



September 7, 2005

VIA ELECTRONIC FILING

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Written Ex Parte WC Docket 05-65: In the Matter of SBC Communications, Inc. and AT&T Corporation Applications for Approval of Transfer of Control

Dear Secretary Dortch:

Fones4All Corporation (“Fones4All”) through counsel, hereby submits this written *ex parte* presentation for filing in the above-referenced docket. Fones4All urges the Commission to condition any approval of the merger of SBC Communications, Inc. and AT&T Corp. on the requirement that the merged company provide deeply discounted basic two wire voice grade loops. As Telscape Communications explained,¹ the Commission imposed a condition similar to this in the SBC/Ameritech merger in 1999,² and clearly the competitive harms that would arise from this proposed merger warrant imposition of a similar condition here.

Fones4All is a competitive local exchange carrier (“CLEC”) based in Woodland Hills, California whose focus is to provide basic local telephone service to economically disadvantaged residential end users, many of whom qualify for universal service support. Fones4All has developed innovative, multi-faceted, grass-roots marketing efforts that mirror the methods recommended by the Joint Board and adopted by the Commission in its recent universal service order, including use of targeted advertising, mailings, and a presence in places where low-income eligible consumers are likely to frequent, including government aid agencies and public transportation outlets.³ Without Fones4All’s service, the approximately 60,000 low income

¹ See Comments of Telscape Communications, Inc. (Apr. 25, 2005) and Telscape *ex parte*, WC Docket No. 05-65 (July 29, 2005).

² See Memorandum Opinion and Order, *Applications of Ameritech, Transferor, and SBC Communications Inc. For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90 95, 101 of the Commission’s Rules*, 14 FCC Rcd. 14712 (1999), ¶ 384 and Appendix C, ¶35 (“SBC/Ameritech Order”).

³ See *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket 03-109, FCC 04-87 at ¶¶ 45-46 (Apr. 29, 2004) (“April 2004 Universal Service Order”) attached hereto. “The first recommended guideline is that states and carriers should utilize outreach materials and methods designed to reach households that do not

consumers currently served by Fones4All, in all likelihood, would have remained without the knowledge that subsidized POTS service was available to them and would have continued to struggle without one of the most basic of tools of modern life: a telephone to call an ambulance, a child's school, or a potential employer. Fones4All's customers are unable to take advantage of so-called "intermodal" alternatives for POTS service, and there are few, if any companies, competing to provide them services. Instead, these low income consumers would likely have no phone service at all unless they purchased overpriced pre-paid service from any number of unscrupulous pre-paid providers who prey upon low income, credit challenged consumers. Fones4All is in the midst of deploying network facilities in order to continue to be able to serve its customers in the wake of the elimination of many unbundling obligations, however, Fones4All (and any other provider serving the residential market) will need continued access to SBC's unbundled local loops for the foreseeable future.

Clearly, merger of SBC and AT&T will lead to a substantial reduction in residential telephone competition throughout SBC's territory and will increase SBC's market power exponentially. Accordingly, as a way to preserve the miniscule level of residential competition that now exists, the Commission should impose conditions that (1) require the merged company to provide significantly discounted two wire voice grade loops to requesting carriers; and (2) prohibit the merged company from charging CLECs manual processing charges for electronically submitted orders, as described in Telscape's July 29 ex parte in this docket.⁴ The same kinds of "significant potential public interest harms" identified by the Commission in the SBC/Ameritech Order—removal of an actual potential entrant; elimination of a benchmark and increasing the incentive and ability of the merged entity to discriminated against rivals"⁵ are present to an even greater extent here. As AT&T itself noted in comments filed in response to SBC's request that the Commission discontinue the independent auditor condition in Merger Condition XXVII (a request which the Commission denied on January 7, 2005)⁶ Condition 17, requiring the provision of UNEs, was one of the most important conditions to the merger, and was integral to protect local competition.⁷

The merger of SBC and AT&T will lead to significantly reduced local competition, and the Commission must take affirmative steps to ensure that the level of competition that has emerged so far survives. If its post Ameritech merger behavior is any indication, SBC cannot be

currently have telephone service. States or carriers may wish to send regular mailings to eligible households in the form of letters or brochures. Posters could be placed in locations where low-income individuals are likely to visit, such as shelters, soup kitchens, public assistance agencies, and on public transportation. Multi-media outreach approaches could be utilized such as newspaper advertisements, articles in consumer newsletters, press releases, radio commercials, and radio and television public service announcements."

⁴ See Telscape ex parte, WC Docket No. 05-65 (July 29, 2005).

⁵ See SBC/Ameritech Order, ¶ 348.

⁶ See Order, *Applications of Ameritech, Transferor, and SBC Communications Inc. For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90 95, 101 of the Commission's Rule*, 20 F96 CC Rcd. (2005).

⁷ See Comments of AT&T Corporation, filed in CC Docket 98-141, July 27, 2004 ("AT&T Comments"); Letter from Leo A. Wrobel, President, Premiere Network Services Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed on July 16, 2004.

counted upon to compete fairly when and if the AT&T merger is concluded, as evidenced by the fact that during an approximately three and a half year period, SBC has made almost \$86.7 million in payments for failing to comply with the Ameritech merger conditions. In fact, SBC's most recent independent audit report,⁸ filed just last week, found that SBC had materially failed to comply with Conditions 14 and 15, which require SBC to provide certain unbundled loop and resale discounts. SBC is unlikely to change its stripes if this transaction is approved, and accordingly, the Commission should condition grant of the application as described herein, as well as in the Telscape filings in this docket.

Sincerely,



Ross A. Buntrock
Counsel to Fones4All Corporation

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Adelstein
Michelle Carey, Legal Advisor to Chairman Martin
Russell Hanser, Senior Legal Advisor to Commissioner Abernathy
Jessica Rosenworcel, Legal Advisor to Commissioner Copps
Scott Bergmann, Legal Advisor to Commissioner Adelstein
Thomas Navin, Chief of the Wireline Competition Bureau
Donald K. Stockdale, Jr., Wireline Competition Bureau
William Dever, Wireline Competition Bureau
Marcus Maher, Wireline Competition Bureau

⁸ See Letter from Michelle A. Thomas, SBC to Marlene Dortch, CC Docket 98-141 (Sept. 1, 2005).