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June 13, 2006

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Dockets 06-74 and 05-261: Notification of Ex Parte Meeting

Dear Ms. Dortch:

Today, on behalf of Fones4All Corporation ("Fones4All"), the undersigned conducted an *ex parte* meeting with the following Commission Staff: Nicholas Alexander, Steve Rodini, Treffaney Lowe, Jonathan Reel, Adam Kirschenbaum, William Dever, and Tim Stelzig from the Wireline Competition Bureau; Jim Bird, Joel Rabinovitz, Ann Bushmiller from the Office of General Counsel; and Marilyn Simon from the International Bureau. The parties discussed the points set forth in the attached presentation at the meeting.

In accordance with the Commission's rules, 47 C.F.R. Sec. 1.1206(b)(1), Fones4All is electronically filing in the above-referenced dockets this letter, along with the attached materials.

Respectfully submitted,

Ross A. Buntrock

Ross A. Buntrock
Counsel to Fones4All Corporation

cc: (Via electronic mail)

Nicholas Alexander
Jim Bird
William Dever
Joel Rabinovitz
Ann Bushmiller
Steve Rodini
Treffaney Lowe
Tim Stelzig
Adam Kirschenbaum
Jonathan Reel
Marilyn Simon

Fones4All Corp.

WC Dockets 06-74, 05-261

Ross Buntrock, Womble Carlyle
Counsel to Fones4All Corp.

Agenda

- Company Overview
- Public Interest Analysis
- Merger-Specific Harms
- Conditions

Company Overview

- Fones4All is a CLEC focused on low income single line residential customers who qualify for Lifeline.
- Uses outreach methods recommended by the Joint Board and adopted by the Commission.
- Today Fones4All serves approximately 80,000 single line residential Lifeline customers in California.
- Fones4All reaches out to low income consumers who have never before had telephone service, most of whom have been ignored or overlooked by others.

Public Interest Analysis

- Public interest evaluation necessarily encompasses the 'broad aims of the Communications Act' which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets
- Universal service has been a fundamental goal of telecommunications regulation since the Act was passed in 1934 and Congress renewed commitment in 1996 Act.
- Section 254(b) establishes principles upon which the Commission base policies for the preservation and advancement of universal service, one of which is that low income consumers have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in urban areas.
- In the TracFone Order the Commission concluded that low income universal service eligible consumers do not have benefits of competitive telecommunications market.

Public Interest Analysis

FONES 4 ALL

- Therefore, in conducting the evaluation of the impact of the merger on mass market competition the Commission should separately examine the market for local service for low income universal service eligible end users.
- Such an analysis will yield same conclusion as Commission reached in TracFone: there is little or no competition in that market and the merger will only exacerbate the problem.
- In order to mitigate these harms the Commission should impose several conditions.

Merger-Specific Harms

FONES 4 ALL

- In California AT&T has already begun defying CPUC orders .
- Provisioning issues/billing issues.
- Prevention of outreach by competitors.

Proposed Conditions

FONES 4 ALL

- A requirement that the merged company provide access to unbundled local switching at the most recently applicable TELRIC rates to ensure facilities based wireline competition for low income consumers eligible for universal service subsidies.
- A requirement that the merged company offer basic two-wire residential loop product at the most recently applicable TELRIC rates in order to ensure facilities based wireline competition for low income consumers eligible for universal service subsidies, even in greenfields.
- A requirement that the merged company repair substandard copper loop plant reported by CLECs.

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

In the Matter of	)	
	)	
BellSouth Corporation and	)	
AT&T Inc. Application Pursuant	)	
To Section 214 of the Communications	)	
Act of 1934 and Section 63.04 of	)	WC Docket No. 06-74
The Commission's Rules For The	)	
Consent to the Transfer of Control	)	
Of BellSouth Corporation to AT&T Inc.	)	

COMMENTS OF FONES4ALL CORPORATION

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June 5, 2006

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

In the Matter of	)	
	)	
BellSouth Corporation and	)	
AT&T Inc. Application Pursuant	)	
To Section 214 of the Communications	)	
Act of 1934 and Section 63.04 of	)	WC Docket No. 06-74
The Commission's Rules For The	)	
Consent to the Transfer of Control	)	
Of BellSouth Corporation to AT&T Inc.	)	

COMMENTS OF FONES4ALL CORPORATION

Pursuant to the Commission's April 19, 2006 Public Notice in the above captioned proceeding Fones4All Corporation ("Fones4All"), by its undersigned counsel, hereby submits its comments on the applications for consent to transfer control filed by AT&T Inc ("AT&T") and BellSouth Corporation ("BellSouth") filed in connection with AT&T's proposed acquisition of BellSouth.[1]

I. INTRODUCTION AND SUMMARY

As explained below, as well as in earlier *ex parte* filings in this docket, the proposed acquisition by AT&T of BellSouth fails the public interest standard set forth in Sections 214(a) and 310(d) of the Communications Act of 1934 as amended,[2] and unless certain conditions are imposed upon the merger, universal service eligible low-income minority customers will be denied a true choice in local telephone service. In this merger, unlike in the two most recent

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1 *Public Notice*, WC Docket 06-74, DA 06-904 (rel. April 19, 2006).
2 47 U.S.C. §§ 214(a), 310(d).

BOC mergers approved by the Commission, in conducting its public interest analysis, should examine as separate relevant product markets the subset of the mass market made up of universal service eligible low income consumers. Such an inquiry is highly relevant in light of Congress' statutory commitment to universal service and the concomitant obligations set forth in Section 254 of the Act, as well as in light of recent Commission acknowledgement of the shockingly low telephone penetration rates for the Commission's Lifeline/LinkUp programs.

Such a public interest analysis will yield a conclusion similar to the one reached by the Commission in the *TracFone Order*:[3] there is precious little, if any competition in the market consisting of low income consumers. What little competition that exists in the low income universal service market today will be irreparably harmed by the merger, especially in the wireline market. Accordingly, to address these harms, and to promote the universal service goals set forth in the Act and repeatedly articulated by the Commission, the following conditions should be placed on the merger:

- A requirement that for a period of at least 60 months the merged company provide access to unbundled local switching ("ULS") at the most recently applicable state commission established TELRIC rates to requesting carriers for the purpose serving single-line residential end users who are eligible for participation in either a state or federal universal program, thereby ensuring facilities-based wireline competition in the low income universal service market.
- A requirement that for a period of at least 60 months the merged company provide basic two-wire residential loop products at the most recently applicable state commission established TELRIC rates to requesting carriers for the purpose of allowing carriers to serve single-line residential end users who are eligible for participation in either a state or federal universal program, thereby ensuring facilities-based wireline competition in the low income universal service market.

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[3] *See Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 USC §214(e)(1)(A) and 47 CFR §54.201(i)*, Order, 20 FCC Rcd 150095 (2005) ("*TracFone Order*").

- A requirement that the merged company repair on a going forward basis substandard copper loop plant reported by CLECs in order to ensure that these facilities are available to serve low income end users, who often reside in areas where degraded plant is present.

Fones4All is a CLEC based in Woodland Hills, California focused on providing basic local and long distance telephone services to residential low income end users, the majority of whom are Spanish speaking and/or members of a racial minority group. Fones4All provides services within the territory of Pacific Bell Telephone Company d/b/a AT&T California ("AT&T California"). In 2003, following the California Public Utilities Commission's ("CPUC") adoption of UNE rates for SBC and Verizon that made it economically feasible to do so, Fones4All began marketing single line basic local residential telephone service to end-users in California utilizing a combination of local switching combined with unbundled loops ("UNE-P") leased from AT&T California and Verizon California. Since elimination of availability of ULS by the Commission in 2005, Fones4All has been working tirelessly to deploy its own network facilities in the areas where its existing customer base resides.

Since it began operations six years ago, Fones4All has brought the benefits of competition to a largely overlooked, and often marginalized sector of the telecommunications market place: Low income, minority, non-English speaking consumers. Fones4All utilizes innovative, multi-faceted, grass-roots marketing methods recommended by the Federal-State Joint Board on Universal Service ("Joint Board"), and adopted by the Commission 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.[4] In fact, the success of Fones4All's outreach programs led the state universal service marketing board in California to seek information regarding Fones4All's methods.

Fones4All has been effective because it seeks out universal service eligible households where they live and work, and educates them about the availability of subsidized telephone service. Since Fones4All first began its intensive marketing efforts, the company has provisioned single line residential service to approximately 80,000 low income households, the vast majority of whom had never before received basic wireline telephone service. In the absence of Fones4All's efforts, these low income consumers, 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. 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 dedicated to serving low-income consumer in the respectful and customer centric way they deserve.

It is both necessary and appropriate for the Commission to impose certain conditions upon the grant of the pending applications in order to ensure that low income universal service eligible consumers to enjoy the fruits of a competitive market. Fones4All, like virtually all

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[4] *See In the Matter of Lifeline and LinkUp*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 at Appendix K (2004) ("*April 2004 Universal Service Order*"): "The first recommended guideline is that states and carriers should utilize outreach materials and methods designed to reach households that do not 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."

competitors serving the residential market, relies upon facilities and services acquired on a wholesale basis in order to provide its services, including monopoly controlled bottleneck facilities controlled by AT&T, BellSouth and other wholesale providers.

The post merger behemoth that will be the "new new AT&T" (as opposed to the "new AT&T" that emerged in November 2005) will result in a substantial consolidation of wholesale competition as well as a substantial reduction in potential competition at the retail level, and will acutely affect what little competition that now exists for low income consumers by decreasing both wholesale and retail level competition. The modest conditions recommended by Fones4All (which are similar to relief sought in the forbearance petition filed by Fones4All last year and now pending before the Commission in WC Docket 05-261, which is by reference incorporated herein in its entirety) will mitigate the public interest harms that will result from the merger.

II. IN CONDUCTING THE PUBLIC INTEREST ANALYSIS THE COMMISSION MUST EXAMINE THE EFFECT OF THE MERGER UPON THE PRESERVATION AND ADVANCEMENT OF UNIVERSAL SERVICE AND THE EFFECT ON COMPETITION IN THE LOW INCOME UNIVERSAL SERVE ELIGIBLE CONSUMER MARKET

Under Sections 214(a) and 310(d) of the Act the Commission must determine whether the proposed transfer of control will serve the public interest, convenience, and necessity.[5] In making its determination the Commission, under its existing standard of review, must first assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules.[6] If the transaction does not violate a statute or rule, the Commission considers whether it could result in public interest harms by

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[5] *See WorldCom, Inc. and its Subsidiaries (Debtors in Possession), Transferor and MCI, Inc. , Transferee,* WC Docket 02-215 Memorandum Opinion and Order, 18 FCC Rcd 26484, 26493 (2003).

[6] *See In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control,* Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005). ("*SBC/AT&T Merger Order*"); *In the matter of Verizon Communications Inc. and MCI Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005) ("*Verizon/MCI Merger Order*").

substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes, and the Commission then employs a balancing test to weigh any potential public interest harms against the potential public interest benefits.[7]

As the Commission has noted previously, "our public interest evaluation necessarily encompasses the 'broad aims of the Communications Act' which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets" and "whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers."[8] These broad aims include, among other things, the implementation of Congress's pro-competitive, deregulatory national policy framework designed to open all telecommunications markets to competition, and the preservation and advancement of universal service.[9] Accordingly, as part of this proceeding the Commission must examine how the merger will affect the universal service goals of the Act and specifically competition within the low income market.

A. Promotion of Universal Service Is One of the Fundamental Aims of the Communications Act And Therefore Must Be Considered in the Commission's Public Interest Analysis Here

As the Commission noted in the *TracFone Order*, "Universal service has been a fundamental goal of federal telecommunications regulation since the passage of the Communications Act of 1934.[10] Congress renewed its concern for low-income consumers in the Telecommunications Act of 1996 when it established the principles that guide the advancement

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7 *Id.*

8 *See SBC/AT&T Merger Order* at ¶ 17; *Verizon/MCI Merger Order* at ¶

9 *See Ameritech., Transferor, and SBC Communications, Inc., Transferee, 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 and 101 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶ 50 (1999) ("*SBC/Ameritech Merger Order*").

10 *See Federal-State Joint Board on Universal Service Petition of TracFone Wireless, Inc. for Forbearance from 47 USC §214(e)(1)(A) and 47 CFR §54.201(i)*, Order, 20 FCC Rcd 150095 (2005) ("*TracFone Order*").

and preservation of universal service. Specifically, the Act directs the Commission to consider whether "consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas, ... have access to telecommunications [services] ... at rates that are reasonably comparable to rates charged ... in urban areas."[11]

The Commission has recognized that law income consumers are entitled to the benefits of a competitive marketplace for telecommunications services, and promotion of universal service, and the availability of both basic and advanced telecommunications services to all Americans is clearly one of the primary purposes encompassed in the Act. Section 254 of the Communications Act of 1934, as amended,[12] codified the Commission's and the states' historical commitment to advancing the availability of telecommunications services for all Americans. Section 254(b) establishes principles upon which the Commission shall base policies for the preservation and advancement of universal service. As the Commission has often noted, "these principles state that consumers in all regions of the Nation, including low-income consumers, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in urban areas. These principles also recognize that ensuring rates are affordable is a national priority."[13]

Furthermore, as the Commission has noted on numerous occasions, and most recently in the *TracFone Order*, only one third of households eligible to do so participate in the Lifeline program.[14] As Commissioner Abernathy noted in her Statement accompanying the *TracFone Order*, "one critical component of the Commission's effort to guarantee [universal service] is the

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11 *Id* at ¶ 10 (emphasis added).
12 47 U.S.C. Sec. 254.
13 *April 2004 Universal Service Order*, para. 3.
14 Id.

Lifeline program...It is essential that we take all possible steps to ensure that low-income users are not barred from utilizing available support on the basis of the specific technologies they wish to use or the specific business plans pursued by their service providers."[15] Accordingly, then, the Act's long-standing universal service goals compel the Commission to consider the effect the merger will have on this unique market segment.

B. The Low Income Universal Service Market Has Been Recognized by the Commission As A Separate and Distinct Market And Therefore Should Be Examined as A Separate Subset of the Mass Market In This Proceeding

The Commission's most recent merger orders have examined in extremely broad terms the effect of mergers on the "mass market," defined as both residential and small business customers together.[16] Specifically, the Commission's two most recent orders, the *SBC/AT&T Merger Order* and the *Verizon/MCI Merger Order* identified three relevant product markets for its mass market analyses: (1) local service; (2) long distance; and (3) bundled local and long distance services.[17] The Commission noted that it defines product markets from the perspective of customer demand, however, many of the assumptions underlying the definitions of these product markets are not applicable to low income customers eligible for universal service subsidies. Accordingly, Fones4All submits that in light of the significant universal service goals of the Act, along with the desire of Congress and the Commission to promote universal service competition in the low income market, in this proceeding the Commission should examine a subset of the mass market: the low income universal service market. In fact, the Commission has

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15 *TracFone Order*, Statement of Commissioner Kathleen Q. Abernathy.

16 *See e.g.*, *SBC/AT&T Merger Order* at n. 243; *Verizon/MCI Merger Order* at n. 245.

17 *See SBC/AT&T Merger Order* at ¶ 82; *Verizon/MCI Merger Order* at ¶ 83.

already recognized that low income consumers are a separate and distinct subset of the mass market with unique market characteristics.[18]

One of the major flaws of the definition of "mass market" previously used by the Commission was the assumption that the "consumer can choose multiple access providers."[19] While the mainstream residential and small business consumers making up the vast majority of the Commission's traditionally defined "mass market" in all likelihood do have access to multiple access providers, the vast majority of low income consumers do not. While traditional consumers may be bombarded with offers for bundled packages of local, long distance, and data services, the universal service market is not a competitive one, as evidenced by the fact that in many states, only the ILEC provides service to that market.[20]

The Commission's analyses of the local service market in the SBC/AT&T and Verizon/MCI merger proceedings both focused exclusively on the VoIP and wireless alternatives to wireline local service; not a single mention was made of the availability of any traditional non ILEC wireline providers.[21] Clearly, however, the low income universal service market stands in stark contrast to the mainstream mass market. In general, universal service customers do not have broadband access, and often use calling cards to make long distance calls, since there is usually a toll blocking restriction on the universal service line. VoIP alternatives, the vast majority of which require a broadband connection costing anywhere from $32 to $92 per month, as well as expensive cable and wireless alternatives, are far beyond the reach of low income

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18 *See TracFone Order* at ¶ 4.

19 Id. at ¶ 84.

20 USAC's Lifeline Support web site (http://www.universalservice.orglli/consumers/ Lifelinesupport.asp) which provides consumers with contact information for the phone companies in their area that provide Lifeline and Link Up demonstrates that except in rare instances where a wireless carrier has obtained ETC certification, only the ILEC is providing Lifeline and Link Up service in many states.

21 *See SBC/AT&T Merger Order* at ¶ ¶ 85-90; *Verizon/MCI Merger Order* at ¶ 86-90.

universal service customers.[22] Moreover, while some wireless prepaid services, such as TracFone and others are maybe available, most universal service eligible providers cannot afford traditional wireless service plans. Therefore, in examining this merger the Commission must address the issue of the availability of competitive providers of wireline service to low income consumers.

III. THE MERGER WILL HARM THE PUBLIC INTEREST BY FURTHER CONSOLIDATING OWNERSHIP OF THE WHOLESALE FACILITIES REQUIRED BY THE FEW COMPETITORS SERVING THE UNIVERSAL SERVICE ELIGIBLE LOW INCOME MARKET

Throughout their application AT&T and BellSouth assert that the merger will not harm competition, and specifically that the merger will have no effect on the competitive capabilities of other providers, including CLECs.[23] The applicants argue that the concerns that prompted the Commission to place conditions on the 1999 SBC/Ameritech merger—that it "would increase the incentives and ability of the larger merged entity to discriminate against rivals..."—are not present in the pending application.[24] The primary basis for the applicants' amazing claims is that "ILECS today have...less ability to engage in technical discrimination" than in 1999 because facilities based-CLECs "typically need only to interconnect with ILECs without leasing underlying facilities."[25] However, as Fones4All has already demonstrated in its May 9, May 19 and May 24 ex parte filings in this docket, AT&T has not only the technical means to discriminate against competitors, but it is availing itself of that capability on a routine basis.

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22 Not only are these technologies expensive, but they are generally not available over the ungroomed ILEC network that serves poor areas; cable modems are only available to those who subscribe to cable television.

23 *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) ("Carlton/Sider Declaration")

24 Carlton/Sider Declaration at 50-54.

25 *Id.* at 53.

Fones4All, like the few other facilities-based competitors serving the low income residential market, rely upon facilities and services acquired on a wholesale basis in order to provide its services, including monopoly controlled bottleneck facilities controlled by AT&T and BellSouth. Competitors such as Fones4All, who seek to serve universal service eligible low income consumers, require ubiquitous access unbundled local switching as well as two wire copper loops. Low income populations are spread across economically depressed residential metropolitan and rural areas throughout the country. Indeed, even in densely populated Southern California, where the majority of Fones4All's customers reside over 95% of Fones4All customers are served by wire centers where no other facilities-based carrier other than the ILEC provides service. This is because the areas that Fones4All serves are in low income and tier 2 rural markets in California. While some competitive sources of ULS are available, such as the product available from Fones4All's wholesale provider, XO Communications, such alternatives are available only in very dense urban areas, and even then, they are not ubiquitous, leaving Fones4All to rely in may areas on expensive ILEC resale offerings to serve universal service customers. Fones4All and other similar carriers are deploying their own networks, in Fones4All's case, consisting of soft switches and leased DS0 loops and transport, however this network, in conjunction with some limited third party wholesale switching solutions can never replace the ubiquitous ILEC network.

Moreover, competitive carriers serving the universal service eligible market are also significantly impaired from expending what little capital they have access to because reimbursement of CLECs from state and federal universal service funds is tied, by law, to ILEC retail basic exchange service, even if those rates are below cost. As a result, state-mandated

below cost retail rates create insurmountable economic barriers and preclude most competitive carriers providing service to residential customers who qualify for universal service. Pursuant to state and federal law, carrier reimbursement rates for all carriers providing universal service are based upon ILEC cost factors. For instance, in California the CPUC ties the rate of competitive carrier reimbursement from the state universal service fund to the ILEC rate for basic local exchange service.[11] That is, competitive carriers in California calculate their universal service reimbursement by subtracting the amount the carrier collects from the universal service subscriber from the ILEC rate for basic local exchange service. As a result, a competitive carrier providing universal service cannot be fully reimbursed by the universal service fund for the costs it incurs in providing the service in the same way that ILECs are. Rather, competitors providing the universal service are inextricably tied to the ILEC rate structure. Therefore, even if a carrier serving universal service eligible customers deployed its own switch-based network it could never recoup its costs. the same reasons as described above, the fact that universal service reimbursement to all carriers is tied to the ILEC retail rates, this model is not economically viable. That is, if Fones4All or any similarly situated CLEC were to deploy a switch-based network in poor or rural area, it would never be able to recoup the cost of providing service since there is no way that the CLEC will be able to achieve the economies of scale of the ILEC. This is the case because a CLEC that deploys the expensive switching equipment will need to duplicate the ILEC network and not be able to fill it in the same manner as the ILEC.

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11 See General Order 153, the administrative regulation governing administration of the California state universal service program, which provides at section 8.3.2: "Each utility, on a per ULTS customer basis, may collect from the ULTS Fund an amount of lost revenues equal to the difference between (a) ULTS rates and charges, and (b) the lesser of the following: (i) the utility's regular tariffed rates and charges, or (ii) **the regular tariffed rates and charges of the ULTS customer's incumbent local exchange carrier.**" (emphasis added). General Order 153 can be viewed in its entirety at: http://www.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/40482.htm.

Even if a CLEC could deploy infrastructure in discrete areas where it has some concentrations of customers, without the availability of loops and switching, the disparity becomes even more pronounced, and has the effect of frustrating one of the most important public policy goals of the Act: to ensure that all Americans have access to both basic telecommunications service. [12]

IV. IN LIGHT OF THE MERGED COMPANY'S ANNOUNCED PLANS TO FOCUS EXCLUSIVELY ON PROVIDING ADVANCED IP VIDEO AND WIRELESS SERVICES, THE COMMISSION MUST ENSURE THAT THE FEW COMPETITORS FOCUSED ON PROVIDING BASIC WIRELINE SERVICE TO THE LOW INCOME UNIVERSAL SERVICE MARKET ARE NOT FORCED OUT OF THE MARKET BY THE MERGED COMPANY

The applicants indicate throughout their application that the intent to cease marketing and gradually withdraw from mass market provision of local long distance and bundled packages of both, and instead focus on providing "new converged services" over their wireless and IPTV networks. AT&T and BellSouth's strategy, then, is obviously very different than that of Fones4All, an extremely small company with fewer than 85 employees, led by a female minority CEO and focused on mostly non-English speaking serving low income wireline end users, many of whom are eligible for universal service subsidies. This has been Fones4All's mission since its founding. As stated above, over the last several years Fones4All has developed innovative, multi-faceted, grass-roots marketing efforts similar to the methods recommended by the Joint Board. As set forth in the Application, the focus of the merged company will be providing wireless and video services to mass market consumers, as well as bundled services to large enterprises users. Clearly, the goal of the merger is not to serve more low-income universal service eligible wireline residential end users.

Fones4All has been effective because it seeks out universal service eligible households where they live and work, and educates them about the availability of subsidized telephone service. Since Fones4All first began its intensive marketing efforts, the company has provisioned single line residential service to approximately 80,000 low income households, the vast majority of whom had never before received basic wireline telephone service. In the absence of Fones4All's efforts, these low income consumers, 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. 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 dedicated to serving low-income consumer in the respectful and customer centric way they deserve.

Fones4All has been successful in its outreach efforts because Fones4All seeks out potential Lifeline customers where they live and work. Since its inception, Fones4All's main vehicle to communicate information regarding the Lifeline program to potential low-income consumers has been through the use of field agents, many of whom were low-income individuals enrolled in the Lifeline program themselves. In a sophisticated, targeted and coordinated fashion, utilizing mapping software and field teams, Fones4All field agents canvass their neighborhoods, going door-to-door to educate consumers about the Lifeline program. Today, Fones4All has scores of field agents, who together have been responsible for signing up in excess of 40,000 new Lifeline subscribers.

In 2005, as a result of valuable information obtained from actual Lifeline costumer surveys, Fones4All concluded that a broader outreach method would be useful. That broader method turned out to be thirty minute "infomercials" that explain in detail in their native language the benefits and eligibility requirements to an ever growing Hispanic population base that generally does not understand how the program works. These programs are aired on local Spanish broadcast channels in both television and radio markets catering to Hispanics in California. The programs are presented by a very well recognized Hispanic radio celebrity who has become Fones4All's spokesperson. During the course of the infomercial, the spokesperson answers every potential question a potential Lifeline user may have, and explains in detail how the program works. If a viewer has additional questions they are directed to call a special Fones4All toll free number. Last year Fones4All aired a number of-hour television programs, scores of half-hour radio programs and hundreds of sixty-second radio spots. During 2006, Fones4All infomercial campaign has continued with twice the number of spots in each medium.

Fones4All has sought out and entered into partnership arrangements with non-profit organizations that cater to the populations likely to contain a large number of potential Lifeline eligible members, such as elderly and low-income families. For example, Fones4All reaches the elderly through relationships with organizations like the Pasadena Senior Center, an independent non-profit that helps elderly people live independent lives. Fones4All reaches low-income families through organizations such as The Sycamores, an organization that assists families with troubled youth in "transitional" living solutions. Fones4All conducts outreach activities at these centers in-person and provides Lifeline applications, as well as informational brochures that explain the Lifeline program.

Fones4All also conducts ethnic based outreach. For example, Fones4All is currently working with a Hispanic organization called "Federacion de Clubes Jaliscienses." Formed in 1990, the Federation is a voluntary philanthropic grass roots civic organization representing over 50 member clubs that provide social services to recent immigrants to Los Angeles from Jalisco, Mexico. Affiliated with the Mexican Consulate in Los Angeles, the Federation represents over 1 million émigrés from the Mexican state of Jalisco who now live and work in metropolitan Los Angeles. The Federation, along with more than 30 other similar Mexican federations, operate in concert with the Mexican Consulate to assist native-born Mexicans with transition from their home state to their new homes in the United States by providing basic social services, conducting philanthropic projects in Jalisco, such as providing ambulances and funding for orphanages, and providing news and information to members about how to obtain basic services and utilities in California, including telephone service, as well as informing members of the availability of public programs like the Lifeline program. In addition to this, Fones4All has been actively involved for the last two years in sponsoring Hispanic massive grassroots events such as the "Fiesta Broadway Show"[26] and the "Mexican Independence Day" celebrations, each drawing crowds in excess of 200,000 people. Until being forced out of the Fiesta Broadway Show by AT&T's use of monopolist tactics, Fones4All was a main sponsor of both events, where it distributed upwards of 100,000 flyers and brochures communicating the existence of the Lifeline program. Fones4All personnel attended these events and sign-up potential qualifying subscribers on the spot. Now that AT&T has forced it out, Fones4All has sought alternative venues to publicize the program.

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[26] AT&T is already flexing its monopoly muscles in Los Angeles, and for the 2006 Fiesta Broadway show demanded that the organizers of the festival exclude all other providers of telecommunications services, including Fones4All. As a result Fones4All was not able to participate as it has in years past.

V. THE COMMISSION SHOULD IMPOSE CONDITIONS ON THE MERGER IN ORDER TO MITIGATE THE PUBLIC INTEREST HARMS AND TO ENSURE THAT LOW INCOME UNIVERSAL SERVICE ELIGIBLE WIRELINE RESIDENTIAL CUSTOMERS HAVE A COMPETITIVE CHOICE

The Commission's public interest authority allows it to impose and enforce transaction-specific conditions in order to ensure that the public interest is served.[27] Section 303(r) of the Act allows the Commission to establish conditions not inconsistent with law that may be necessary to carry out provisions of the Act.[28]

Despite its attempts to distinguish the present application from that of SBC and Ameritech in 1999, the applicants fail to explain how the merger will not present the same harms, including the increased the incentive and ability of the larger merged entity to discriminate against rivals in retail markets, that prompted the Commission to establish several common sense conditions on that transaction. Like the SBC/Amerietch merger, the proposed transaction will lead the merged entity to raise entry barriers that will adversely affect the ability of rivals to compete in the provision of retail advanced services, interexchange services, local exchange and exchange access services, thereby reducing competition and increasing prices for consumers of those services, including wholesale consumers required by competitors. The increase in the number of local areas controlled by AT&T as a result of the merger will increase its incentive and ability to discriminate against carriers competing in retail markets that depend on access to AT&T's inputs in order to provide services.

Fones4All, like virtually all competitors serving the residential market, relies on facilities and services acquired on a wholesale basis in order to be able to provide its services. These include monopoly bottleneck network facilities acquired from AT&T. As noted above, in order

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27 *Verizon/MCI Merger Order* at ¶ 19.

28 *Id.*

to provide universal service customers across a wide geographic area competitors need access to ULS and basic two-wire loops. The further consolidation of wholesale providers of inputs to competitors portends a substantial reduction in wholesale competition, as well as a substantial reduction in potential competition at the retail level, including for low income customers eligible for universal service. Accordingly, Fones4All recommends adoption of the following conditions a aimed at addressing the universal service implications of the merger and enhancing the ability of competitive carriers to continue to obtain necessary facilities on a fair and reasonable wholesale basis to serve low income universal service end users consistent with Section 254 of the Act.

A. The Commission Should Require the Merged Company To Provide For At Least 60 Months Access to Unbundled Local Switching and Two Wire Loops at the Most Recently Applicable TELRIC Rates In Order to Serve Universal Service Eligible Low Income End Users

The single most important factor in attempting to provide low-income universal service eligible residential end users with some modicum of competitive choice is to ensure that non ILEC wireline providers of universal service subsidized telephone services exist in the market. The only way to ensure that competitors have the ability to provide universal supported services to low income end users is to provide access to unbundled local switching and basic two-wire loops and on a nondiscriminatory basis at TELRIC rates.

Copper loops are, and will remain for many years, the only viable communications pathway to many end users, particularly residential and low income consumers. While cable broadband networks and wireless loops offer potential competitive "last-mile" alternatives for some consumers in some locations, cable systems are not ubiquitous and wireless loop technology has yet to be widely deployed. Moreover, the cost of using these technologies

currently is out of reach for many consumers; thus, for these and other customers, having access to the "triple play" of IP voice, data, and video, over any type of broadband medium, including xDSL, is not a practical alternative. With the elimination of a commercially-viable UNE-P product,[29] the service alternatives for residential end users who simply want, or can only afford, traditional voice service are rapidly diminishing. Moreover, AT&T indicates that it will no longer provide telephone service to the mass market. Other competitors theoretically may be able to make up for some of the loss of potential service options, but the costs and technical requirements of providing wireline facilities-based service to universal service eligible customers are extremely cost prohibitive.

Competitors seeking to serve the universal service market should be provided access to basic two-wire loops and ULS at rates that are significantly closer to that actually experienced by AT&T, and at a minimum no more than recent TELRIC rates set by relevant state commissions. pursuant to 47 U.S.C. § 251. Thus, the Commission should require AT&T to provide as a condition of the proposed merger, TELRIC priced ULS and basic two-wire residential loops to requesting carriers using the inputs to serve universal service eligible residential end users.

B. The Commission Should Require the Merged Company To Maintain on a Going Forward Basis All Existing Copper Loop Plant Used to Serve Universal Service Eligible Low Income End Users

The primary motivation for AT&T's acquisition of BellSouth is purportedly to strengthen AT&T's ability to develop innovative products and services to serve customers in a rapidly changing communications environment. Part of this endeavor, of course, requires AT&T to intensify its transition to next-generation broadband capability, including fiber-to-the-home or to

[29] The Local Wholesale Complete "commercial agreements" offered by AT&T are not commercially viable, especially for serving universal service end users as the rates of reimbursement for competitors, as set forth above, are tied to ILEC retail rates which are in many cases lower than the wholesale "commercial" rates offered by AT&T.

the neighborhood node. Indeed, such investments are undoubtedly seen by AT&T as crucial to its future ability to compete in the converging communications marketplace. Unfortunately, despite AT&T's horn-blowing about its decision to in some distant day provide low income consumers with IPTV,[30] this focus creates the potential for low income consumers to be abandoned (much like SBC's 1999 out of region competition strategy) along with the of legacy telephone facilities now serving them, while AT&T completes its multi-year or, perhaps, multi-decade build-out of a fiber network. During this time, many end users, particularly those located in low income, low-revenue producing, residential areas face the prospect of diminished access to basic communications services. For this reason, it is imperative that the Commission ensure that AT&T continues to maintain these legacy copper facilities to proper standards so that end-users who remain captive to the copper network have the opportunity to obtain high quality telephone services.

Fones4All believes that a simple solution is to require AT&T, as a condition to the acquisition of BellSouth, to fully correct any deficiency in a copper loop facility within 5 business days of its receipt of a report that the facility is not in compliance with state commission standards or, when there is a pending order relating to the facility, no later that the order due date. In addition, AT&T should be required to set up a point of demarcation (DMARC) hotline for receipt of deficiency reports by CLECs. By establishing explicit requirements designed to maintain all DMARCs at state commission-established standards, all consumers including low income consumers, not just consumers chosen by AT&T to receive new Lightspeed services, will continue to have the ability to receive the broadest array of services and competitive options

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30 *See* AT&T Ex Parte, WC Docket 06-74 (May 8, 2006).

feasible over whatever facilities exist to serve them, even if those facilities consist of legacy copper loops.

VI. CONCLUSION

AT&T does not play fairly today, and it cannot be counted on to play fairly once the acquisition of BellSouth is completed. AT&T has shown, repeatedly, that it will engage in no-holds-barred efforts to stifle competition from any competitor, no matter how small. As the California Public Utilities Commission found in Decision No. 04-12-053, AT&T California has engaged in such tactics as improperly billing competitors for retail-related activities, withholding refunds for amounts that AT&T California acknowledged were due competitors, circumventing the ability of the Commission and carriers to monitor AT&T California's performance by forcing competitors to waive performance reporting and penalties in order to receive amounts owed to them, and establishing roadblocks to prevent end users with AT&T California DSL service from signing up with competitors for voice service.[31]

Moreover, AT&T's recent refusal to abide by a lawful order of the CPUC with respect to post March 11, 2006 resale pricing for unconverted UNE-P lines proves that AT&T continues to perceive itself as above the law and having no obligation to further any interests but its own even in the face of an order from state regulators.[32] Because AT&T is now, by far, the most dominant competitor in the mass-market local exchange services market, and will be even more dominant after the acquisition of BellSouth, it is vital that the Commission take steps to ensure that the interests of the most vulnerable consumers – universal service eligible residential end users—are preserved. Fones4All submits that the best way to do so is to adopt conditions to the acquisition

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31 *See* CPUC D. 04-12-053 (2004).

32 See Fones4All Ex Parte Letter WC Docket 06-74 (May 19, 2006).

that are designed to preserve the ability of other carriers to compete. The conditions proposed by Fones4All will do just that. Therefore, Fones4All urges the Commission to not grant the application herein without first considering and adopting appropriate conditions, including those proposed by Fones4All.

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