

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

In the Matter of)	
)	
AT&T Inc. and BellSouth Corporation)	WC Docket No. 06-74
Application for Consent to)	DA 06-904
Transfer of Control)	

**REPLY COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”)¹ submits these reply comments in response to the above referenced *Public Notice*² in which the Wireline Competition Bureau (“WCB” or “Bureau”) solicits data and information in order to evaluate AT&T Inc. and BellSouth Corporation’s application for Commission approval of the transfer of control to AT&T of licenses and authorizations held directly and indirectly by BellSouth.

NTCA urges the Commission to adopt the following market power safeguards as a condition of approving the proposed AT&T/BellSouth merger:

1. Provide rural ILECs and other small communications companies with the same wholesale terms, conditions and prices to interconnect and gain access to the merged company’s facilities that comprise the public communications network (PCN) as the merged company offers to its affiliates and subsidiaries (e.g., access to long distance/toll facilities, access to the Internet backbone (including special access, DS1s, DS3s, and Internet protocol (IP) bandwidth), and access transiting services (including tandem switching and transport)).

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 571 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, CATV, IPTV, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Public Notice*, “Commission Seeks Comment on Application for Consent to Transfer of Control Filed by AT&T Inc. and BellSouth Corporation,” WC Docket No. 06-74, DA 06-904 (released April 19, 2006) (*Public Notice*).

2. To the extent that the newly formed merged company will provide and control distribution of video programming, the Commission should require the merged company to provide access to this video programming to rural ILECs and small companies utilizing shared headends with the same quality, terms, conditions and prices as the newly merged company offers to its affiliates and subsidiaries, as well as other companies similar in size to the merged company.
3. Provide Most Favored Nation (MFN) conditions on all of the merged company's contracts involving interconnection and access to the PCN, IP backbone, and video programming so that rural carriers and other small companies can obtain the same favorable terms, conditions and prices that large carriers, or affiliated carriers of the merged company, receive in their contracts with the merged company.
4. Disclose publicly the terms and conditions of contracts involving interconnection and access to the PCN, IP backbone and video programming. Prohibiting non-disclosure agreements will assist in ensuring that rural carriers and their customers receive the same quality service and reasonable prices for these facilities and services.
5. Cap the newly merged company's wholesale rates for wholesale DS1 and DS3 local private line services for a minimum of 5 years.
6. Cap the newly merged company's wholesale rates and tariffs for special access services, including contract tariffs that either company provides in its in-region territory, at AT&T's and BellSouth's current rates for these wholesale services for a minimum of 5 years.
7. Cap the newly merged company's rates and tariffs for transiting services, including contract tariffs that either company provides in its in-region territory, at AT&T's and Bell South's current rates for these services for a minimum of 5 years.
8. Require the newly merged company to maintain settlement-free peering arrangements with at least as many providers of Internet backbone services as it did prior to the merger for a minimum of 5 years.

Continued access to special access services, the Internet backbone, and video content is a serious concern to NTCA member companies. Reliable, reasonably priced access to the Internet backbone is vitally important to these companies' ability to provide their customers with affordable broadband services. NTCA member companies do not have many Internet backbone access choices as it is. In a recent survey of NTCA member companies, 57% of survey respondents indicated that they have two or fewer choices for Internet backbone providers, and

38% indicated they have but a single option.³ Further increasing market concentration, without accompanying safeguards, will threaten their ability to provide their customers with the type of service they want and are entitled to receive.

A number of parties filing initial comments in this proceeding share these same concerns. Time Warner Telecom notes that the “proposed merger threatens to cause the Internet backbone market to become dominated by one or more ‘mega-peers’ ...[which] could well be positioned to exploit their growing market power and take anticompetitive actions against smaller Internet backbone and transit providers.”⁴

Consumer Federation of America, Consumers Union, Free Press, and U.S. Public Interest Research Group (hereafter referred to as Consumer Federation, *et al.*) believe that the proposed merger would have “profoundly anticompetitive effects across the full range of product and geographic markets touched by the merging parties.”⁵

In an attachment to their petition, Consumer Federation, *et al.* note that the proposed merger will “provide incentives to restrict access and discriminate” as “[a]ccess to the last-mile pipes controlled by AT&T can only be achieved through interconnection with AT&T’s backbone network.”⁶ Upon the merger’s approval, many companies in BellSouth’s service territory will find themselves in the position of having no choice but to deal with AT&T in order to obtain access to the Internet backbone.

NTCA concurs with Consumer Federation, *et al.*’s proposed solution: “[f]or a period of five years AT&T-BellSouth must maintain at least as many settlement-free U.S. peering

³ NTCA 2006 Broadband/Internet Availability Survey, conducted May 2006, report forthcoming July 2006.

⁴ “Petition to Deny of Time Warner Telecom,” WC Docket 06-74, June 5, 2006, at 27.

⁵ “Petition to Deny of Consumer Federation of America, Consumers Union, Free Press, and U.S. Public Interest Research Group,” WC Docket No. 06-74, June 5, 2006, at 3.

⁶ Consumer’s Union, *et al.*, “Joint Declaration of Mark N. Cooper and Trevor Roycroft, On Behalf of Consumer Federation of America, Consumers Union, Free Press, and USPIRG,” (Cooper/Roycroft Declaration), at 60.

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 available website, with any revisions to the peering policy posted on a timely basis as they occur.”⁷ This five-year freeze would effectively prevent the newly-formed entity from taking unfair advantage of their dominant position in the industry.

Other interested parties concur. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), in a June 14 *ex parte* filing, calls upon AT&T to “maintain settlement-free peering arrangements with at least as many providers of Internet backbone services as it did prior to the merger.”⁸ OPASTCO cites AT&T’s increased bargaining power over small carriers post-merger and the resultant upward pressure on prices. They suggest that the Commission analyze the merger’s impact on markets for a minimum five-year period, only then deciding if the proposed restrictions could be lifted.⁹

In the case of the previous SBC/AT&T and Verizon/MCI mergers, NTCA called for public disclosure of the terms and contracts involving access to the IP backbone.¹⁰ NTCA argued that “[p]rohibiting non-disclosure agreements will assist in ensuring that rural carriers and their customers receive the same quality service and reasonable prices for these facilities and services.”¹¹ The same holds true in this matter. In the absence of full disclosure, it will be impossible to know whether or not AT&T is abusing their increased market power. The Commission should therefore prohibit AT&T’s use of non-disclosure agreements.

⁷ Consumer Federation, *et al.* petition, at 9.

⁸ OPASTCO *Ex Parte* Notice, WC Docket No. 06-74, DA 06-904, June 14, 2006, at 3.

⁹ *Id.*

¹⁰ See, for example, NTCA *Ex Parte* Notice, WC Docket No. 05-65, WC Docket No. 05-75, “SBC/AT&T Merger, Verizon/MCI Merger,” October 21, 2005, at 1.

¹¹ *Id.*

NTCA believes that these conditions are necessary to ensure that the newly merged company will interconnect their facilities with small communications companies at reasonable rates, terms and conditions. Consolidations of this magnitude without these market power safeguards will only enhance the market power of these and other future mega voice/data/video corporations to dictate the prices, terms and conditions in contracts with small communications, broadband, video, voice over Internet protocol (VoIP), and other IP-enabled service providers. With unchecked market power, these multibillion dollar companies will have a greater opportunity to conduct predatory pricing and implement discriminatory practices against their much smaller competitors.

Small communications, broadband, IP and video companies have little or no leverage in negotiations with large companies. Large vertically integrated corporations can walk away from negotiations, small companies cannot. Non-disclosure agreements hide from the public any discriminatory rates and conditions that may be imposed on small providers seeking wholesale interconnection to the PCN, IP backbone and video content from large providers. As a condition of this and any future mega-merger approvals, NTCA urges the Commission to prohibit non-disclosure agreements and allow small carriers MFN status concerning the newly formed AT&T/Bell South contracts involving special access, connection to the IP backbone, access to video content, and interconnection of telecommunications and information services between the merged companies and other companies.

The Commission review of these and other mergers must be very sensitive to the mergers' potential impact on competitors, consumers and the public interest. If these and other new mega-corporations abuse their market power, small communications providers could be harmed dramatically and rural consumers could find themselves in a world without certain

services or a world without competition for voice, video or data services in their rural communities. Such a result would be contrary to the Communications Act's goals of ensuring universal service, promoting the deployment of advanced services, developing competition and maintaining affordable rates for all Americans.

For the above-noted reasons, NTCA urges the Commission to adopt NTCA's proposed market power safeguards as a condition of approving the proposed AT&T/BellSouth merger.

Respectfully submitted,

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June 20, 2006

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 06-74, DA 06-904 was served on this 20th day of June 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons.

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