

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

AT&T Inc. and BellSouth Corporation)	
Applications for Approval of)	WC Docket No. 06-74
Transfer Of Control)	

**PETITION TO DENY
of
CONSUMER FEDERATION OF AMERICA,
CONSUMERS UNION,
FREE PRESS,
and
U.S. PUBLIC INTEREST RESEARCH GROUP**

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Pursuant to Sections 214 and 310 (d) of the Communications Act of 1934, as amended, Consumer Federation of America (“CFA”), Consumers Union (“CU”), Free Press, and U.S. Public Interest Research Group (“U.S. PIRG”) (collectively, “Joint Petitioners”), respectfully submit this Petition to Deny the applications, submitted by AT&T Inc. (“AT&T”) and BellSouth Corporation (“BellSouth”), seeking approval of the Federal Communications Commission (“FCC” or “Commission”) to transfer control to AT&T of the licenses and authorizations held directly and indirectly by BellSouth.¹ As will be demonstrated herein, and in the attached Joint Declaration of Mark Cooper and Trevor Roycroft,² the proposed merger of two of the four

¹ The authorizations proposed to be transferred are listed in Public Notice (DA 06-904) released April 19, 2006 “Commission Seeks Comment on Application for Consent to Transfer of Control Filed by AT&T Inc. and BellSouth Corporation”, and in subsequent “Section 1.65” amendments filed on behalf of AT&T and BellSouth.

² The attached joint declaration (“Cooper/Roycroft Declaration”) is incorporated herein by reference.

remaining Bell operating companies will contribute to the ongoing consolidation observed in telecommunications markets in the U.S. and have profoundly anticompetitive effects across the full range of product and geographic markets touched by the merging parties. Joint Petitioners believe that unless the merger is rejected outright or, at a minimum, dramatically altered, consumers will witness the steady march of the telecommunications industry back toward a *de facto* deregulated monopoly where competitive forces are held at bay by a dominant firm, leading to inflated prices, shoddy service and inadequate innovation.

I. STATEMENT OF INTEREST

Joint Petitioners, individually and collectively, represent a broad range of consumer interests. As such, Joint Petitioners are “parties in interest” within the meaning of Section 309(d) of the Communications Act of 1934, as amended, and have standing to participate in this proceeding.

- The Consumer Federation of America is an advocacy, research, education and service organization established in 1968. CFA has as its members some 300 nonprofit organizations from throughout the nation with a combined membership exceeding 50 million people. As an advocacy group, CFA works to advance pro-consumer policy on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts.
- Consumers Union, the publisher of *Consumer Reports*, is an independent, nonprofit testing and information organization serving only consumers. CU does advocacy work from four offices in New York, Washington, San Francisco, and Austin. CU’s public policy staff addresses a broad range of telecommunications, media and other policy issues affecting consumers at the regional, national and international level. CU staff members frequently testify before Federal and state legislative and regulatory bodies and participate in rulemaking activities at the Commission and elsewhere.
- Free Press is a national nonpartisan organization working to increase informed public participation in crucial media policy debates, and to generate policies that

will produce a more competitive and public interest-oriented media system with a strong nonprofit and non-commercial sector.

- U.S. PIRG serves as the federal advocacy office for the state Public Interest Research Groups (PIRGs). PIRGs are non-profit, non-partisan consumer advocacy organizations with a total of approximately 1 million members, including members in every state. The PIRGs have long been active in ensuring that the telecommunications system is robust and competitive and provides consumers with a wide variety of choices for quality service and at competitive prices.

II. ARGUMENT

A. Merger of AT&T and BellSouth Would Have Profound Anticompetitive Effects on the Markets for Telecommunications, Internet and Video Services.

The proposed merger of the largest and dominant Bell operating company, AT&T, and BellSouth, another of the remaining RBOCs will contribute to the ongoing consolidation in telecommunications markets in the U.S. It will have profoundly anticompetitive effects across the full range of product and geographic markets touched by the merging parties.

Seven years ago, at the start of the first major wave of telecommunications mergers, CFA et al. warned that the mergers of Bell Atlantic with NYNEX and SBC with Ameritech “would result in a market structure that is simply too concentrated to support effective competition.”

More recently, in opposition to the SBC/AT&T and Verizon/MCI mergers, CFA et al. stated:

The Commission simply cannot look back on the carnage of the past six years and conclude that its decision to allow a handful of incumbents to dominate the local telecommunications market has served the public interest....[T]he piecemeal approval of mergers and the failure to enforce market opening and network access policies enacted by Congress has allowed the industry structure to devolve into what *Business Week* called a “cozy duopoly.” This “cozy duopoly” has failed to serve the most fundamental public interest objective of the Communications Act.

Now, with the ink barely dry on the approval of the SBC/AT&T and Verizon/MCI mergers, we see the “next logical step” from the point of view of these dominant firms, a new assault on competition. However, as discussed in greater detail in the Cooper/Roycroft Declaration, the impact of the AT&T-BellSouth merger extends beyond the CLEC market which was the focus of the SBC-AT&T and Verizon MCI mergers. This latest consolidation will create the nation’s largest provider of broadband Internet access facilities, and a new target at which AT&T will take aim with the goal of the elimination of competition—the Internet. While the Internet today provides a limited threat to AT&T from “over-the-top” Voice Over Internet Protocol (VoIP) providers, a more pressing threat, in the view of AT&T, is emerging from alternative providers of video services who rely on the Internet and want to offer video services in competition with AT&T’s planned video service. Thus, if the Commission does not take appropriate action, by either denying this merger, or placing stringent enforceable conditions on the merger, it can look forward to a full-scale attack on competition and innovation in markets for Internet content, services, and applications.

B. The Public Interest Would Best Be Served by Denial of the Merger Application.

The merger of AT&T and BellSouth can only accelerate the growing market dominance exhibited by AT&T. Not only will it further cement AT&T’s position as a dominant local and long distance provider, but it will also bolster its position as a national wireless player and as an emerging dominant firm in the Internet access market. Competitive benefits to consumers are entirely lacking.

The applicants have provided a “Public Interest Showing” that, while voluminous, is totally devoid of specific product and geographic market data of the sort that would enable the

Commission to analyze the competitive impact of the merger. Moreover, as explained in detail in the Cooper/Roycroft declaration, much of the evidence the parties have proffered in support of the merger is contradictory.

The “Public Interest Showing” describes a BellSouth which is, according to the joint applicants, strategically disadvantaged in the marketplace.³ Joint applicants claim that BellSouth cannot compete effectively in the enterprise market.⁴ However, BellSouth’s disadvantages are not shared, according to the joint applicants, by the “many categories of companies competing aggressively to provide telecommunications services to business customers”⁵ – groups which includes such “household names” as Netiface Communications, Dimension Data Plc (described as “a South African-based IT services and solution provider”), and Xspedius Communications.⁶ According to the joint applicants’ own submission, Xspedius Communications, which “focuses on small and medium-sized businesses in the southern United States” “also provides local fiber and/or dial tone solutions to major enterprise customers including Bank of America, Humana, Hewlett Packard, Citigroup, Nokia and Lexmark.”⁷

Over nearly a half century, consumers realized many benefits due to the introduction of competition in telecommunications markets, beginning with the advent of private microwave in the late 1950s and culminating with the divestiture of the Bell system and the pro-competitive provisions of the Telecommunications Act of 1996. Today, we are confronted with the looming

³ The Declaration of Barry Boniface is devoted to a recitation of BellSouth’s shortcomings as a potential competitor.

⁴ Public Interest Showing, p. 63.

⁵ Public Interest Showing, pp. 69-82 and Appendix B.

⁶ Public Interest Showing, at B-23.

⁷ *Id.*

reconstitution of the Bell System, which the Commission reassures us will not harm consumers because of “intermodal competition.” However, as discussed in detail in the Cooper/Roycroft Declaration, the market advantages of dominant firms like AT&T and Verizon may doom incipient “intermodal” competitors. The wave of exit and retrenching resulting from the elimination of UNE-P is likely to continue or accelerate; competition in the market for Internet content and services is coming under siege.

The attached Cooper/Roycroft Declaration analyzes the current state of competition and demonstrates that virtually none of the competitors cited by applicants, ranging from CLECs, to long distance carriers, to “over-the-top” VoIP providers, equipment manufacturers, systems integrators and wireless carriers, pose any significant threat to the shared dominance of the ILECs and the cable companies over the local connectivity market. Indeed, alternative facilities based competition is projected to decline substantially, from 8 percent of local connections today to just 3% in six years.

Cable companies, the other participant in what *Business Week* has described as a “cozy duopoly,” generally do not market voice services outside of a bundle of services, and may not even push voice services for customers who don’t also take high-speed Internet service, and/or a bundle of video programming. In only two percent (2%) of communities, principally those where cable overbuilds exist, do consumers have a meaningful opportunity to obtain service from a third facilities-based provider. Thus, consumers face the prospect of a “battle of the bundles” with AT&T and the local cable company targeting their resources toward the high-end consumers willing to spend well over a hundred dollars a month on a triple or quadruple play of voice, data, video and/or wireless services. Standing on the sidelines of the “intermodal

competition” will be those consumers who are less affluent or who live in communities where only one broadband network, or perhaps none at all, exists.

The interests of consumers and, indeed, the larger public interest, are best served by robust competition with real choices among providers of facilities, services and content. If the Commission approves the proposed merger of AT&T and BellSouth, consumers face the prospects of a “Hobson’s choice” between the bundled offerings of two large companies with shared market dominance, if they have any choice at all.

C. If the Commission Does Not Block the Proposed Merger, It Must Impose a Series of Stringent and Enforceable Conditions on the Merged Company.

If the Commission does not deny the AT&T/BellSouth merger application, the public interest requires the imposition of a series of conditions on its approval. Joint Petitioners have identified eight conditions that would, at a minimum, be required.⁸ Most of the proposed conditions are not new, but are carried forward from previous merger proceedings. Each proposed condition, and the rationale for its imposition, is addressed in the Cooper/Roycroft Declaration. The conditions are briefly summarized below:

1. AT&T must divest its out-of-region operations in the BellSouth service area, including facilities used to provide local exchange and special access service.⁹

⁸ Joint Petitioners do not necessarily believe that these eight conditions are the only conditions that may be required. We intend to review the comments and petitions filed by other parties and reserve the right to amend or supplement the proposed conditions accordingly.

⁹ Should the Commission not require the spin-off of AT&T’s network assets and customer base in the BellSouth region, remedies similar to those imposed by the Department of Justice on the previous mergers should be required here as well. Furthermore, the special access service quality merger condition imposed by the Commission on the SBC-AT&T and Verizon-MCI mergers should be imposed on AT&T-BellSouth.

2. AT&T-BellSouth may not seek any increase in state-approved rates for unbundled network elements (“UNEs”) currently in effect for a five-year period, subject to certain exceptions.
3. The Commission must take a “fresh look” at its key decisions predicated on the existence of competition in local markets where AT&T and BellSouth were present. To the extent that regulatory relief has been afforded to BellSouth based on analysis of competition that included any of AT&T customers or assets, those decisions, particularly those decisions affecting the availability of UNEs, must be revisited. Customers of AT&T and BellSouth should also be given the opportunity for a “fresh look” at existing contractual relationships without penalty or early termination fees.
4. For a period of five years AT&T-BellSouth must maintain at least as many settlement-free U.S. peering arrangements for Internet backbone services with domestic operating entities as they did in combination immediately before the merger, and the merged entity must post its peering policy on a publicly accessible website, with any revisions to the peering policy posted on a timely basis as they occur.
5. Within one year after closing, AT&T-BellSouth must deploy and offer within the BellSouth portion of its in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase voice services, and continue to offer this service in the entire AT&T service area for five years after the date which the last BellSouth state complies with this provision.¹⁰
6. For a five year period, beginning at closing, AT&T-BellSouth must conduct business in compliance with the principles set forth in the FCC’s Policy Statement, issued September 23, 2005 (FCC 05-151). The merger condition should require that AT&T-BellSouth explicitly acknowledge that the Commission has enforcement authority to compel compliance with these “Network Neutrality” principles.
7. AT&T-BellSouth must be required to divest either Cingular, or all of its licenses and operations (including R&D) in the 2.3 GHz and 2.5-2.7 GHz bands. This would enhance the prospects for entry of a wireless national third broadband platform, in competition with the ILEC-cable duopoly.
8. For five years following the closing, AT&T-BellSouth must file annually a declaration by an officer of the corporation attesting that AT&T-BellSouth has substantially complied with the terms of these conditions in all material respects.

¹⁰ The Commission should review its current “naked DSL” requirement to determine whether “naked DSL” is providing a meaningful alternative in the marketplace and, if it is not, the Commission should revise that requirement, and the associated merger condition, to the extent necessary to ensure that prices, terms and conditions for this offering are reasonable.

III. CONCLUSION

Joint Petitioners, representing the interests of consumers nationwide, urge the Commission to conclude that the merger of AT&T and BellSouth is contrary to the public interest and that the AT&T-BellSouth application must be denied. If the Commission does approve the merger of AT&T and BellSouth, the interests of consumers require that approval be subject to specific, enforceable conditions including those described herein.

Respectfully submitted,

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Dated: June 5, 2006

Certificate of Service

I hereby certify that copies of the foregoing "Petition to Deny of Consumer Federation of America, Consumers Union, Free Press, and U.S. Public Interest Research Group" were sent this fifth day of June, 2006 via first class United States mail, postage prepaid, to the following:

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