

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

In the Matter of	)	
SBC Communications, Inc. and	)	
AT&T Corporation	)	WC Docket No. 05-65
For Approval of	)	
Transfer of Control	)	

**REPLY COMMENTS OF THE  
TELECOMMUNICATIONS CONSUMERS' COALITION  
IN SUPPORT OF APPROVAL**

The Telecommunications Consumers' Coalition ("Consumers' Coalition") and the individual groups listed below as *ad hoc* members submit the following reply comments to the Federal Communications Commission's ("FCC") Public Notice in the above-captioned docket, released on March 11, 2005<sup>1</sup>, and various comments filed in response.

1. **Interest of TCC and its Members.** The Consumers' Coalition and its Members have a substantial interest in the outcome of this proceeding because it will affect the quality and vitality of the retail telecommunications market. However, neither the Consumers' Coalition nor its Members, have a financial interest in this proceeding. Consumers represented by the Consumers' Coalition purchase retail local and interexchange telecommunications services from SBC Communications, Inc.

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<sup>1</sup> Public Notice, DA 05-656, March 11, 2005

and AT&T Corporation, as well as purchasing retail services from many other providers in the marketplace.<sup>2</sup> These include markets of great geographic, population and socio-economic diversity. The Consumers' Coalition represents consumers who reside in rural and urban areas, who purchase service in residential and business locations, and who rely on technology as basic as POTS and as advanced as TDD. The comments of the Consumers' Coalition here are made with the interest of all of its consumer members in mind and with a mind toward the development of a ubiquitous, multi-platformed, competitive market for telecommunications services that benefits all consumers.

The Consumers' Coalition is an *ad hoc* group of state and national consumer groups with diverse constituencies and interests that have found common ground in their collective support of the proposed combination of SBC and AT&T as a way to provide more innovative and cost-effective retail telecommunications services to consumers.

The Members of the Consumers' Coalition are as follows:

- ***American Association of Business Persons with Disabilities***

Americans Association of Business Persons with Disabilities is an advocate for individuals and small business owners with disabilities. The Association monitors and comments on many diverse issues that impact the lives and livelihood of individuals and small business owners with disabilities.

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<sup>2</sup> As a practical matter, and as discussed in more detail below, AT&T ceased providing new service to residential and small business customers in 2004.

- ***Consumer Coalition***

Consumer Coalition is active in protecting the rights on individual and small business consumers who are directly affected by the rights of major corporations and administrative law agencies. They have actively intervened before numerous governmental agencies.

- ***Consumers First, Inc.***

Consumers First, Inc., is a consumer education and advocacy organization representing the interest of diverse consumer interest. Consumers First works with consumer activists, community leaders, small businesses, senior

citizens, disability, minority and rural stakeholders to make sound public policy. This broad-based, grass-roots association is active in providing information and participating in the governmental process.

- ***The California Alliance for Consumer Protection***

The California Alliance for Consumer Protection was founded to support marketplace competition as the best form of consumer protection. The organization is active in both state and federal regulatory and legislative matters.

- ***California State Conference of the NAACP***

The California State Conference is an advocacy organization that works for the civil rights of African Americans and other minority groups in California. It is membership organization with 63 local branches and over 30 youth units and college chapters.

- ***California Senior Action Network***

California Senior Action Network works to represent the interest of the elderly in society. They work with government officials and the media to bring about changes to benefit the aged.

- ***Citizens Against Regulatory Excesses***

Citizens Against Regulatory Excesses (CARE) is a grass roots volunteer group of utility stakeholders, i.e., employees, retirees and shareowners - a coalition whose aim is to inform the public about regulatory issues, and, subsequently bring political and media attention on those who set and administer utility policies.

- *Consumers Research Institute*

Consumer Research Institute is a non-profit institution established to teach and disseminate educational material to the public. They work to improve consumer protection laws and regulations that will provide an honest and fair competitive marketplace for consumers.

- *The California Alliance for Consumer Protection*

The California Alliance for Consumer Protection was founded to support marketplace competition as the best form of consumer protection. The organization is active in both state and federal regulatory and legislative matters.

## **2. The Pubic Interest Supports Approval of the Proposed Transfer.**

Today's telecommunications marketplace is a remarkable consumer success story. Technology and competition have produced an explosion in telecommunications alternatives. Consumers have more choices and lower relative prices than at any point in this nation's history. Given AT&T's withdrawal from consumer markets, this merger will not actually impact the number of choices that residential and small business consumers have available to them. No longer are consumers tethered to a landline phone. Cellular coverage is virtually ubiquitous, and clearly the choice of the mobile Generations X, Y and Z. At the same time, cable telephony has grown from an intriguing concept to a real alternative, as a growing subscriber base and influx of Wall Street capital attest. Satellite, VOIP, Wi-Fi and Broadband over Power Line add to the mix.

Taken together, the “story” of this first decade of the 21<sup>st</sup> Century will be the dynamic, competitive and multi-dimensional breakout of the telecommunications industry. The FCC has played a critical role in this story, and its role—while changing—continues to be important. In the 1980s, the Commission was instrumental in opening the long distance market to competition. In the 1990s, the FCC’s aggressive implementation of the Telecommunications Act lead to significant consumer benefits. Now, in the 2000s, not unlike a parent who has watched a child grow up, the Commission’s role is to step back and provide a much more light-handed degree of regulation. The telecommunications market has matured and is strong. Competition is vibrant, and, in, some cases, beyond the traditional jurisdictional reach of the Commission. It is in this context that two traditional landline companies—SBC and AT&T—have come before the Commission seeking approval of their combination.

The Consumers’ Coalition supports the SBC/AT&T application and submits that its approval is in the public interest. Further, we believe that the combination of SBC and AT&T will provide consumers with significant benefits, both continuing and yet unrealized. Specifically, the combination of these two entities will spur innovation by creating a national company that will compete in multiple segments of the telecommunications market. Both residential and business customers will realize these benefits.<sup>3</sup> At the same

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<sup>3</sup> We note with agreement the empirical research of Women Impacting Public Policy in this regard. *Comments of Women Impacting Public Policy* (April 25, 2005).

time, the reach of a combined SBC/AT&T entity, while significant, will not dominate in a dynamic and changing marketplace. Indeed, the combined company will still have no significant presence in two of the most promising market segments—VoIP and BPL. The combination, however, will allow the companies to capture cost-efficiencies, which should translate into competitive benefits for consumers in the market.

**3. Responses to specific comments**

In reply to comments raised by Initial Commentors in this proceedings, the Consumers' Coalition notes specifically as follows:

**a. The Commission should largely defer to DOJ's expertise.**

As raised by The Progress & Freedom Foundation, in recent practice the Commission and the Department of Justice have concurrently reviewed the competitive effects of a proposed transaction.<sup>4</sup> The Department of Justice and Federal Trade Commission are charged with reviewing transactions with reference to antitrust laws. These agencies are certainly qualified (and obligated) to perform this review.

In the past, the FCC independently undertook this analysis as well. The focus was substantially the same, and primarily served to give the Commission an additional factor in its review analysis at a point in time

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<sup>4</sup> *Comments of Randolph J. May* on behalf of The Progress & Freedom Foundation (April 25, 2005) at p. 2-3

when the FCC's *policy* goals may have differed from the DOJ's *statutory* goals. That time has now passed. As noted above, the FCC has accomplished its policy goal of creating a competitive telecommunications marketplace. The need for separate FCC antitrust review is now passed. It is duplicative of the DOJ review at this juncture. For that reason, the Commission should defer to the DOJ review, and not undertake an independent review.

**b. The Commission should summarily reject requests to deny the application.**

The Commission should summarily reject those few requests to deny the application. Although very few parties attempted to challenge outright the public interest benefits of this proposed transaction and its positive implications for consumers, some naysayers clung to that reflex.<sup>5</sup> That response is predictable, but its basis is unfounded.

Specifically, arguments in favor of outright denial are based on flawed analysis and backward-looking interpretations. Some commentators essentially ask this Commission to invoke a 1990s-style review. We think that is wasteful and unnecessary. Indeed, they even go beyond this by premising their arguments upon the potential merger of MCI, a matter clearly not before the Commission here. In addition, they invite the Commission to undertake the DOJ review role in assessing the market. In so

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<sup>5</sup> See, e.g., *Petition to Deny of Consumer Federation of America, Consumers Union, and U.S. Public Interest Research Group*, filed April 22, 2005

doing, they generally ignore the dynamic marketplace realities of today's multi-dimensional telecommunications market. Consumers do not see a difference, as they once did, between local and long distance services. The newer technologies, such as wireless, have completely changed how consumers see telephonic services. Calling area boundaries and the eternally consumer-confusing distinctions between LATAs has become archaic. The negative commentators ask the Commission to envision a static market, when nothing could be further from reality.<sup>6</sup> Consumer demand has overtaken judicial fiat in defining the marketplace, and providers are constantly responding to that consumer demand.

**c. Forced divestiture of AT&T assets is not in the public interest.**

Service to existing AT&T customers should not be compromised through the forced divestiture of AT&T assets, as proposed by some competitors.<sup>7</sup> This proposal is anti-consumer and should be rejected on its face. The notion that "SBC should be required to divest all of AT&T's enterprise customers..."<sup>8</sup> would deprive customers of their provider of choice by definition. This is clearly a remedy that is unwarranted, self-serving and

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<sup>6</sup> An example of this failure to account for marketplace reality is found in a section of the comments, entitled, *The End of Competition in the Local Marketplace*, Id., p. 12. The implication is that approval of this transaction will mark the end of local competition. Of course, that is incorrect or misleading on several accounts. First, as widely publicized, AT&T exited the local market for new residential customers in 2004, so approval of this application will not have that effect. Second, even after AT&T's exit, competition in the local market continues to flourish via various niche players and competing technologies.

<sup>7</sup> *Comments of ACN Communications Services, Inc., et al* (April 25, 2005) at 69.

<sup>8</sup> Id. At 69.

inherently punitive to AT&T customers. Forced customer migration, even on the enterprise customer level, is an unacceptable result for consumers. We believe that the consumer is the sovereign of the marketplace and they alone should have the option to select the provider of their choice when they want to make a change. We do not believe that that change should be mandated by government action.

### **Conclusion**

The proposed transfer of control of AT&T Corporation to SBC Communications, Inc. is supported by the public interest, and will bring benefits to America's telecommunications consumers. On behalf of the groups listed below and the constituents they represent across this nation, we urge your prompt consideration and unfettered approval of this proposal.

Date: May 10, 2005

Respectfully submitted,

The Telecommunications Consumers'

Coalition

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