of affordable unbundled network services for CLECs. Furthermore, the 30-market entry strategy that was developed as a condition of the SBC/Ameritech merger has not brought the expected benefits to consumers. SBC has not been an active CLEC in the required 30 markets, nor has there been the retaliatory entry into SBC territory. Consumers Union and CFA discuss other bottlenecks and competitive problems currently existing in the industry. The applicants discuss the impending and growing competition from cable VOIP and wireless ISP services. At this point in time, cable VOIP is not a reliable substitute for landline telephone service. Over 70% of U.S. households don't have the broadband service necessary for VOIP, and VOIP does not have reliable access to 911. Additionally, consumers must usually buy a cable TV package in order to have access to cable Internet services, which can

⁴ Comments of the National Association of State Utility Consumer Advocates before the FCC, *In the Matter of SBC Communications Inc. and AT&T Corp. Application for Approval of Transfer of Control*, WT Docket No. 05-65, April 25, 2005, p. 2.

⁵ Op. Cit, pp. 2-5; Ibid., pp. 6-10.

bring the price of Internet access to \$80-\$100 per month.⁶ SBC and AT&T also cite the growing threat of wireless services. Again, wireless services are quite expensive compared to landline phone service (about 10 cents a minute), and wireless does not always provide reliable 911 access. The market for broadband service is further inhibited by the fact that SBC does not sell “naked” DSL only, but requires customers to also purchase local landline phone service. While affordable broadband services are currently provided by several municipalities, their growth is being thwarted by impending state legislation banning publicly owned networks, largely at the urging of the RBOCs.

NASUCA discusses the numerous findings and conclusions of the FCC in the SBC/Ameritech merger. These include the finding that the merger significantly decreased the potential for competition in local telecommunications market by large incumbent LEC’s, and that the merger would provide the merged companies the incentive and ability to discriminate against competitors in the provision of advanced services, interchange services and circuit switched local exchange services. AT&T is currently SBC’s largest competitor in the provision of local phone and long distance service in SBC’s territory, and obviously the merger will eliminate this competition.⁷ AT&T was also a vigorous proponent of competitive public policy positions. The proposed merger will eliminate AT&T both as a competitor and public policy advocate of open competition. The combined market

⁶ Op. Cit, p. 4.

⁷ SBC asserts that AT&T has made an irreversible decision to cease pursuing wireline residential local and long distance customers, thereby supporting the applicants’ position that the two companies are not competitors. However, AT&T had strong intentions to aggressively market its Internet VOIP services in lieu of wireline services.

presence of AT&T and SBC will also offer more opportunities for discrimination against other market competitors. As noted by Consumers Union and the Consumer Federation of America, AT&T is a large provider of backbone internet and interstate transport. SBC is a large purchaser of Internet and interstate backbone services. The merger will make it more difficult for competitors to access crucial backbone service.⁸ Additionally, the merger will make it easier to overcharge competitors for access to local switching and other local services, which is already occurring as a result of the D.C. Court of Appeals decision.

OPC does not believe that merger is in the public interest and will result in a substantial reduction in telephone competition. If the Commission approves the merger, OPC supports the implementation of several conditions in order to ameliorate the merger's anticompetitive results. As discussed by NASUCA, one of the most important conditions would be the requirement that SBC make UNE-P and HFPL available to competitors at TELRIC rates, and the additional requirement that SBC re-enter 30 major markets outside SBC's 13 state territory.⁹ As OPC has previously stated, the market entry strategy mandated in the SBC/Ameritech merger was not successfully pursued by SBC; the Commission should not only vigorously enforce the requirement but also monitor the market entry on a continuous basis to ensure active and enduring entry by SBC in the 30 markets.

OPC also recommends the adoption of the California Bill of Rights (CBOR) as a merger condition. SBC/AT&T should be subject to the CBOR for all its wireline,

⁸ Op. Cit, pp. 8-9.

⁹ Op. Cit, pp. 21-23.

wireless and broadband operations, with the Commission retaining enforcement jurisdiction if a state regulatory authority is unable to enforce CBOR standards. SBC/AT&T should be subject to a carrier to carrier performance plan, as laid out in condition VII of the SBC/Ameritech merger. And SBC should be required to provide ubiquitous broadband capabilities through its territory within five years, and commit to flowing the merger synergies back to consumers.

CONCLUSION

OPC urges the Commission to find that the merger petition is not in the public interest, convenience and necessity, and the Commission should not grant the necessary approvals for the merger. Alternatively, the Commission should impose conduct and performance standards on the merged entities that will limit the harm to competition resulting from the merger, and provide benefits to residential and small commercial customers. OPC further urges the Commission to keep in mind the potential anticompetitive effects of the impending merger of MCI with either Verizon or Qwest. When the two mergers are considered together, telephone competition will be harmed to a much greater extent than described by OPC in these comments.

Respectfully submitted,

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