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A PROFESSIONAL LIMITED
LIABILITY COMPANY

May 24, 2006

VIA ECFS

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

**Re: Notice of Written Ex Parte: In the Matter of Review of AT&T Inc. and
BellSouth Corp. Application for Consent to Transfer Control, WC Docket
06-74**

Dear Ms. Dortch:

Further to the written ex parte submitted by Fones4All Corporation (“Fones4All”) in the above referenced docket on May 9, Fones4All hereby provides additional information regarding the anticompetitive tactics that are routinely employed by AT&T Inc and its subsidiary, AT&T California (“AT&T”) against Fones4All and other small competitive local exchange carriers (“CLECs”). The Commission must carefully consider these facts as it analyzes the merger application of AT&T Inc. and BellSouth Corp. and the applicants’ claims that the merger will not harm competition and will have no effect on the competitive capabilities of other providers, including competitive local exchange carriers (“CLECs”).¹

Summary/Background

As noted in its May 9 filing, Fones4All, a very small CLEC based in California focused on serving low income minority Universal service eligible end users, has been the target of a relentless months-long anticompetitive campaign being waged by AT&T pursuant to which AT&T is, among other things, withholding from Fones4All payment for lawfully levied access charges for intraLATA toll traffic terminated to Fones4All’s network by AT&T. As part of this anticompetitive effort, AT&T has filed a specious complaint against Fones4All at the California Public Utilities Commission (“CPUC”) falsely claiming that Fones4All has over-billed AT&T for intraLATA toll termination and seeking to force Fones4All to return two years of lawful payments amounting to approximately \$2.6 million, which were paid without question by

¹ See *Description of Transaction, Public Interest Showing and Related Demonstration*, WC Docket 06-74 at 54-12; (Mar. 31, 2006); see also Declaration of Dennis W. Carlton and Hal S. Sider at 50-54 (Mar. 29, 2006).

AT&T for over two years, until September 2005, consistent with an agreement between the companies. Then, out of the blue, in late September 2005 AT&T abruptly lodged a “dispute” with Fones4All in which AT&T claimed that “internal traffic studies” conducted by AT&T—traffic studies that AT&T so far has refused to share with Fones4All—allegedly showed that the minutes of use (“MOU”) attributed to AT&T by Fones4All were actually minutes originating from other carriers, and not AT&T. However, the results of AT&T’s “internal traffic studies” are facially incredible in that they conclude that AT&T California—the largest and dominant local provider of local telecommunications services in California, serving millions of businesses and residences—terminates on the average around 6 minutes of traffic per Fones4All end user to the Fones4All’s network each month. The results of AT&T’s traffic “studies” are not only contrary to common sense, but they are at odds with local usage assumptions adopted by the CPUC, and most ironically, in direct conflict with AT&T’s own advocacy in another pending CPUC proceeding.

AT&T’s CPUC Complaint Against Fones4All

In its baseless complaint filed against Fones4All at the CPUC on March 10, 2006, AT&T California falsely claims that Fones4All’s intraLATA toll invoices were “inflated” beyond what AT&T alleges was usage reflected in Fones4All’s Daily Usage Files (“DUF”). AT&T seeks from Fones4All a refund of payments made from April 2003 through September 2005 for termination of intraLATA toll traffic to Fones4All’s network.² However, as Fones4All stated in its Answer to AT&T California’s complaint,³ AT&T has failed to provide Fones4All with any of the information AT&T is required to provide under the interconnection agreement, including either the DUF or the Calling Party Number (“CPN”), or any other usage information.

Instead, from the earliest days when Fones4All became a facilities-based carrier in 2002, AT&T insisted that it would provide Fones4All usage information only if Fones4All spent tens of thousands of dollars to deploy and maintain a specialized “Network Data Mover” (“NDM”) dedicated connection between Fones4All’s and AT&T’s offices.⁴ Citing the unreasonable and unnecessary expense of deploying and maintaining the dedicated NDM connection, Fones4All requested that the usage information be provided by AT&T via some other means, such as magnetic tape, however AT&T flatly refused Fones4All’s repeated requests. AT&T’s refusal to provide the DUF, the CPN, or any usage information by any means other than the NDM connection amounts to a patent violation of the interconnection agreement which Fones4All is now being forced to litigate.

In the face of AT&T’s refusal to provide Fones4All with any usage information or the DUF or CPN, and consistent with an agreement between AT&T and Fones4All pursuant to

² AT&T has “disputed” Fones4All’s invoices since September 2005 and paid only a fraction of the amount actually due.

³ See Fones4All Answer to Complaint, CPUC Case 06-03-013 (April 17, 2006).

⁴ *Id.*

which AT&T agreed to assist Fones4All with CABS billing as part of the company's transition from resale to UNE-P in exchange for Fones4All's public support of AT&T California's Section 271 applications before the CPUC and this Commission, Fones4All billed AT&T California using very conservative local calling usage assumptions based upon those adopted by the CPUC in the AT&T California UNE pricing case.⁵

In that case, the CPUC adopted an assumption that the average end user would utilize 1,400 local calling minutes per month.⁶ Mindful of the CPUC local usage assumptions, and discounting those assumptions significantly to account for traffic that is not compensable under the interconnection agreement with AT&T, Fones4All billed AT&T for only approximately 250 minutes of local calling usage per Fones4All customer per month.⁷ For over two years, until September 2005 when it filed its "dispute," AT&T agreed that the usage assumptions used by Fones4All were more than reasonable, and accordingly honored Fones4All's invoices consistent with the Section 271 agreement with Fones4All. AT&T was apparently mindful that it had never provided Fones4All with the DUF, CPN or any other usage information and that Fones4All's assumptions were much less than those adopted by the CPUC.

However, in its CPUC Complaint against Fones4All, AT&T now contends that the 250 minutes of local calling assumption used by Fones4All is unreasonable. In fact, according to the summary results of AT&T's "study"⁸ of Fones4All's traffic—the actual studies have never been provided, despite repeated requests—AT&T now claims that AT&T California, the dominant provider of local telecommunications service to millions of business and residential end users in both the state as a whole and the geographic area where the vast majority of Fones4All's subscribers reside,⁹ terminates anywhere from *less than one second of local calling per end user per month to around 6 minutes*. In fact, AT&T uses these "traffic study" results in order to formulate what it says are the "lawful" numbers of minutes that AT&T should be required to pay Fones4All for termination of intraLATA toll traffic. And in fact, and this is what AT&T has been paying Fones4All for "undisputed" portions of Fones4All's intraLATA toll invoices since September 2005—payments based on local usage of around 6 minutes per month per end user.

⁵ See UNE Re-look Decision, D. 04-09-063, Appendix A, n. 2 ("UNE-P calculated based on usage assumption of 1400 local 700 toll."); see also Interim Opinion Establishing Interim Rates for Pacific Bell Telephone Company's Unbundled Loop and Unbundled Switching Network Elements, Application of AT&T Communications California, Inc. et al, A. 01-02-024, D. 02-05-042, Appendix A, bottom table ("1400 Local Voice & 300 toll Minutes" or "2000 Local Voice Minutes").

⁶ *Id.*

⁷ Besides being highly conservative based upon the CPUC's local MOU assumptions in the UNE pricing decision, Fones4All took into account the fact that having an almost 99% low income local only calling based, many of their end-users would likely be either receiving calls from other end users, or utilizing prepaid calling cards which require the end user to dial a of a toll-free access number (usage of which is according compensable by Fones4All).

⁸ See Appendix C of AT&T California Complaint.

⁹ See CPUC D. 04-11-022 (2004) (available at: http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/47665.PDF).

At the same time that AT&T is suing Fones4All claiming 6 minutes of local usage per end user per month, AT&T is advocating in another proceeding pending before the CPUC that AT&T be allowed to charge a “proxy” rate for unconverted UNE-P lines that includes “at least 1,400 MOU per month.”¹⁰ AT&T argues further that “in Section 271 proceedings, the FCC has approved UNE rates based on comparable assumptions for ILECs in other states” and cites the Commission’s 271 for Verizon in Pennsylvania, New York and Massachusetts.¹¹ AT&T can’t have it both ways.

AT&T now owes Fones4All millions of dollars in past due charges for terminating intraLATA toll charges, but continues withholding from Fones4all lawfully billed amounts. AT&T’s anticompetitive actions have forced Fones4All to expend thousands of dollars of scarce financial resources on wasteful litigation to seek collection. This money would be better spent on deploying additional network facilities to allow Fones4All to serve more low income customers in California—especially the ones that AT&T is no longer interested in serving.¹²

Accordingly, the tactics described herein are further evidence of the anticompetitive tactics that AT&T is already wielding against very small competitors. This information is relevant to the Commission’s deliberations in this docket, as it considers the applicants’ claims that the merged company will not have the incentive or ability to discriminate against small competitors if the merger is approved.

Sincerely,

Ross A. Buntrock

cc: Chairman Martin
Commissioner Copps
Commissioner Adelstein
Commissioner Taylor Tate
Daniel Gonzalez
Michelle Carey
Jessica Rosenworcel
Scott Bergmann
Aaron Goldberger
Dana Shaffer
Best Copy and Printing, Inc.

¹⁰ See AT&T California’s Comments on the Draft Decision of ALJ Jones Confirming the Assigned Administrative Law Judge’s Ruling Granting in Part The Motion For Enforcement of Decision 06-01-043 at 10.

¹¹ *Id.* at 11.

¹² The applicants note throughout their application that they have ceased active marketing of its traditional services to mass market consumers and adopted a “harvesting” strategy.

