

**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.)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES**

On October 13, 2006, the Federal Communications Commission (“FCC” or “Commission”) issued a Public Notice calling for comment on proposals made by AT&T Inc. (“AT&T”) and BellSouth Corporation (“BellSouth”) (collectively, “Applicants”) seeking Commission approval of AT&T’s takeover of BellSouth and its subsidiaries.¹

¹ DA 06-2035. The proposals were contained in a letter from AT&T counsel attached to the Public Notice. An Erratum was issued on October 16, 2003, with a corrected letter attached.

The National Association of State Utility Consumer Advocates (“NASUCA”)² submits these brief comments on the proposals.³ NASUCA’s position is still that this merger does not serve the public interest, convenience and necessity, as required by the governing statutes and this Commission’s rules. Nonetheless, NASUCA expects that the Commission will approve the merger, as it has the other mergers over the last decade. That makes it all the more important that the Commission impose conditions on the merger. As stated in the October 20, 2006 ex parte, from the residential consumer perspective, **at a minimum** the Commission should adopt the “stringent and enforceable” conditions discussed by Consumer Federation of America (“CFA”) and the New Jersey Division of the Ratepayer Advocate (“NJRPA”).⁴

As an overriding concern, we note that none of the conditions lasts for longer than 30 months. There is no indication of what happens after that time. The sunset date of

² NASUCA is a voluntary, national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states 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. Ann. Subdiv. 6; 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). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

³ NASUCA filed comments on June 5, 2006 in this docket, pursuant to the Public Notice filed on April 19, 2006 in this docket, DA 06-904. Also, on October 20, 2006, NASUCA filed an ex parte communication attaching filings made by NASUCA in the United States District Court for the District of Columbia (*United States of America v. SBC Communications, Inc. and AT&T Corp.*, (CA-1:05 CV02102) and *United States v. Verizon Communications, Inc., and MCI, Inc.* (CA-1:05CV2103)) concerning consolidation in the telecommunications industry.

⁴ 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 Dr. Mark N. Cooper and Dr. Trevor R. Roycroft; the NJRPA conditions are described in the joint affidavit of Susan M. Baldwin and Sarah M. Bosley.

any conditions should be driven by a trigger that would demonstrate that some target level of competition in the relevant market has been achieved.

The document makes distinctions between what will happen in the legacy BellSouth territory and the current AT&T territory. To the extent that this is designed to correct current problems particular to the BellSouth territory, it is appropriate. But benefits from this merger -- with its national implications -- should be extended to all customers under the entire AT&T/SBC/Ameritech/PacBell/SNET/BellSouth footprint, not just BellSouth.

The value of some of these “conditions” is minimal. For example, broadband condition number 2 commits to providing a DSL modem without charge to any customer who signs up for at least 12 months.⁵ AT&T has been doing this all along.⁶ The \$10 DSL rate (only available to new customers) is lower than the current \$14.95 rate, but that appears to be the direction of AT&T’s current marketing anyway, in order to pull market share away from cable providers.

More importantly, the definition of a broadband service as “in excess of 200 kpbs in at least one direction”⁷ is antique and allows AT&T far too much wiggle room. Any such commitment must be consistent with current technology. Further, the “naked DSL”

⁵ Applicants’ Letter at 2.

⁶ For example, AT&T’s current AT&T/Yahoo DSL offer includes a charge of \$49.99 for the ADSL modem, which is then eligible for a \$49.99 rebate, resulting in a net cost of \$0 to the consumer. *See* <http://www.sbc.com/gen/general?pid=7690#hsi> (visited 10/23/06). In fact, the rebate does not even require a 12-month contract, only that the “High-speed Internet account must be in service for a minimum of 60 days to be eligible for rebate.” *Id.* In addition, AT&T is offering VISA Gift Cards of between \$25 and \$75 based upon the type of ADSL service ordered.

⁷ Broadband condition number 1, *id.*

commitment (ADSL condition number 1) includes no price commitment. Requiring sale of DSL without the sale of local service is only of value if there is a substantial differentiation in price. Based on what AT&T did in California, that is not AT&T's strategy.⁸

This merger would join AT&T, the Nation's largest local and long distance carrier, with BellSouth, the third largest incumbent local exchange carrier ("ILEC"). It also combines the two owners of the second-largest wireless carrier (Cingular). If it is to be approved, it must be assured that there are both consumer benefits and consumer protections. The concessions by the Applicants -- clearly intended to be the least they can get away with -- do not adequately justify approval of this merger.

CONCLUSION

In the *SBC/Ameritech Order*, the Commission noted the reasons for the breakup of AT&T, which the SBC/Ameritech merger -- like the other SBC mergers and the mergers that led to the creation of Qwest and Verizon -- reversed in part:

To put it simply, the Bell System was broken up because of two

⁸ The California PUC's merger conditions required that AT&T begin offering "Naked DSL" by June 30, 2006: "SBC shall, by June 30, 2006, cease forcing customers to purchase separately traditional local phone service as a condition for obtaining DSL (this condition is commonly known as a requirement to provide 'naked DSL'). We further order that no later than June 30, 2006, SBC shall submit an affidavit evidencing compliance with this condition of the merger." In the Matter of the Joint Application of SBC Communications, Inc. ("SBC") and AT&T Corp. Inc. ("AT&T") for Authorization to Transfer Control of AT&T's Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation, Application 05--02-027, Order Approving Application to Transfer Control (November 18, 2005) at 108. On June 30, 2006, AT&T made the required filing, setting its "Naked DSL" rate at \$44.99, which is actually *higher* than the combination of the minimum single-party residential dial tone line rate plus the Basic DSL rate. Additionally, the availability of this "Naked DSL" offering is not readily disclosed on the AT&T website, as is demonstrated on the attached printout of AT&T residential DSL offerings in California.

firmly held beliefs. One belief was that competition, rather than regulation, could best decide who would sell what telecommunications services at what prices to whom. The other belief was that the principal obstacles to realizing that competitive ideal were the incentive and ability of dominant local exchange carriers, who typically controlled virtually all local services within their regions, to wield exclusionary power against their rivals.⁹

The mergers approved by the Commission have actually harmed wireline competition and the prospects for consumer benefits that competition could bring. And the combined companies also wield significant market power in the intermodal markets that have sprung up as a result. If the Commission is to approve this merger, the Commission must order meaningful and enforceable conditions that will protect and benefit consumers in the Applicants' territories.

Respectfully submitted,

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⁹ *SBC/Ameritech Order*, ¶ 14.