

*M. Lovern*

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February 12, 2007

Secretary, FCC  
Marlene Dortch  
FCC  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

**FILED/ACCEPTED**

**FEB 12 2007**

Federal Communications Commission  
Office of the Secretary

RE: Bellsouth AT&T Merger Docket # 06-74  
Reply to AT&T's Opposition To My Petition for Reconsideration

Dear Dortch:

Enclosed is an Original and 4 Copies of my Reply to AT&T's Opposition To My Petition for Reconsideration in the above proceeding, filed in a timely fashion. Please log this in the record.

Thank you.

*Michael Lovern, Sr.*  
Michael Lovern, Sr.

No. of Copies rec'd 0 + 4  
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*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**FILED/ACCEPTED**

**FEB 12 2007**

Federal Communications Commission  
Office of the Secretary

In the Matter of Applications  
for Consent to the Transfer  
of Control of Licenses and  
Section 214 Authorizations from

BELLSOUTH CORPORATION  
Transferor

To

WC Docket No. 06-74

AT&T INC.  
Transferee

**REPLY TO PETITION IN OPPOSITION FILED BY AT&T TO MICHAEL  
LOVERN SR.'S PETITION FOR RECONSIDERATION**

MICHAEL LOVERN, SR. ("Lovern") hereby submits his REPLY ("Reply") TO AT&T'S PETITION IN OPPOSITION TO Lovern's PETITION FOR RECONSIDERATION ("Petition") with respect to the subject transfer proceeding.

**Lovern raised two questions before the Commission in his original Petition:**

1. The Commission's vote December 29, 2006, in these proceedings, must be cancelled or stayed pursuant to new hearings and a new vote based on the December 29, 2006, vote being in violation of Commission Rules, etc... as the record is incomplete and the Commission knew this prior to their vote. [See Exhibit A]. Four (4) Official Court Documents ("Missing Exhibits") received by the Commission, filed by Lovern part and parcel to his October, 24, 2006, filing in this proceeding mysteriously disappeared, without explanation, and were therefore not included in the official record. The

Commission did not see these very important documents, nor consider their implications in the matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from BellSouth Corporation to AT&T Inc. This requested action is warranted and governed by 47 CFR 1.106 (c) (1) (2) & 47 CFR 1. 102 (a) (2), and the Administrative Procedures Act.

2. AT&T prematurely, and in violation of federal and state law [FCC Regulations, State Securities Laws, RICO, Securities Exchange Act of 1934, Federal Civil Rights laws {42 U.S.C., Sec. 1985 (3), 1986}, etc.], took physical possession of Bellsouth in violation of the "Merger Agreement" approved by Bellsouth Shareholders, which said approval is predicated on full regulatory approval. As of December 29, 2006, and as of today, that has not happened as the FCC's decision is not effective, or final. The FCC must place Independent Trustees inside Bellsouth to operate Bellsouth until these proceedings and all appeals are final, so as to protect Shareholders of Bellsouth and AT&T.

#### **QUESTION NO. 1**

Despite the fact that 19 states, 3 foreign countries, and the Department of Justice have approved this merger, the FCC's decision is not official under federal law, to include its own Rules & Regulations, nor has the federal court approved the merger between SBC Communications, Inc. (SBC) and AT&T Corp. (AT&T), **Civil Action No. 1:05CV02102**. As of today no one even knows what AT&T consists of, which a reasonable person would ask, how can they merge with Bellsouth when the SBC / AT&T merger is not even final. The simple answer is politics and special interest money.

Apparently there are a different set of rules for the big money, political contributing corporations than for everyone else.

AT&T claims that Lovern **“fails to offer any proof that these exhibits were, in fact, attached... Thus, his allegations, at best, are nothing more than reckless speculation.”** [1] With all due respect, this statement is patently false and odiferous at best. Exhibit A of Lovern’s Petition For Reconsideration notifies the Commissioners that the Missing Exhibits disappeared and were not in the Official Record. When Lovern discovered they were missing, the time to file Comments in this proceeding had expired. Unlike AT&T, the FCC Rules and Regulations apply to Lovern, and the Commissioners never responded to Lovern’s letter [Exhibit A – Nov. 06], nor did they invite Lovern to resubmit the documents for Commission review. They simply ignored the entire situation, perhaps as an inconvenient truth. Under the *Administrative Procedure Act*, “A party is entitled to present his case or defense by oral or documentary evidence.” This did not happen in this case regarding the Missing Exhibits.

AT&T goes on to say the Missing Exhibits **“were entirely irrelevant to the merits of the merger.”** [2] This statement is outrageous. The Commission has an obligation under federal law to protect the “Public’s Interest.” The FCC is authorized to approve the merger only if it finds that “the public interest, convenience and necessity [would have been] served” by it. 47 U.S.C. § 310(d). In Lovern’s Comments filed in this

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[1] AT&T’s Petition in Opposition, page 2, par. 1

[2] AT&T’s Petition in Opposition, page 2, par. 2

case 5-18-06 [Official Court Document - Civil Action No. 1:05CV02102] he outlines in great detail an incredible *racketeering enterprise* involving non-competitive behavior in violation of Antitrust / RICO laws where by the “**PUBLIC**” has been defrauded out of over \$500 Billion by the parties, plus AT&T’s Competitors were defrauded out of several hundred billion more dollars. On 10-24-06 [Official Court Document Civil Action No. 1:05CV02102] Lovern filed an evidentiary brief with supporting physical evidence to prove his allegations. It is in this filing that the Missing Exhibits mysteriously vanished, and one of those Missing Exhibits is an affidavit from a former AT&T Employee who is a subject matter expert, who has personal knowledge as he was physically present, and he has corroborated Lovern’s allegations. How is that not relevant? It is extremely relevant and the Commission needs to see the Missing Exhibits to be able to effectively protect the Public’s Interest.”

In describing the contours of the public-interest standard, the FCC has explained that “the public interest evaluation under Section 310(d) necessarily encompasses the broad aims of the Communications Act, which includes, among other things, preserving and enhancing competition in relevant markets, ensuring that a diversity of voices is made available to the public, and accelerating private sector deployment of advanced services. . . . That policy is shaped by Congress and deeply rooted in a preference for competitive processes and outcome. 47 U.S.C. 310(d) stipulates the transfer of a communications licensee may go forward only upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”

For mergers, the FCC's inquiry ranges from cursory to exhaustive. It might review competition issues, which the Department of Justice also considers. The FCC might decide how existing rules apply to a merged entity (say, if one is under price caps and the other is not). As a condition of approving the merger, the FCC might require the merged entity to comply with new rules beyond those required by statute. **[placing a Trustee inside Bellsouth until this proceeding and all appeals are final]**. The level of scrutiny varies widely; the “public interest” varies depending on whether the transfer is the sale of a single license, or the merger of two telecommunications companies. Based on this, the Missing Exhibits are very relevant and anything but insignificant.

## **QUESTION NO. 2**

AT&T goes on to claim Lovern's position that AT&T had no legal right to take physical possession of Bellsouth is “bizarre” and that AT&T acted properly and legally.<sup>[3]</sup> AT&T even misrepresents two reported cases in their footnote [10]. AT&T represents in footnote 10, pg. 3 of their petition that the FCC established that an FCC decision becomes effective when the vote takes place and they cited *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 & Order, 73 FCC 2d 676 (1979)*, by saying the FCC rejected the position that transfer cannot take place until there is a final Order. At that time, and in that case, the Appellant [WATCH] used the wrong Regulation

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[3] AT&T's Petition in Opposition, page 3, par. 1

to address effective dates. WATCH cited 47 CFR 1.4; From Page 679, par. 8, 73 FCC 2d 676;

**“Although WATCH asserts that TAFT’s and Improvement’s August 16 consummation violated Commission rules, the rules it cites are inapplicable. (Motion, p. 2 n. 3) Sec. 1.4 of the Rules, 47 CFR 1.4, governs computation of time for filing pleadings and does not address the question of when a Commission Order is effective to permit parties to act in reliance on it.”**

This brings us to 47 CFR 1.102 and **“Delegated Authority.”** AT&T states that the present Commission decision is not based on “Delegated Authority.” The only way the vote can take place is pursuant to delegated authority. Under the Administrative Procedures Act (APA), and Title 47 U.S.C., Sec 154 (j), the Commission must rely on staff to read and assess all of the *Comments* filed, and, make recommendations to the Commissioners. The comments must be taken into consideration for the Commission decision to be legal [APA & 47 U.S.C., Sec. 154 (j)]. It is well established that the Commissioners do not read all the Comments filed in a given case. That responsibility is delegated [See 47 CFR Sec. 0.5 & 0.11 (4) **{“make recommendations as may be necessary to administer the Communications Act most effectively in the public interest” – 0.11 (4)}**] to the appropriate staff, and subsequent recommendations are made, which Commissioners then use said recommendations to make their decision as to how they will vote. Anyone who thinks the Vote in this case was based solely on 100% of the work being done by the Commissioners is simply WRONG! If the Commissioners want to come into federal court and testify under oath that they did 100% of the work, inclusive of reading and assessing all the filed Comments, I’ll be glad to oblige them. The decision made December 29, 2006, was based in part on “delegated authority” and

the Commission will not dispute this, hence, 47 CFR 1.102 is in play.

In 1981 the D.C. Court of Appeals confirmed that new FCC Regulations had been codified that do address this matter. *Washington Ass'n For Television & Children v. FCC*, 665 F. 2d 1264, 1273 (1981), referring to 47 CFR 1.103, which states in 1.103 (a);

**“Unless otherwise specified by law or Commission rule (e.g. Sec. 1.102 and 1.427, the effective date of any Commission action shall be the date of public notice of such action as that latter date is defined in Sec. 1.4(b) of these rules.”** [underline added for emphasis].

Sec. 1.102 (2) is a Commission Rule and it states;

**“If a petition for reconsideration of such final decision is filed, the effect of the decision is stayed until 40 days after release of the final order disposing of the petition.”**

The federal D.C. Court of Appeals did not officially address the matter of effective dates in the Washington case [665 F. 2d 1264, 1273, (1981) because WATCH {Appellant}] didn't file until after the FCC's Final Order had been issued. From the D.C. Court of Appeals, 665 F. 2d 1264, 1273 cited by AT&T;

**“This issue is now moot with regard to the transfer of Channel 20. The Commission's written order has in fact issued, see *Initial Transfer Order*, 73 FCC 2d 655 (released Sept. 28, 1979); an order to rescind the transfer to await a written order, while it would have been possible between August 16 and September 28, is now an impossibility.”** [underline added for emphasis].

The matter of when the decision became effective was moot because the final order had already been issued. This is not the case here in the present case, there is no final order in this case, and pursuant to the FCC's own regulation [47 CFR 1.102 (a) (2)], they cannot issue one until 40 days after all appeals have run.

Even though the D.C. Court of Appeals did not take up the matter of when an FCC decision becomes effective in 1981, the Court did take it up in 2003 in connection to the AT&T Broadband / Comcast merger, *Argued September 8, 2003, Decided October 31, 2003, Nos. 02-1337 & 02-1347 - Consumer Federation of America, et al., Petitioners / Appellants v. Federal Communications Commission and United States of America, Respondents / Appellees AT&T Corporation, et al., Intervenors On Petition for Review and Notice of Appeal of Orders of the Federal Communications Commission.* The Court refused jurisdiction in this case because the FCC's decision was not final. The Court stated, ;

**“The following month, the Commission approved the license transfers required to consummate the merger. *In re Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. and AT&T Corp. to AT&T Comcast Corp.*, 17 F.C.C.R. 23,246 (2002) (“the Merger Order”). The consumer groups appealed that decision pursuant to 47 U.S.C. § 402(b)(6). We consolidated the petition and the appeal.**

## II.

**There are two preliminary matters. The first deals with the petition for judicial review. The Motion Order was not a “final” order within the meaning of the Hobbs Act, 28 U.S.C. § 2342(1). It did not finally decide whether the Commission would approve transfer of the licenses and it did not end the proceedings before the Commission. See *Illinois Citizens Comm. for Broad. v. FCC*, 515 F.2d 397, 402 (D.C. Cir. 1975).” [underline added for emphasis – “did not end the proceedings before the Commission”].**

The Merger Order of December 29, 2006, is not final, nor can the transfer be effective, hence, AT&T's physical takeover of Bellsouth is therefore illegal.

The FCC's own published definition of “Final Order” is:

**III. Definitions – {*Consent Decree entered into by the Federal Communications Commission (“Commission”) and U S WEST Communications, Inc. (“U S WEST”)*}.}**

11. For the purposes of this Settlement Agreement, the following definitions shall apply:

- (a) "Commission" means the Federal Communications Commission.
- (b) "Bureau" means the Commission's Wireless Telecommunications Bureau.
- (c) "U S WEST" means U S WEST Communications, Inc., and all of its subsidiaries and affiliates.
- (d) "Order" means an order of the Commission adopting this Consent Decree.
- (e) "**Final Order**" means an Order that is no longer subject to administrative or **judicial reconsideration, review, appeal, or stay.** [Underline added for emphasis].

The U.S. Supreme Court says;

**"two conditions must be satisfied for agency action to be "final": First, the action must mark the "consummation" of the agency's decision making process, *Chicago & Southern Air Lines, Inc. v. Waterman S. S. Corp.*, 333 U.S. 103, 113 (1948). And second, the action must be one by which "rights or obligations have been determined," or from which "legal consequences will flow," *Port of Boston Marine Terminal Assn. v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, (1970). *Bennett v. Spear*, 520 U.S. 154, 178 (1997).**

The definition of consummation is – "the act of consummating; completion." The Merger proceedings before the FCC in this case are not final, not completed, and not effective. In the case cited by AT&T, Washington *supra*, 665 F. 2d 1264, **the Court chastised the FCC for their conduct;**

**"The FCC has by no means served as an exemplar of proper agency procedures in this case. Were the issues related to the Top 50 Policy and the effective dates of agency action not moot, we would remand the proceedings to the Commission and require it to accord to WATCH full party status." [underline added for emphasis].**

As you can see, even the D.C. Court of Appeals is familiar with the FCC's willingness to ignore procedure. It's surprising AT&T would cite this case.

## CONCLUSION

The vote on December 29, 2006, was not legal under the FCC's own Regulations, the Communications Act or the Administrative Procedures Act. The FCC has no choice but to grant this Petition For Reconsideration, or face court proceedings in the D.C. Court of Appeals, and private litigation. To allow AT&T to continue to control Bellsouth violates the federally protected rights of the Bellsouth Shareholders, to include, but not limited to, violations of the Securities Exchange Act of 1934, and SEC Rules and Regulations, post Enron, as well as the reporting rules under the "Sarbanes Oxley Act". The FCC has no Congressional Authority to circumvent the "**Shareholder Rights**" of Bellsouth Shareholders.

AT&T filed a fraudulent 8-K on December 29, 2006, stating the Merger was final. This is the same day the Commission voted. From the 8-K;

### ***"ITEM 2.01. COMPLETION OF ACQUISITION OR DISPOSITION OF ASSETS.***

**On December 29, 2006, the merger of ABC Consolidation Corp. ("Merger Sub"), a wholly owned subsidiary of AT&T Inc. ("AT&T"), with and into BellSouth Corporation ("BellSouth") (the "Merger") was consummated in accordance with the Agreement and Plan of Merger, dated as of March 4, 2006, among BellSouth, AT&T and Merger Sub (the "Merger Agreement"). Pursuant to the terms of the Merger Agreement, each outstanding share of BellSouth common stock, par value \$1.00 per share ("BellSouth Common Shares"), was converted into and became exchangeable for 1.325 shares of AT&T common stock, par value \$1.00 per share ("AT&T Common Stock"), and cash in lieu of any fractional shares. AT&T issued approximately 2.4 billion shares of AT&T Common Stock to former holders of BellSouth Common Shares, giving them an approximate 38% stake in AT&T.**

**Based on the closing price of \$35.75 per share of AT&T Common Stock on the New York Stock Exchange on December 29, 2006, the last trading day before the closing of the Merger, the aggregate value of the consideration paid to former holders of BellSouth Common Shares in connection with the Merger was approximately \$85.8 billion. Upon the closing of the Merger, BellSouth became a wholly owned subsidiary of AT&T and the BellSouth Common Shares, which traded under the symbol "BLS", have ceased trading on, and are being delisted from, the New York Stock Exchange."** [underline added for emphasis].

This SEC disclosure [8-K] is fraudulent on its face, violates Sarbanes Oxley, and if that's not bad enough, AT&T used this fraudulent 8-K to de-list Bellsouth's stock with the illegal assistance of the NYSE, then subsequently went into the market place to sell and issue **\$2,000,000,000** in unsecured Bonds, which said Bonds are now questionable as to their legality.

**The Commission needs to immediately –**

1) Stay all orders in this proceeding until such time that all review [appeals] [both FCC and Federal Circuit Court] have run their course; The legal authority can be found in 47 CFR 1.102 and *In Re Time Warner Inc.*, CSR 4998-X, Order released October 6, 1997.

**4. "Pursuant to Section 1.102(b)(2) of the Commission's rules, the Bureau has discretion to stay the effect of an order pending disposition of a petition for reconsideration. We conclude that it is in the public interest to avoid precipitating a "fire sale" of the cable system in question or depriving the communities involved of cable service until a suitable buyer is found. We will treat TWI's Request under Section 1.102(b)(2) and exercise our discretion to stay enforcement of Section 76.501(a) until the Bureau completes its review of TWI's forthcoming petition for reconsideration, which we expect will be filed expeditiously."**

*NOTE: In that particular case a Petition For Reconsideration had not even been filed.*

2) Order AT&T to cease physical control of Bellsouth assets during said review, and to order a full in-depth audit as to the monetary and structural actions committed on

BellSouth to date; and, appoint Trustees to take over the operation of Bellsouth in the interim.

3) Order the record in this proceeding to be amended to include the Missing Exhibits prior to a new scheduled vote and further hearings after the Commission has reviewed the Missing Exhibits; and,

4) Schedule hearings as to what happened to the Missing Exhibits.

Respectfully submitted,



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Filed February 12, 2007

**CERTIFICATE OF SERVICE**

I, Michael Lovern, Sr., hereby certify that on this 12<sup>th</sup> day of February 2007, a copy of this Reply was sent first class mail to Jack Zinman, Gary Phillips and Paul [LC] Mancini, Attorneys for AT&T Inc., to 1120 20<sup>th</sup> St., NW, STE 1000, Washington, D.C. 20036.



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February 12, 2007