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

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

REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

In this proceeding, AT&T Inc. ("AT&T") and BellSouth Corporation ("BellSouth") seek approval from the Federal Communications Commission ("Commission") of AT&T's takeover of BellSouth and its subsidiaries. On June 5, 2006, some twenty parties, including the National Association of State Utility Consumer Advocates ("NASUCA")[1] filed comments either directly opposing the merger, or

[1]NASUCA is a voluntary association of 45 advocate offices in 42 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

recommending conditions be placed on the merger.[2] Only one party filed comments supporting the merger, the Alliance for Public Technology ("APT"). APT, which receives financial support from AT&T and BellSouth,[3] continues its support for such mergers[4] by arguing that they will result in more rapid deployment of advanced services.[5] APT is to be commended for its consistency, but not its foresight. As shown by comments of other parties, the promises of past mergers -- including promises as to advanced services -- have not been met, and there is no reason to expect that this combination will be any different. The Communications Workers of America ("CWA") filed comments noting possible benefits from the merger,[6] but expressed concerns about its members' jobs, especially in light of "what happened after SBC bought the 'old' AT&T to become the 'new' AT&T."[7]

NASUCA submits that the overwhelming weight of the comments, including

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[2] These parties include the Access Integrated Networks, Inc. ("Access"); Access Point, Inc. et al.; Cbeyond Communications, et al.; Center for Digital Democracy ("CDD"); Clearwire Corporation ("Clearwire"); COMPTEL; Consumer Federation of America, Consumers Union, Free Press and U.S. Public Interest Research Group ("CFA, et al."); EarthLink, Inc. ("EarthLink"); Fones4All Corporation ("Fones4All"); Georgia Public Service Commission ("GPSC"); Global Crossing North America, Inc. ("Global Crossing"); Image Access, Inc. d/b/a NewPhone, et al. ("Image Access, et al."); Mobile Satellite Ventures Subsidiary LLC ("MSV"); New Jersey Division of the Ratepayer Advocate ("NJRPA"); PaeTec Communications, Inc. ("PaeTec"); Jonathan L. Rubin, J.D., Ph.D. ("Rubin"); Saturn Telecommunications Services, Inc. ("Saturn"); Sprint Nextel Corporation ("Sprint"); SwiftTel Communications, Inc. ("SwiftTel"); and Time Warner Telecom, Inc. ("TWT"). The American Civil Liberties Union filed comments that the Commission cannot approve the merger until it fully adjudicates pending complaints that the applicants have violated federal privacy laws regarding the privacy of their customers' communications.

[3] See http://www.apt.org/about/sponsors-and-affiliates.html (accessed June 15, 2006).

[4] See APT Comments at 1-2.

[5] Id. at 2-5.

[6] CWA Comments at 1.

[7] Id. at 3-4.

NASUCA's initial comments, demonstrates conclusively that this merger does not serve the public interest, convenience and necessity, as required by the governing statutes and this Commission's rules.[8] In initial comments, NASUCA stated that "[n]onetheless, NASUCA expects that the Commission will approve the merger, as it has the other mergers over the last decade."[9] Perhaps the weight of the comments will persuade the Commission otherwise.

Opposition to the merger comes from representatives of consumers;[10] competitive local exchange carriers;[11] other competitive interests;[12] wireless companies;[13] Internet service providers;[14] mobile satellite service operators;[15] and individuals and organizations with an interest in competition policy.[16] (Some of these categorizations of industry participants may be oversimplified.) The comments discuss extensively the competitive and public interest harms that would result from this merger.

Specifically, the extensive and detailed comments of NJRPA and CFA, et al.

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[8] NASUCA's reply comments are submitted pursuant to the Public Notice filed on April 19, 2006 in this docket, DA 06-904.

[9] NASUCA Comments at 2.

[10] NASUCA; NJRPA; CFA, et al.

[11] Access; Access Point, Inc. et al.; Cbeyond, et al.; Fones4All; Global Crossing; Image Access, Inc., et al. (resellers); PaeTec; Saturn; SwiftTel; TWT.

[12] COMPTEL ("COMPTEL is the leading industry association representing competitive facilities-based telecommunications service providers, emerging [voice over Internet protocol] VoIP providers, integrated communications companies, and their supplier partners." COMPTEL Petition to Deny at 1.).

[13] Sprint.

[14] Clearwire; EarthLink.

[15] MSV.

[16] Rubin; CDD.

demonstrate the harms that will result from this merger[17]:

> [T]he proposed merger of two of the four 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. …[U]nless 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.[18]

AT&T and BellSouth dominate their local markets, and their merger would further entrench their position.[19] These anticompetitive effects would be seen in the markets for telecommunications, Internet and video services.[20]

Much has been said about the availability of intermodal alternatives that supposedly undercut the market power of firms like AT&T and BellSouth.[21] NJRPA "demonstrates comprehensively that intermodal alternatives do not yet provide economic substitutes for basis service, and therefore do not constrain AT&T's and BellSouth's market power."[22] Further, as CFA, et al. state, "the market advantages of dominant firms

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[17] NJRPA's comments are supported by the joint affidavit of Susan M. Baldwin and Sarah M. Bosley. CFA, et al.'s comments are supported by the joint affidavit of Dr. Mark N. Cooper and Dr. Trevor R. Roycroft.

[18] CFA, et al. Comments at 3; see also NJRPA Comments at 4 ("AT&T and BellSouth possess unique resources and capabilities to compete. The merger … would .irrevocably eliminate potential competition between these two major telecommunications carriers.").

[19] NJRPA Comments at 8.

[20] CFA, et al. Comments at 3 at 4-5.

[21] NJRPA refutes AT&T's claim of losing thousands of access lines every day to these alternatives. NJRPA Comments at 10.

[22] Id. at 11.

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."[23] As also noted by NJRPA, the situation is exacerbated by the fact that the Bells have been given regulatory relief -- on both federal and state levels -- based on the promise of competition that has yet to materialize.[24]

In initial comments, NASUCA asserted that the benefits of conditions placed on prior mergers "were minimal and short-lived."[25] Nonetheless, some parties propose that conditions be used here to ameliorate the public interest harms that would result from **this** merger. For example, the GPSC asserts that the Commission should require "that network neutrality be maintained and that AT&T offer stand-alone digital subscriber line ('DSL') service in BellSouth's service territory."[26] NASUCA submits that these conditions, which resulted from the SBC/AT&T merger,[27] are hardly sufficient here, as they were insufficient for SBC/AT&T.[28]

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[23] CFA, et al. Comments at 7.

[24] NJRPA Comments at 5.

[25] NASUCA Comments at 3.

[26] GPSC Comments at 1.

[27] *In the Matter of AT&T Corp. and SBC Communications Inc., Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission's Rules for Consent to the Transfer of Control of AT&T Corp. to SBC Communications, Inc.*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2006), Appendix F.

[28] Indeed, in one significant respect the GPSC inflates the value of the SBC/AT&T conditions: the conditions do not yet require AT&T to offer stand-alone DSL – that was required only within a year of the merger closing, and the condition applies for only two years. Id.

Others urging the Commission to adopt conditions include Access;[29] Access Point, et al.;[30] Cbeyond, et al.;[31] CDD;[32] Clearwire;[33] EarthLink;[34] Fones4All;[35] Global Crossing;[36] Image Access, et al.;[37], MSV;[38] PAETEC;[39] and Sprint.[40] Some, like NASUCA, appear to believe that no amount of conditions will adequately protect the public interest.[41] On balance, however, if the Commission feels compelled to approve this merger, it appears from the consumer perspective that **at minimum** the "stringent and enforceable" conditions discussed by CFA, et al. and NJRPA should be adopted.[42]

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[29] Access Comments at 2 (condition requiring merged company to negotiate in good faith).

[30] Access Point, et al. Comments at 65-74 (divestiture, cost-based access, non-discrimination, performance measures, etc.).

[31] Cbeyond, et al. Comments at 96-110 (wide variety).

[32] CDD Comments at 1 (divestiture of Cingular).

[33] Clearwire Comments at 1 (divestiture of "certain spectrum and leaseholds").

[34] EarthLink Comments at 2 (unspecified).

[35] Fones4All Comments at 2-3 (conditions to assist carriers serving low-income consumers).

[36] Global Crossing Comments at 7-8 (conditions to prevent discrimination in the provision of special access).

[37] Image Access, et al. Comments at 10 (conditions to protect competition via resale).

[38] MSV Comments at ii (conditions to prevent discrimination "against non-affiliated carriers and in favor of non-affiliated Cingular").

[39] PAETEC Comments at iii (conditions to prevent discrimination in the provision of special access).

[40] Sprint Comments at ii ("conditions designed to prevent the merged company from exploiting its dominance in the provision of special access services").

[41] See COMPTEL Comments, Rubin Comments, TWT Comments.

[42] CFA, et al. Comments at 8-9; NJRPA Comments at 22-23. The CFA, et al. conditions are described in detail in the joint affidavit of Cooper and Roycroft; the NJRPA conditions are described in the joint affidavit of Baldwin and Bosley.

Respectfully submitted,

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June 20, 2006