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October 19, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth St., SW
Washington, DC 20554

Re: Notice of *ex parte* communication: DA 06-2035 and WC Docket No. 06-74

Dear Ms. Dortch:

On October 18, 2006, Gene Kimmelman, Senior Vice President for Federal and International Affairs and Jeannine Kenney, Senior Policy Analyst, both of Consumers Union, and Mark Cooper, Director of Consumer Research for Consumer Federation of America met with Commissioners Michael Copps and Jonathan Adelstein to reiterate concerns identified in our reply comments filed in WC Docket No. 06-74, In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, and to respond to the supplemental filing of AT&T noticed in DA 06-2035 on October 13, 2006.

We expressed our concerns that the potential merger conditions outlined in AT&T's supplemental filing were insufficient to protect the public interest and failed to directly address the anti-competitive harms the merger poses. In some cases, the conditions outlined by AT&T appear to be little more than marketing strategies designed to entice existing customers to buy new services or public relations ploys designed to engender good will. Regardless, the proposed conditions do little to nothing to mitigate the impacts of the merger.

We proposed that the Federal Communications Commission should impose conditions that directly confront and mitigate the network bottlenecks that this merger would further constrict, reducing already minimal competition in telephony and broadband service and increasing the risk of discrimination against competitive online content and service providers.

First, the Commission should protect consumers from anti-competitive arrangements between AT&T and online content and service providers by requiring not just that AT&T comply with the principles outlined in FCC's Policy Statement of

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September 23, 2005, but also by both requiring that AT&T complies with an additional non-discrimination requirement and by ensuring enforceability of FCC's principles. The Internet remains one of the last sources of competitive services and independent content and must remain available to consumers. The bottleneck that an even more powerful AT&T can create to competitive services becomes an even greater concern as AT&T begins acquiring content for IPTV and other services. A fifth "principle of nondiscrimination" and enforcement should remain in effect for no fewer than seven years following the merger closing date to provide opportunities for competitive broadband providers to emerge and offer an alternative to AT&T's DSL service.

Second, we recommended that the merging parties should not only be required to offer broadband service to all ADSL-capable consumers without requiring those consumers to also purchase circuit switched telephone service, they must make that stand-alone service available at reasonable prices throughout the territories of both parties. Without reasonably priced services, consumers will not have a meaningful access to stand-alone DSL service, allowing the merged entity to reduce or eliminate the viability of competitive, independent voice-over-Internet-protocol phone service providers. VOIP customers must first have access to broadband before they can use the low-cost VOIP services. Stand-alone DSL services priced so high as to eliminate any incentive for consumers to buy stand-alone DSL does nothing to mitigate the anticompetitive effects of this merger on residential phone service.

We also expressed concern that anticompetitive pricing of stand-alone DSL service is exactly how AT&T carried out a comparable condition imposed on its merger with SBC. Therefore, we recommended that stand-alone DSL service should be priced reasonably and at rates no higher than AT&T's lowest available discounted DSL service offered to new or existing customers for a significant period of time. Thus, stand-alone DSL service should be available for \$10 in markets where AT&T is also offering its bundled broadband Internet service for \$10 per month, as it proposed in its supplemental filing. This condition would have the added advantage of preventing AT&T from squeezing out competitive broadband providers by offering predatory price discounts on bundled DSL service. Further this condition should be imposed for no fewer than seven years following the merger closing date to ensure that competitive broadband and VOIP service providers have an opportunity to gain a foothold in the marketplace. This is particularly important given the limited spectrum currently available to competitive wireless broadband providers.

Third, we proposed that in order to protect competitive providers and the business and residential customers who use their services both in and out of the merger territory, the Commission should require that negotiations over special access fees be subject to baseball-style binding arbitration, requiring special access charges to be just and reasonable. Exorbitant and unregulated special access fees have served as anti-competitive barriers and have resulted in increased costs to competitors that are passed on to their residential and business customers. Baseball-style binding arbitration would provide incentives for AT&T to engage in good-faith commercial negotiations to avoid the arbitration process.

Finally, as we have noted in prior filings in this docket, AT&T and Bell South

should be required to divest sufficient spectrum in the merger territory to allow a third wireless broadband provider to compete in-region. The wireless trials proposed by AT&T in its supplemental filing have nothing to do with and do not mitigate the anticompetitive impacts of this merger. The proposal does nothing to promote use of spectrum by alternative broadband competitors; it merely allows AT&T, the dominant wireline, wireless and broadband provider, to offer an additional service to its customers. To mitigate AT&T's market power with respect to in-region broadband and wireless markets, AT&T/Bell South should be required to divest spectrum in order to make airwaves available to unaffiliated broadband competitors who may be able to offer wireless broadband service as a competitive alternative to AT&T's DSL service.

The core conditions outlined above address the fundamental concerns about the anticompetitive network bottlenecks that a combined AT&T/Bell South would further constrict. The Commission should impose conditions that directly address these core issues and reject terms that do not mitigate the adverse impacts of the merger itself.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted

/s/

Jeannine Kenney
Senior Policy Analyst
Consumers Union