

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
BellSouth Corporation and AT&T Inc.)
) WC Docket No. 06-74
Application Pursuant to Section 214 of the)
Communications Act of 1934 and Section 63.04 of the)
Commissions Rules for Consent to the Transfer of)
Control of Bellsouth Corporation to AT&T Inc.)

**OPPOSITION BY AT&T INC.
TO PETITION FOR RECONSIDERATION FILED BY MICHAEL LOVERN, SR.**

AT&T Inc. (AT&T) respectfully submits the following opposition to the petition for reconsideration filed by Michael Lovern, Sr. (Lovern) regarding the above-referenced merger between AT&T and BellSouth Corporation (BellSouth).¹ Lovern has raised two basic claims, both of which are entirely frivolous.

First, despite the fact that 19 states, three foreign countries, the Department of Justice and this Commission each carefully reviewed and approved the merger, Lovern claims the merger should nonetheless be declared “null and void” because four exhibits allegedly appended to his comments were purportedly removed from the official record of the merger proceeding by “[s]omeone at the FCC” or by unidentified “other individuals.”² According to Lovern, these mysterious exhibit snatchers have committed a “federal felony” by “tampering with evidence” and the Commission must halt the merger until it figures out what happened to the missing documents.³

¹ Michael Lovern, Sr. Petition for Reconsideration, WC Docket No. 06-74 (January 26, 2007) (Lovern Petition).

² Lovern Petition at 4 and Exhibit A.

³ Lovern Petition at 4.

AT&T has no actual knowledge as to whether the exhibits in question were ever filed with the Commission and, if so, what happened to them. AT&T notes, however, that Lovern fails to offer any proof that these exhibits were, in fact, attached to his filing (e.g., by proffering a copy of his comments, with exhibits, bearing a date-stamp from the Secretary's Office), let alone that Commission staff (or someone else) deliberately and improperly tampered with his filing, as he claims. Thus, his allegations, at best, are nothing more than reckless speculation.⁴

In any event, the fate of the alleged exhibits is in no way a basis for reconsideration of the merger approval because the alleged exhibits were entirely irrelevant to the merits of the merger. The four alleged exhibits cited by Lovern include three documents concerning divestiture-era billing systems and a 1999 "Business Week Article on John Ashcroft."⁵ None of these documents raises any issue even remotely relevant to the application for transfer of control filed by AT&T and BellSouth. Thus, even if these exhibits had been properly filed and included in the record, they would have had no bearing on the Commission's approval of the merger because, as the D.C. Circuit has repeatedly held, an agency is under no obligation to respond to a commenter's irrelevant or insignificant claims.⁶

⁴ Lovern similarly fails to provide any support for his scurrilous accusations that AT&T has laid off thousands of employees, destroyed records, looted the corporate treasury and engaged in other inappropriate conduct – allegations that are apparently invented out of whole cloth. Lovern Petition at 5.

⁵ See Comments of Michael Lovern, Sr., WC Docket No 06-74, at 20-21 and List of Exhibits (October 24, 2006); Lovern Petition at 4 and Exhibit A.

⁶ See, e.g., *NARUC v. FERC*, 2007 WL 79054 (D.C. Cir. Jan. 12, 2007) ("The doctrine obligating agencies to address significant comments leaves them free to ignore insignificant ones."); *MCI WorldCom Inc. v. FCC*, 209 F.3d 760, 765 (D.C. Cir. 2000) ("An agency is not obligated to respond to every comment, only those that can be thought to challenge a fundamental premise."); *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 468 (D.C. Cir. 1998) ("An agency must . . . demonstrate the rationality of its decision-making process by responding to those comments that are relevant and significant."). See also *Applications of Time Warner Inc. & Am. Online Inc.*, Memorandum Opinion and Order, 16 FCC Rcd. 6547, 6550 ¶ 6 (2001) ("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.'").

Second, Lovern asserts that, because the Commission has not yet issued the text of its decision approving the transfer of control of BellSouth, AT&T behaved unlawfully by prematurely consummating the transfer of control on December 29, 2006.⁷ Lovern's argument appears to be based on the bizarre assertion that the merger was approved on delegated authority.⁸ Contrary to Lovern's patently frivolous argument, the Commission itself (not some Commission designee) approved the merger.⁹ Moreover, the Commission and the D.C. Circuit long ago confirmed the propriety of consummating a transfer of control on the same day the Commission approves the transfer, even if the Commission does not issue the text of its decision until a later date.¹⁰ Here, the Commission adopted its decision approving the AT&T/BellSouth merger on December 29, 2006, and expressly stated that the decision was "effective upon adoption."¹¹ Thus, although the Commission has not yet issued the text of its decision, AT&T acted properly in consummating its merger with BellSouth on December 29, 2006.

⁷ Lovern Petition at 5.

⁸ Lovern Petition at 2-3 (citing 47 C.F.R. § 1.102), 5.

⁹ *FCC Approves Merger of AT&T Inc. and BellSouth Corporation*, FCC News Release, at 3 (December 29, 2006) (stating that the merger was approved pursuant to "Action by the Commission").

¹⁰ See *Application of Improvement Leasing Company (Transferor) and Taft Broadcasting Company (Transferee) for Consent to the Transfer of 100% Control of Channel 20, Incorporated, Licensee of WDCA-TV (Ch. 20)*, Washington, D.C., Memorandum Opinion and Order, 73 FCC 2d 676 (1979) (rejecting challenges to the consummation of a transfer of control prior to release of the text of the Commission's decision), *aff'd Washington Assoc. for Television and Children v. FCC*, 665 F.2d 1264, 1273 n.24 (D.C. Cir. 1981) ("[W]e are unconvinced that the statute requires a written order before the FCC action becomes effective . . ."). In addition, the Commission's rules now specifically authorize it to designate an effective date that is "either earlier or later in time" than the date it releases its decision. See 47 C.F.R. § 1.103(a).

¹¹ *FCC Approves Merger of AT&T Inc. and BellSouth Corporation*, FCC News Release at 3.

Accordingly, for all of the foregoing reasons, the Commission should summarily dismiss Lovern's petition without further consideration.

Respectfully Submitted,

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February 5, 2006

CERTIFICATE OF SERVICE

I, Shandee R. Parran, hereby certify that on this 5th day of February 2007, a copy of AT&T Inc.'s Opposition to the Petition for Reconsideration Filed by Michael Lovern, Sr. in WC Docket No. 06-74 was served via First Class U.S. Mail postage prepaid on the following:

Michael Lovern, Sr.
3713 Parke Drive
Edgewater, MD 21037

/s/ Shandee R. Parran
Shandee R. Parran