

October 27, 2006

**BY ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, WC Docket No. 06-74

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Dear Ms. Dortch:

Throughout this proceeding, Applicants have demonstrated that their merger will produce enormous consumer benefits without any adverse effect on the robust and fast growing competition that they will continue to face in every facet of their businesses. This showing has now been starkly validated by the filings of more than 150 consumer groups, labor organizations, and government officials, who represent the millions of Americans most directly affected by the merger.

The Commission's Public Notice has led to an extraordinary outpouring of grassroots support for the merger. Groups that represent the employees of the combined company,<sup>1</sup> rural and urban consumers,<sup>2</sup> children,<sup>3</sup> students and educators,<sup>4</sup> minorities,<sup>5</sup> women,<sup>6</sup> senior citizens,<sup>7</sup>

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<sup>1</sup> See Comments of the Communications Workers of America, WC Docket No. 06-74 (Oct. 24, 2006) ("CWA Comments"). Currently, the combined companies (AT&T, BellSouth and Cingular) have approximately 185,000 union employees, a number that is significantly more than, by year-end 2006, it is estimated that General Motors and Ford combined will have (153,000), and more than the top six domestic airline companies combined will have (184,000).

<sup>2</sup> E.g., Letter from Guarione Diaz, Cuban American National Council, Inc., to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006) ("We understand that this merger will have a positive impact by providing jobs with competitive wages and strong benefits that support families across the country."); Letter from Julio Fuentes, Florida State Hispanic Chamber of Commerce, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006); Letter from Terry Jones, Charlotte-Mecklenburg Black Chamber of Commerce, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 24, 2006) ("Charlotte-Mecklenburg Black Chamber of Commerce Letter"); Letter from Tim Martin, Albany Economic Development Commission, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 20, 2006) ("Albany Economic Dev. Comm'n Letter"); Letter from Scott Miller, Catawba County Economic Development Corporation, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006).

clergy,<sup>8</sup> the poor,<sup>9</sup> family farmers,<sup>10</sup> the disabled and disadvantaged,<sup>11</sup> small businesses,<sup>12</sup> and

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<sup>3</sup> *E.g.*, Letter from Larry Brown, Work, Achievement, Values & Education (WAVE), to FCC Commissioners, WC Docket No. 06-74 (Oct. 25, 2006); Letter from Wilie Myles, Friends of Children, Inc., to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 24, 2006) (“Friends of Children Letter”).

<sup>4</sup> *E.g.*, Letter from Sam Bounds, Mississippi Association of School Superintendents, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006) (“Miss. Ass’n of Sch. Superintendents Letter”); Letter from Lisa Conescu, Jefferson Dollars for Scholars, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006) (“Dollars for Scholars Letter”); Letter from Beverly Brahan, Mississippi Association of Educators, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 20, 2006) (“Miss. Ass’n of Educators Letter”); Letter from Charles Young, Allen University, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 19, 2006) (“Allen Univ. Letter”); Letter from Henry Tisdale, Claflin University, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006) (“Claflin Univ. Letter”); Letter from Carol Brusen, Greater Shelby County Education Foundation, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006) (“Shelby County Ed. Found. Letter”).

<sup>5</sup> *E.g.*, Letter from Thaddeus Biagas, Coalition of Minority Contractors of Louisiana USA L.L.C., to FCC Commissioners WC Docket No. 06-74 (Oct. 23, 2006) (“Coal. of Minority Contractors Letter”); Letter from Rosa Rosales, League of United Latin American Citizens, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 24, 2006) (“LULAC Letter”); Letter from Dennis Huang, Asian Business Association, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006) (“Asian Bus. Ass’n Letter”); Letter from Jesse Jackson, Rainbow PUSH Coalition, to FCC Commissioners, WC Docket No. 06-74 (Oct. 20, 2006) (“Rainbow PUSH Coal. Letter”); Letter from J.D. Hokoyama, Leadership Education for Asian Pacifics, Inc., to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006).

<sup>6</sup> *E.g.*, Letter from Bonnie Wong, Asian Women in Business, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006) (“Asian Women in Bus. Letter”); Letter from Barbara Kasoff, Women Impacting Public Policy, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006).

<sup>7</sup> *E.g.*, Letter from Kristin Fabos, SeniorNet, to FCC Commissioners, WC Docket No. 06-74 (Oct. 20, 2006); Letter from John Gargotta, Senior Volunteer Services, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006).

<sup>8</sup> *E.g.*, Letter from Rev. Romal Tune, Clergy Strategic Alliances, LLC, to FCC Commissioners, WC Docket No. 06-74 (Oct. 25, 2006).

<sup>9</sup> *E.g.*, Letter from Martha Bergmark, Mississippi Center for Justice, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006) (“Miss. Ctr. for Justice Letter”); Letter from Douglas Weber, United Way of Broward County, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006).

<sup>10</sup> *E.g.*, Letter from Leroy Watson, The National Grange of the Order of Patrons of Husbandry, to FCC Commissioners, WC Docket No. 06-74 (Oct. 24, 2006) (“Nat’l Grange Letter”).

<sup>11</sup> *E.g.*, Letter from Kathy Martinez, World Institute on Disability, to FCC Commissioners, WC Docket No. 06-74 (Oct. 24, 2006); Letter from Pamela Compton, United Way of Eastern Kentucky, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006); Letter from Pat Carpenter, Special Olympics Louisiana, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23,

public safety authorities,<sup>13</sup> among others, all agree that the merger will decidedly serve the public interest. So, too, do governors, state legislators, state regulators, mayors and members of Congress, including a majority of the Democratic members of Congress from the BellSouth region.<sup>14</sup> These grassroots consumer and labor organizations and those who represent them

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2006) (“Special Olympics La. Letter”); Letter from Keith Hosey, Center for Accessible Living, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006).

<sup>12</sup> *E.g.*, Letter from Harry Alford, National Black Chamber of Commerce, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 24, 2006) (“Nat’l Black Chamber of Commerce Letter”); LULAC Letter.

<sup>13</sup> *E.g.*, Letter from Joe Benavides, Broward County Council of Professional Fire Fighters, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006); Letter from Wanda McCarley, Association of Public-Safety Communications Officials, et al., to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006) (“APCO et al. Letter”).

<sup>14</sup> Letter from Bob Riley, Governor of Alabama, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006) (“Gov. Bob Riley Letter”) (“[T]he proposed merger will produce many positive outcomes for . . . and will allow the combined company to better serve the needs of our consumers, businesses, and communities.”); Letter from Ernie Fletcher, Governor of Kentucky, to FCC Commissioners, WC Docket No. 06-74 (Oct. 18, 2006) (“any further delay in FCC approval of the [merger] . . . will harm the citizens and economic well-being of [Kentucky]”); Letter from Haley Barbour, Governor of Mississippi, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 19, 2006) (“[T]ogether [AT&T and BellSouth] can provide a broad range of consumer and economic benefits that BellSouth cannot provide on its own.”) (“Gov. Haley Barbour Letter”); Letter from Beverly M. Earle, North Carolina State Representative, to FCC Commissioners, WC Docket No. 06-74 (Oct. 23, 2006) (“I believe the merger of these two strong companies will serve the public interest and greatly benefit residents of [North Carolina]”); Letter from John S. Wilder, Tennessee Speaker of the Senate, to Jonathan Adelstein, FCC, WC Docket No. 06-74 (Oct. 19, 2006) (“[T]he delay by the FCC to approve the transaction is harmful to Tennessee’s economy, its telephone customers, and to current BellSouth employees here in Tennessee.”); Letter from C. Duke Scott, South Carolina Office of Regulatory Staff, to FCC Commissioners, WC Docket No. 06-74 (Oct. 26, 2006) (“S.C. Office of Regulatory Staff Letter”) (“ORS supports the proposed merger”); Letter from Nielsen Cochran et al., Mississippi Public Service Commission, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 25, 2006) (“[The merger] will increase the availability and affordability of broadband to Mississippi consumers.”) (“Miss. Public Service Comm’n Letter”); Letter from Robert E. “Bud” Cramer, Member of Congress, et al. to FCC Commissioners, WC Docket No. 06-74, at 1 (Oct. 24, 2006) (Letter signed by 17 Members of the U.S. Congress) (“U.S. Congress Letter”) (“representing tens of thousands of constituents” and finding that the “proposed AT&T-BellSouth merger has the potential to provide significant new benefits for consumers”); Letter from Jim DeMint, U.S. Senator, et al. to Kevin Martin, FCC, WC Docket No. 06-74, at 1 (Oct. 24, 2006) (Letter signed by eight Members of the U.S. Senate) (“U.S. Senate Letter”) (“echo[ing] the Concerns of Chairman Stevens and Chairman Barton about the Commission’s failure to act . . . on the application for the proposed merger between BellSouth and AT&T.”); Letter from Gregory W. Meeks, U.S. House of Representatives, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006) (“The Commission should approve this merger and should do so quickly.”).

understand what merger opponents choose to obfuscate: that the merger will “greatly enrich the lives and economic prosperity of all . . . citizens,”<sup>15</sup> provide “improved lower cost services to consumers and many new opportunities for minorities,”<sup>16</sup> create a “catalyst for dynamic economic change,”<sup>17</sup> and “further disaster recovery efforts.”<sup>18</sup> Thus, while merger opponents scoff at Applicants’ commitments to expand the availability and accessibility of broadband services or worry about how they can profit from these commitments,<sup>19</sup> the many consumer groups that have weighed in recognize that “the merger . . . will deliver new and innovative broadband technologies,”<sup>20</sup> and “bring about *affordable* and *universal* broadband access for all of our

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<sup>15</sup> Letter from Ernest Johnson, NAACP Louisiana State Conference, to Kevin Martin, WC Docket No. 06-74 (Oct. 24, 2006) (“NAACP Louisiana Conference Letter”); *see also, e.g.*, Letter from Patsy Hendley, Greater Cheraw Chamber of Commerce, to FCC Commissioners, WC Docket No. 06-74 (Oct. 24, 2006) (“Cheraw Chamber of Commerce Letter”) (merger would “significantly enhance the economic viability of” all communities).

<sup>16</sup> LULAC Letter; *see also, e.g.*, Miss. Ctr. for Justice Letter (the merger would “advance the economic prosperity” of the “most disadvantaged residents” by providing “improved access to the Internet . . . [thus] closing the information and technology divide”); Asian Bus. Ass’n Letter (merger “will turn out to be very positive for consumers and businesses, as well as Asian Americans”); Asian Women in Bus. Letter (the merger “can only be viewed as a win-win for customers and local economies”).

<sup>17</sup> Cheraw Chamber of Commerce Letter; *see also* Letter from Marvin Moss, Laurens County Development Corporation, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 20, 2006).

<sup>18</sup> Gov. Bob Riley Letter; *see also, e.g.*, Gov. Haley Barbour Letter; Letter from Jeb Bush, Governor of Florida, to FCC Commissioners, WC Docket No. 06-74 (Oct. 25, 2006); Letter from C. Dukes Scott, S.C. Office of Regulatory Staff, to FCC Commissioners, WC Docket No. 06-74 (Oct. 26, 2006).

<sup>19</sup> Comments of Federation of Internet Solution Providers of the Americas, WC Docket No. 06-74, at 4 (Oct. 24, 2006) (“FISPA Comments”); Comments of NetZero, Inc., WC Docket No. 06-74, at 6 (Oct. 24, 2006) (“NetZero Comments”); Comments of COMPTTEL, WC Docket No. 06-74, at 7-8 (Oct. 25, 2006) (“COMPTTEL Comments”).

<sup>20</sup> Miss. Ass’n of Educators Letter; *see also, e.g.*, Albany Economic Dev. Comm’n Letter (“Th[e] merger will address one of the most critical needs required for any community seeking to grow its economy and new jobs – affordable and universal broadband Internet access.”); Coal. of Minority Contractors Letter (the coalition “strongly encourages prompt approval of the merger” so that “consumers can soon benefit from the promise of affordable and widely available broadband technology”); Letter from George T. French, Jr., Miles College, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 20, 2006) (merger will enable “innovations to our nation’s schools, libraries and to students’ homes”); *see also, e.g.*, Miss. Ass’n of School Superintendents Letter (merger “will deliver new and innovative technologies to improve . . . our nation’s educational capabilities”); Letter from Patrick Bartness, Museum of Aviation Foundation, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006) (merger will “bring *affordable* and *universal*

citizens, including those in low income and rural areas who need it the most.”<sup>21</sup> These groups represent millions of Americans from all walks of life, and they “strongly encourage[] *prompt* approval” of the merger so that Applicants can begin delivering the public interest benefits of their combination.<sup>22</sup>

These consumer groups are not alone in recognizing the enormous benefits this merger will bring to the American public. Every single other regulatory body that has reviewed this transaction has already recognized that it promises public interest benefits without competitive harm, and they did so even before Applicants proposed any commitments. After their own exacting reviews, the Department of Justice, 19 states,<sup>23</sup> and three foreign countries<sup>24</sup> have rejected the same baseless arguments that merger opponents continue to press here and approved the merger promptly and without *any* conditions.<sup>25</sup> It is the consensus view of these experienced

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broadband coverage to . . . parents and students”) (emphasis in original); Allen Univ. Letter (the university believes that “the merger will deliver new and innovative broadband technologies that will improve the education of our young people”); Dollars for Scholars Letter (same); Miss. Ass’n of Educators Letter (same); Claflin Univ. Letter (same); Shelby County Ed. Found. Letter.

<sup>21</sup> NAACP Louisiana Conference Letter (emphasis added); Letter from Sherrie Gilchrist, Chattanooga African American Chamber of Commerce, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 23, 2006); Friends of Children Letter; *see also, e.g.*, Claflin Univ. Letter (“Claflin University and [its] minority students, many of whom come from lower income families and rural areas, will reap greater benefit than most from these broadband commitments.”).

<sup>22</sup> Coal. of Minority Contractors Letter; *see also, e.g.*, Charlotte Mecklenburg Black Chamber of Commerce Letter (the Chamber of Commerce “strongly encourages prompt approval of the merger”); Rainbow PUSH Coal. Letter (“The FCC should . . . not impose roadblocks . . . by imposing conditions on the new company alone to address issues that are industry-wide in nature.”).

<sup>23</sup> These regionally and politically diverse states that approved the merger were: Georgia, Florida, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Arizona, Delaware, Hawaii, Minnesota, New Hampshire, New Jersey, New York, Pennsylvania, Utah, Vermont, West Virginia and Wyoming.

<sup>24</sup> Germany, the United Kingdom and Norway approved the merger.

<sup>25</sup> Contrary to the claims of some merger opponents, these reviews were anything but cursory. In its exhaustive eight-month investigation of the full range of areas in which the two companies compete, the Department of Justice “reviewed extensive information obtained from the merging parties and from industry participants and interviewed dozens of industry participants, including competitors and customers of the merging parties.” Statement by Assistant Attorney General Thomas O. Barnett Regarding the Closing of the Investigation of AT&T’s Acquisition of

regulators<sup>26</sup> that consumers will receive clear and considerable benefits from the merger of AT&T and BellSouth,<sup>27</sup> that there are *no* negative public interest effects,<sup>28</sup> and that the conditions that have been proposed by competitors and inside-the-Beltway interest groups are unrelated to any

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BellSouth: Investigation Concludes That Combination Would Not Reduce Competition (Oct. 11, 2006) (“*DOJ Statement*”), available at [http://www.usdoj.gov/atr/public/press\\_releases/2006/218904.pdf](http://www.usdoj.gov/atr/public/press_releases/2006/218904.pdf). The state commission investigations were equally rigorous – AT&T and BellSouth responded to literally hundreds of discovery requests from staff, state Attorneys General and private parties, and a number of states accepted written testimony, required live cross-examination, and held oral arguments and other public hearings.

<sup>26</sup> The individual vote total of the 73 elected and appointed state commissioners, Democrats and Republicans, who reviewed the merger was an overwhelming 69 in favor of approval to a mere four opposed.

<sup>27</sup> See, e.g., Transcript of Excerpt of Authority Conference, *In re AT&T Inc.’s Proposed Merger with BellSouth Corp.*, Docket No. 06-00093 (Tenn. Reg. Auth. July 10, 2006) at 15-16 (“[T]his merger . . . is in the public interest of all Tennessee consumers.”) (“*Tennessee Transcript*”); *id.* at 3 (statement of Director Kyle (Democrat)) (“After careful consideration of the evidence presented by the parties in this proceeding and contained in the record, I believe this transaction will serve the public interest, will enhance competition in communications service markets, and should result in a stronger, more effective responsive and innovative company better able to meet the needs of Tennessee consumers.”); *In re Request for Approval and/or letter of Non-Opposition to the Indirect Change in Control of Certain Certificated Entities Resulting from the Planned Merger (AT&T Inc. & BellSouth Corp.)*, Docket No. U-29427, Order at 4 (La. Pub. Serv. Comm’n Aug. 2, 2006) (“*Louisiana Order*”) (“[T]here are clear benefits that will be received by end-users . . . as a result of this merger.”); *In re Joint Application of AT&T Inc. & BellSouth Corp. Together with its Certificated Miss. Subsidiaries for Approval of Merger*, Docket No. 2006-UA-164, Final Order at 12 (Miss. Pub. Serv. Comm’n 2006) (“*Mississippi Order*”) (“[T]he merger will promote the public interest.”).

<sup>28</sup> See, e.g., *DOJ Statement* at 1-2 (the merger (i) “does not raise competition concerns with respect to Internet services markets or ‘net neutrality,’” (ii) “would not significantly increase concentration in the ownership of spectrum in any geographic area or give AT&T control over a large enough share of all spectrum suitable for wireless broadband services to raise competitive concerns,” (iii) “would not harm [business services] competition due to the presence of other competitors, the emergence of new technologies, and the fact that the merging parties’ respective strengths are largely complementary,” (iv) does not raise any mass market competition concerns, given AT&T’s “limited and declining competitive significance” and the “presence of other competitors, changing regulatory requirements, and the emergence of new technologies, such as voice over IP,” (v) does not raise special access concerns, because the merged firm will continue to face special access competition from multiple firms with “extensive local networks” in all metropolitan areas where AT&T and BellSouth own significant overlapping facilities); *Tennessee Transcript* at 4 (statement of Director Kyle) (“I did not find any compelling evidence that this merger will harm competition in any way.”); *Louisiana Order* at 4 (“[T]he end users and Intervenors will not experience *any* negative public interest concern.”) (emphasis added).

impact of the merger and thus are beyond the proper scope of any merger review proceeding.<sup>29</sup> As the Chairman of the Tennessee Regulatory Authority put it: “This transaction [is] good for Tennessee, good for jobs, good for consumers, and good for competition.”<sup>30</sup>

This Commission has before it an extraordinarily detailed record that compels these same conclusions. No material new proposals have been added to the debate in the latest comments, and the record clearly supports prompt approval of the transaction. No party seriously contests that the merger will generate substantial public interest benefits, including the very types of benefits the Commission found to be real, significant and merger-specific in approving the SBC/AT&T and Verizon/MCI mergers. By speeding the deployment of IPTV services to BellSouth’s customers and enabling the combined firm to deliver those services more efficiently to all customers, the merger will accelerate and enhance much-needed wireline video competition. By unifying ownership of Cingular, the merger will enable next-generation converged services sooner and more economically. By importing to the BellSouth territory AT&T’s industry-leading disaster recovery capabilities, and combining these skills and resources with BellSouth’s hard-earned experience in this area, the merger will help insulate customers in areas of the nation that are most susceptible to natural disasters from crippling and prolonged communications outages.

The merger also will improve service to government customers and the citizens they serve, especially in the vital area of national security. Integrating the complementary networks and assets of AT&T and BellSouth will enhance performance and foster innovation and investment that will benefit *all* customers – from single-line mass market customers to global enterprises. And by producing a more effective competitor, at home and abroad, the merger will spur

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<sup>29</sup> See, e.g., *In re Joint Application for Approval of the Indirect Transfer of Control Relating to the Merger of AT&T Inc. & BellSouth Corp.*, Case No. 2006-00136, Order at 4 (Ky. Pub. Serv. Comm’n July 25, 2006) (we have “considered [the CLEC] proposed conditions and find that they should not be implemented at this time. These proposed matters are not sufficiently related to the proposed merger of AT&T and BellSouth to be considered in this proceeding.”); *Mississippi Order* at 32 (finding that “the record does not establish any public-interest harms that will result from the merger, and that no conditions should be imposed upon this Commission’s approval of the Joint Application”); *Tennessee Transcript* at 4 (statement of Director Kyle) (“The intervenors in this docket have asked the Authority to impose many conditions upon the merger. After careful review, I do not believe that any conditions are warranted. I do not see a connection between the conditions the intervenors seek to have the Authority impose upon the merger and the resulting benefit to the consumer or competition.”).

<sup>30</sup> Letter from Pat Miller, Tennessee Regulatory Authority, to Kevin Martin, FCC, WC Docket No. 06-74 (Oct. 25, 2006) (“Tennessee Regulatory Authority Letter”).

competition, stimulate demand and create a more globally competitive American telecommunications sector.<sup>31</sup> The record further establishes that these benefits will be realized without any harm to competition, and the Commission's precedents indisputably establish that, in these circumstances, there is no basis to require *any* conditions, much less expansive wish lists that have no connection to any effect of the merger.

The minority of comments that contend otherwise can be summarily dismissed. While competitors continue to clamor for handouts, and while inside-the-Beltway interest groups continue to press their own narrow and misguided policy agendas,<sup>32</sup> none of their proposals is remotely related to any real merger-specific harm, which is reason enough to reject them under the Commission's settled precedents.<sup>33</sup> And none is supported by anything other than bald, recycled rhetoric rooted in a world view that is at least a decade old and has no relevance in today's regulatory and competitive environment.

That our competitors continue to clamor for more conditions should, of course, come as no surprise. But their claims cannot be taken seriously, not only because they are transparently self-serving and have been rejected by every one of the regulatory bodies that have considered them, but also because just last year, these same parties heaped praise on the similar but less expansive merger conditions that were approved as part of the SBC/AT&T and Verizon/MCI merger orders. Those conditions, according to these parties, were "meaningful" and gave them "confidence in [their] ability to compete on a level playing field in years ahead."<sup>34</sup>

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<sup>31</sup> See, e.g., Public Interest Statement at 5-54; Joint Opposition at 1-12.

<sup>32</sup> See, e.g., Steve Rosenbush, *Telecom: Bulking Up To Take on Cable*, Business Week, Oct. 24, 2006 ("none of the fears surrounding telecom consolidation appear to have been realized . . . the public is benefiting from an infusion of innovative new technologies, from cheap Internet phone service to high-speed phone lines hauling voice, data, and video.").

<sup>33</sup> See, e.g., *In re Applications of Time Warner Inc. & Am. Online Inc.*, Memorandum Opinion and Order, 16 FCC Rcd. 6547, 6550 ¶ 6 (2001) ("*AOL/Time Warner Order*") ("It is important to emphasize that the Commission's review focuses on the potential for harms and benefits to the policies and objectives of the Communications Act that flow from the proposed transaction – i.e., harms and benefits that are 'merger-specific.'").

<sup>34</sup> Press Release, Global Crossing, Global Crossing Statement on FCC's Merger Approvals (Oct. 31, 2005), available at <http://www.globalcrossing.com/news/2005/october/31.aspx> ("The fact that the FCC was willing to freeze special access prices for 30 months and require continued Internet peering for three years (among other important safeguards) gives Global Crossing confidence in our ability to compete on a level playing field in years ahead."); see also Press Release, XO Communications, Inc., XO Communications Statement on FCC Conditions for SBC-

While the conditions sought by our competitors are thus wholly unnecessary and improper, they are deeply flawed in other respects as well. Merger opponents ask the Commission to reimpose on AT&T/BellSouth unbundling requirements that were vacated in its recently affirmed *Triennial Review Remand Order*,<sup>35</sup> thereby requiring that UNEs be made available in the absence of impairment and in contravention of both Commission and court mandates. They demand that the Commission grant them all of the expansive – and unjustifiable – new special access regulations that they seek in the pending industry-wide rulemaking proceedings, which the Commission has repeatedly held are the only appropriate fora for consideration of those requests. They ask the Commission to engage in the wholesale abrogation of private contracts and to supplant the dispute resolution processes established by the Communications Act with ill-defined, ill-considered arbitration processes that would result in a morass of litigation. They urge the Commission to single out one industry segment (cable) for favored interconnection and intercarrier compensation treatment and a single company (AT&T) for disfavored treatment – actions that would both exacerbate inequities in the current rules and undermine the effort to achieve comprehensive intercarrier compensation reform by fundamentally altering carriers’ incentives and interests after a broad cross-section of industry participants and state regulators worked so hard to develop a consensus proposal. They ask the Commission to begin regulating the Internet without a firm grasp on the implications of such regulation for the future of the Internet and before the Commission has even had the opportunity to compile a record that would inform an understanding of those implications.

Perhaps the most brazen attempt to use this proceeding to further the private interests of a single company, however, is Clearwire’s attempt to force divestiture of BellSouth’s 2.5 GHz spectrum. As demonstrated in prior filings to which Clearwire has never even attempted a response, Clearwire’s arguments have no basis in law, fact or economic theory: (i) the merger has

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AT&T and Verizon-MCI Mergers (Oct. 31, 2005), *available at* <http://www.xo.com/news/277.html> (we are “gratified” by the “meaningful conditions designed to ensure ongoing customer choice and price competition for millions of small to medium business customers”); Press Release, EarthLink, Inc., EarthLink Touts Victory for VOIP (Oct. 31, 2005), *available at* [http://www.earthlink.net/about/press/pr\\_voip\\_victory/](http://www.earthlink.net/about/press/pr_voip_victory/) (merging parties’ commitment to comply with the Commission’s Internet Policy Statement “guarantee(s) the rights of all consumers to access the Internet content and applications they choose”).

<sup>35</sup> See *In re Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd. 2533 (2005) (“*Triennial Review Remand Order*”), *aff’d sub nom. Covad Commc’ns v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

*no* material impact on wireless spectrum concentration in any band (or combination of bands) locally, regionally or nationally; (ii) there is plenty of alternative spectrum available to Clearwire in both the 2.5 GHz band and other WiMAX compatible bands in all areas where BellSouth and AT&T have spectrum holdings, including in Atlanta, where Clearwire just leased substantial spectrum; (iii) there is no basis to Clearwire's claim that any "national" broadband wireless entry strategy is blocked by BellSouth's spectrum holdings, as evidenced by Clearwire's *support* for the Sprint/Nextel merger, which created 2.5 GHz concentrations in 26 BTAs that are greater than BellSouth has in the Atlanta BTA, and by Sprint Nextel's recent admission that it has all the spectrum it needs to offer a national platform; and (iv) Applicants have no possible incentive to "warehouse" their spectrum and are not, in fact, doing so. Clearwire's claims to the contrary rest on reckless mischaracterizations of documents submitted into the record by BellSouth. At bottom, Clearwire wants the Commission to ignore BellSouth's lawful possession and use of 2.5 GHz spectrum and force the transfer of the spectrum based on Clearwire's self-serving and baseless claims that it would put the spectrum to "better" use. There is no conceivable basis for such regulatory fiat, and Clearwire's naked spectrum grab should be rejected.

The Commission should dismiss all these self-serving proposals without any further delay. There is an extraordinarily full record – both quantitatively and qualitatively – in this proceeding. AT&T and BellSouth filed more than 4,000 pages in support of their applications and provided over 750,000 pages of additional materials in response to the Commission's specific information requests, and these materials have been available to the Commission, its staff, and other parties to this proceeding for months. Although merger opponents have shown little interest in examining this evidentiary record,<sup>36</sup> they have taken full advantage of their many opportunities to present and

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<sup>36</sup> Following the filing of the Joint Opposition on June 20, 2006, Applicants opened a consolidated data room at the offices of Crowell & Moring LLP to house all their Confidential and Highly Confidential submissions. All information and documents Applicants produced to the Commission have been available for viewing (subject to the Commission's protective orders) 24 hours a day, 7 days a week, by appointment, during the more than 100 days the data room has been open. In addition, pursuant to a stipulation in the New Jersey proceeding, Applicants made a duplicate set of material available for review by the New Jersey Division of Rate Counsel at the offices of AT&T's New Jersey counsel. Although 50 individuals obtained protective order clearance to view this information, counsel for only five parties visited either data room, and counsel for only one party spent more than 17 hours at either site. It defies logic to hear these same parties now complain that they need more time to review the record in this proceeding when they have wholly failed to avail themselves of the opportunity to do so up to now.

advocate their views.<sup>37</sup> Their most recent comments merely retread old ground and discuss proposals that were previously rejected and that have been in the record of this proceeding for months. Nor is there any basis to claim that more time is needed to consider Applicants' proposals – most of these proposals came from prior transactions approved by the Commission or merger opponents' own laundry lists, and merger opponents do not suggest that the Commission should reject any of Applicants' proposals, only that the Commission should lard on many more conditions. There are no new facts to gather, no new proposals to consider and nothing more to do. The Commission should approve the merger now and remove the final impediment to Applicants' consummation of the transaction and delivery of the consumer benefits it promises.

Sincerely,

/s/ Gary L. Phillips \_\_\_\_\_

AT&T Inc.  
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/s/ Bennett L. Ross \_\_\_\_\_

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cc: Chairman Martin  
Commissioner Copps  
Commissioner Adelstein  
Commissioner Tate  
Daniel Gonzalez  
Michelle Carey  
Jessica Rosenworcel  
Scott Deutchman  
Scott Bergmann  
Ian Dillner

Thomas Navin  
Nicholas Alexander  
William Dever  
Donald K. Stockdale, Jr.  
Gary Remondino  
John Branscome  
David Krech  
Sarah Whitesell  
Jim Bird  
Best Copy and Printing, Inc.

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<sup>37</sup> Before the record was reopened, merger opponents submitted nearly 200 filings and made over 100 *ex parte* presentations in support of those views, including 89 to the Commissioners' offices. Many of these filings and presentations focused on the requests and supposed justifications for the conditions these parties continue to advocate. The public record shows that more than 40 Commission staff members have been substantively involved in this matter, from the Commissioners' offices, the Wireline Competition Bureau, the Wireless Telecommunications Bureau, the International Bureau, the Office of General Counsel, and the Office of Strategic Planning and Policy Analysis.