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Consumer Federation of America



December 12, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: **Ex Parte Communication:** AT&T Inc. and BellSouth Corporation Applications for Approval and Transfer of Control, WC Docket No. 06-74

Dear Ms. Dortch,

We are writing to enter into the record the views of consumer and public interest organizations on the matter of Commissioner Robert McDowell's participation in the proposed merger of AT&T/BellSouth. Though AT&T and Bell South were consulted by the Office of General Counsel on their views regarding the recusal, the public was not invited to submit comments or provide input.

We reject the contention that the merger negotiations are inextricably deadlocked. We do not doubt that an agreement could be reached through good-faith negotiations among the agency's four participating Commissioners. Those negotiations cannot move forward, however, when the prospect of forcing participation of Commissioner McDowell remains in play. Furthermore, we view the General Counsel's "un-recusal" of Commissioner McDowell as a violation of the public's trust, sacrificing a valid process of good-faith negotiation for political expediency and the convenience of the merging parties.

We note that the December 7, 2006 letter from AT&T and BellSouth to General Counsel Sam Feder, makes two specious claims: first, that the companies are "clearly the parties most likely to be impacted adversely" by Commissioner McDowell's appearance of bias or lack of impartiality; and second, that they are the parties that Office of Government Ethics rules are intended to protect.

Neither claim should be given any weight. While AT&T and Bell South have a financial stake in the outcome of the Commission's decision in the merger, it is the public that will be most

adversely impacted by any real or perceived bias on the part of Commissioner McDowell. Given that the combined entity will control half of the business and residential telephone lines in the nation, it is the public, not AT&T or Bell South which has the greatest stake in the merger's rejection or approval, with or without conditions. Any appearance that a federal regulatory decision that so directly affects the welfare of the public is based on prior or existing commercial relationships jeopardizes the public's trust in the federal decision making process. The adverse impact of real or perceived bias extends far beyond this single transaction to the public's trust in the credibility of the federal government as a whole. Thus, federal ethics rules are designed to protect the public's interest in the integrity and credibility of the government that serves them, not to protect the parties of a given transaction. We trust the Commission recognizes this overarching purpose of federal ethics despite the spurious claims made by AT&T and Bell South.

Further, regardless of how Commissioner McDowell votes on the merger, the public interest is jeopardized. Should he decide not to abstain, an appearance of impropriety or conflict of interest is inevitable. Having first recused himself due to his own perception that a conflict exists, if Commissioner McDowell now votes to approve the merger, the public will be left with the impression that his participation is the result of pressure by the merging parties and their political allies. If he votes against the merger or seeks conditions sought by competitive telephone providers, the public will rightfully be concerned that he is reflecting the interests of his former employer's membership. In the short term, critical public interest conditions on the merger may be denied. In the long term, the reputation of the agency will be damaged and the integrity of the recusal process undermined. Neither result is in the public interest.

We therefore respectfully urge that the Commission work toward good-faith negotiations on the merger without the participation of Commissioner McDowell.

Sincerely,

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