Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
AT&T Inc. and BellSouth Corporation	)	WC DOCKET NO. 06-74
Applications for Approval of	)	
Transfer of Control	)	
	)	

REPLY OF *AD HOC* TELECOM MANUFACTURER COALITION

This Reply is filed by a group of companies that make a wide variety of telecom hardware and software used by service providers and consumers. While we express no view on the broad question of whether the FCC should approve this merger, we file our Reply in order to respond to the request by three parties that the agency condition any merger approval on compliance either with (i) the "network neutrality" regulation set forth in the agency's Policy Statement[1] but for a longer period than was mandated in previous merger approval orders,[2] or (ii) a more stringent network neutrality regulatory regime than is reflected in the Policy Statement.[3] We oppose both suggestions because we believe either option risks unnecessarily slowing investment in telecom products, and we file this Reply to explain the basis for this conclusion.

In deciding whether to condition approval of a telecom merger on compliance with any given regulatory requirement, the Commission is required to balance any public interest harm that could result from imposing that condition against any benefit that might result, and it may not impose the condition

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1 *See* "Appropriate Framework for Broadband Access to the Internet over Wireline Facilities", FCC No. 05-151 (Sept. 23, 2005).

2 Consumer Federation *et al* Pet. to Deny at 9 (asking FCC to require that the merged AT&T/BellSouth comply with the agency's network neutrality Policy Statement for five years from the closing date, whereas the agency has required other merged ILECs to comply with the Policy Statement for two years); Center for Digital Democracy Pet. to Deny at 4 (same).

3 Access Point *et al.* Pet. at 34 (asking FCC to impose "substantial new safeguards" as a condition of merger approval to ensure network neutrality).

if the harm exceeds the benefit.[4] A merger condition that provides a disincentive to invest in telecom infrastructure or other telecom products represents one that produces a public interest harm.[5]

A growing body of new evidence suggests that a major disincentive to invest in telecom infrastructure will result from network neutrality regulation and that this disincentive to invest in infrastructure also will depress spending for all other hardware and software products that are required to provide consumers with the new services these networks make possible. First, the consensus on Wall Street and among venture capitalists appears to be that the imposition of network neutrality regulation provides a disincentive to invest in telecom infrastructure and related products. For example, Sanford C. Bernstein and Company's senior telecom analyst recently concluded that "[m]andated 'Net Neutrality' would further sour Wall Street's taste for broadband infrastructure investments, making it increasingly difficult to sustain the necessary capital investments [to deploy these networks]."[6] Likewise, John Rutledge, President of Rutledge Capital, has stated that network neutrality regulation would "put a chill on badly-needed investment in America's consumer broadband infrastructure."[7]

Investment bankers and venture capitalists are not alone in believing that network neutrality regulation will provide a disincentive to invest in telecom hardware and software. Several new economic studies likewise have concluded that network neutrality regulation will depress demand for telecom products. One example is a study released this month by the American Consumer Institute:

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4 *See, e.g., SBC/Ameritech Merger Order* at ¶ 47, 14 FCC Rcd. 14712 (1999); *AT&T/SBC Merger Order* at¶ 16, 20 FCC Rcd. 18290 (2005).

5 *SBC/Ameritech Merger Order, supra*, at ¶ 50; *AT&T/SBC Merger Order, supra*, at ¶ 17.

6 *See, e.g.*, Bernstein Research Weekly Research Notes, "Net Neutrality – Beware the Law of Unintended Consequences" at 3 (April 7, 2006).

7 Rutledge and Company News Release dated April 27, 2006, avail. at http://biz.yahoo.com/prnews/060427/clth533.html?.v=21.

> "[Network neutrality regulation will] make investment in network infrastructure more risky, . . . reduce expected earnings for risk taking shareholders and . . . reduce expected growth of cash flow from broadband network services [and these factors,] in turn, [will] raise capital costs, lower the optimal rate of rolling out broadband networks, and delay and/or reduce infrastructure investment."[8]

Of equal significance is new study by the Phoenix Center for Advanced Legal & Economic Public Policy Studies, which concludes that network neutrality regulation "is likely to deter [development of competing broadband access networks], reduce the expansion and deployment of [such] . . . networks, and . . . lead to the monopoly provision of . . . broadband services in many markets."[9]

CONCLUSION

In order to avoid creating a disincentive to invest in telecom products, the Commission should not condition approval of the proposed AT&T/BellSouth merger on compliance with the "network neutrality" regulation set forth in the agency's Policy Statement for a longer period than mandated in

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8 Larry F. Darby, "Consumer Welfare, Capital Formation and Net Neutrality: Paying for Next Generation Broadband Networks" at 8 (June 2006), avail. at www.theamericanconsumer.org/Net Neutrality Study.pdf.

9 Phoenix Center Policy Paper No. 24, "Network Neutrality and Industry Structure" (April 2006) at 2-3, avail. at http://www.phoenix-center.org/pcpp/PCPP24Final.pdf. See also Broadband Working Group MIT Communications Futures Program and Cambridge Univ. Communications Research Network, "The Broadband Incentive Problem" (Sept 2005) (concluding that the "broadband value chain", including investment in broadband networks and in hardware and software products that make broadband networks work, "is headed for a train wreck" unless broadband network operators are permitted to experiment with new ways to recover network costs, including the right to recover some costs from companies that use the networks to provide services and applications to consumers), avail. at http://cfp.mit.edu/groups/broadband/docs/2005/Incentive_Whitepaper_09-28-05.pdf.

previous merger approval orders. Nor should it condition merger approval on compliance with a more stringent network neutrality regulatory regime than set forth in the Policy Statement.

Respectfully submitted,

Brad E. Herr, President
AC Data Systems, Inc.
806 West Clearwater Loop, Ste C
Post Falls, ID 83854

Brian Paul, Chief Financial Officer
Actiontec Electronics, Inc.
760 North Mary Avenue
Sunnyvale, CA 94085

Jack Field, VP Global Connectiity Solutions
ADC Telecommunications
1187 Park Place
Shakopee, MN 55379

Manfred Laidig, President
BTECH Inc.
10 Astro Place
Rockaway, NJ 07866

Michael C. Stephens, President and CEO
CBM of America, Inc.
1455 W. Newport Center Drive
Deerfield Beach, FL 33442

Robert J. Novak, Sr. VP and COO
Charles Industries, Ltd.
5600 Apollo Drive
Rolling Meadows, IL 60008

Brad Radichel, President
Condux International, Inc.
145 Kingswood Road
Mankato, MN 56002-0247

Robert J. Robbins, President
Electrodata, Inc.
23020 Miles Road
Bedford Heights, OH 44128

Peter M. Pifer, CEO
Enhanced Telecommunications, Inc.
6065 Atlantic Blvd, Ste B
Norcross, GA 30096

Joseph D. Evankow, Jr., Director
FiberControl
1208 Highway 34, Tower No. 1
Aberdeen, NJ 07747

Daryl Ingalsbe, President
Independent Technologies Inc.
1142 Miracle Hills Drive
Omaha, NE 68154

Richard A. Orriss, President and CEO
Leapstone Systems, Inc.
220 Davidson Avenue
Somerset, NJ 08873

Eric A. Norland, President
Norland Products Inc.
2540 Route 130, Ste. 100
Cranbury, NJ 08512

William G. Johnson, President and CEO
NorthStar Communications Group, Inc.
1900 International Park Drive
Birmingham, AL 35243

Simin Cai, President
NSG America, Inc.
28 Worlds Fair Drive
Somerset, NJ 08873

John G. Heindel, CEO
PECO II, Inc.
1376 State Route 598
Galion, OH 44833

Brian N. DiLascia, Vice Pres. and Gen. Mgr.
Prysmian Communications Cables and Systems
USA, LLC
700 Industrial Drive
Lexington, SC 29072

John R. Colson, Chairman and CEO
Quanta Services, Inc.
1360 Post Oak Blvd, Ste 2100
Houston, TX 77056-3023

John L. Vette, CEO
SNC Manufacturing Company Inc.
101 W. Waukau Avenue
Oshkosh, WI 54902-7299

Fred McDuffee, CEO
Sumitomo Electric Lightwave
78 Alexander Drive
Research Triangle Park, NC 27709

Samuel D. Davis, President
Telesync, Inc.
5555 Oakbrook Pkwy, Ste 100
Norcross, GA 30093

Andrew Marsh, President and CEO
Valere Power, Inc.
661 North Plano Road, Ste 300
Richardson, TX 75081

Mary Vermeer Andringa, President and CEO
Vermeer Manufacturing Company
1210 Vermeer Road East
Pella, IA 50219

William L. Martin III, CEO
White Rock Networks, Inc.
1301 West Pres. George Bush Freeway
Richardson, TX 75080

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Reply of Ad Hoc Telecom Manufacturer Coalition" has been mailed to each of the following:

Mark Cooper, Dir. of Research
Consumer Federation of America
1424 16th Street, NW Ste 310
Washington, DC 20036

Gene Kimmelman, VP
Consumers Union
1101 17th Street, NW Ste 500
Washington, DC 20036

Ben Scott, Policy Director
Free Press
501 Third Street, NW Ste 875
Washington, DC 20001

Ed Mierzwinski, Consumer Program Direcotr
U.S. Public Interest Research Group
218 D Street, SE
Washington, DC 20003

Andrew Jay Schwartzman
Media Access Project
1625 K Street, NW Ste 1000
Washington, DC 20006

D. Mark Baxter
Stone & Baxter
577 Mulberry Street, Ste 800
Macon, GA 31201
(for Access Integrated Networks)

Andrew Lipman
Bingham McCutchen
3000 K Street, NW
Washington, DC 20007
(for Access Point et al)

Jane Clancey
Jane Clancey