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October 3, 2006

**VIA U.S. EXPRESS MAIL**

*Ex Parte* Filing

Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**RE: In the Matter of Petition of AT&T Inc and BellSouth Applications for Approval of  
Transfer of Control  
WC Docket No. 06-74**

Dear Secretary Dortch:

The New Jersey Public Advocate, Division of Rate Counsel hereby files this *ex parte* in the above referenced proceeding. This hard copy of the *ex parte* contains confidential information subject to the Protective Order in WC Docket No. 06-74 is only being filed in hard copy. A redacted version will be filed electronically tomorrow with the Federal Communications Commission.

The Joint Applicants each, separately, possess the ability, incentive and opportunity to discriminate against rivals and to exercise their market power to the detriment of mass market, mid-sized, and enterprise consumers. The proposed transaction would enhance the Joint Applicants' ability and incentive to engage in anticompetitive conduct and to set supra-competitive rates for non-competitive services. The recommendations that follow are supported by the Declaration of Susan Baldwin, Sarah M. Bosley, and Timothy E. Howington based upon review of the confidential and highly confidential documents furnished by the Petitioners in this proceeding. The attached declaration supplements but does not replace the Baldwin/Bosley Declaration and further supplements our comment and reply comments filed previously in this proceeding. Rate Counsel submits that the proposed merger should be denied as not being in the

public interest. If the merger is not denied, then at a minimum, the following conditions should be imposed.

### **Summary of Major Findings and Recommendations.**

- The Commission should not approve the proposed merger unless and until AT&T demonstrates its compliance with the conditions on the AT&T/SBC merger, especially AT&T's provision of stand-alone digital subscriber line ("DSL").
- In its assessment of whether the proposed transaction is in the public interest, the Commission should review carefully the strategic and planning documents that the Joint Applicants have designated as highly confidential because, among other things, they are not available to the general public, yet contain important information about the Joint Applicants' market power and sales strategies. The Commission, therefore, has a unique responsibility to consider these documents.
- The Commission should determine a procedural mechanism whereby the Commission can consider the evidence in this proceeding in its deliberations in the Separations proceeding. The Joint Applicants' marketing and sales plans, which are described in highly confidential documents submitted in this proceeding, bear directly on the flaws in the existing separations process, and the concern that basic service customers are cross-subsidizing Bells' unregulated lines of business.
- If, despite evidence that the merger is not in the public interest, the Commission approves the merger, its approval should be contingent upon enforceable conditions that mitigate risks for consumers and mid-sized and enterprise businesses with strong incentives for compliance and clear standards for enforcement.
- A review of the evidence contained in the materials provided to the FCC by the Joint Applicants underscore the critical importance of the adoption of the conditions outlined in the Baldwin/Bosley declaration.<sup>1</sup>

### **Proposed Conditions.**

- The Joint Applicants should commit to the deployment of broadband throughout their operating territory as part of basic service with no increase in POTs prices.
- Market concentration among relatively few carriers means that net neutrality conditions are essential to protect consumers and competitors from undue control of access to the Internet;

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<sup>1</sup>/ See Baldwin/Bosley Declaration, at paras. 264-285.

- The Joint Applicants should commit to unbundled DSL until such time as AT&T demonstrates to the Commission that the market has evolved to a point where the commitment is no longer necessary;
- The Joint Applicants should offer UNE-P at TELRIC rates until local market are sufficiently competitive;
- The Commission should require an audit of AT&T's interaffiliate transactions and sales practices;
- The Commission should require Applicants to offer video, DSL, and other non-telecommunications services through structural separate entities with compliance with affiliate transaction rules.
- The Commission should require AT&T and BellSouth to submit service quality data and adopt sanctions for reductions in service quality;
- The Commission should impose a condition that the Joint Applicants must offer an à la carte option for any video offering in addition to various bundles.
- The Commission should either deny the merger or require the Joint Applicants to divest the overlapping facilities to remedy the competitive harm in the mass market, mid-size, and enterprise markets. Absent such divestiture, the Joint Applicants should commit to compete out of region.
- The FCC should impose conditions to ensure consumers benefit from merger synergies. The FCC should establish an adequate X-factor and reinitialize rate caps to reflect all the exogenous events that have occurred and the distortion due to the separations freeze. Furthermore, the FCC should take account of estimated merger synergies in its forthcoming decisions in the intercarrier compensation and separations proceedings.
- The Commission should eliminate the non-rural high cost support from the universal service fund for the Joint Applicants;
- The Commission should condition its approval of the transaction on the Joint Applicants' assignment and allocation of a fair share of the public switched telephone network away from regulated services to unregulated services, which, in turn, would require a re-initialization of regulated rates.
- The Commission should ensure that legacy AT&T customers in BellSouth's territory are not harmed by the proposed merger;
- Competitive reporting and information are more essential than ever.

Very truly yours,

RONALD K. CHEN  
PUBLIC ADVOCATE OF NEW JERSEY

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