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July 14, 2006

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COMMISSION
CLERK

Ms. Blanca Bayo, Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Protest of Proposed Agency Action and Petition for Formal Proceeding Regarding
Docket No. 060308-TP

Dear Ms. Bayo:

Enclosed are the original and seven (7) copies of the Protest of Proposed Agency Action and Petition for Formal Proceeding regarding joint application for approval of indirect transfer of control of facilities relating to the merger of AT&T, Inc. and BellSouth Corporation.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Howard E. Adams

MP _____
OM _____
TR _____
CR _____
CL _____ HEA/jnb
PC _____ Enclosures
CA _____
CR _____ cc: Carolyn Marek, Time Warner Telecom of Florida, L.P.
GA _____ g:\gene\time warner\time warner telecom\at&t & bell south merger (docket 060308-tp)\cover letter re petition for formal 07-14-06.doc
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint application for approval of indirect transfer of control of telecommunications facilities resulting from agreement and plan of merger between AT&T Inc. (parent company of AT&T Communications of the Southern States, LLC, CLEC Cert. No. 4037, IXC Registration No. TJ615, and PATS Cert. No. 8019; TCG South Florida, IXC Registration No. TI327 and CLEC Cert. No. 3519; SBC Long Distance, LLC, CLEC Cert. No. 8452, and IXC Registration No. TI684; and SNET America, Inc., IXC Registration No. TI389) and BellSouth Corporation (parent company of BellSouth Telecommunications, Inc., ILEC Cert. No. 8 and CLEC Cert. No. 4455); and BellSouth Long Distance, Inc. (CLEC Cert. No. 5261 and IXC Registration No. TI554). DOCKET NO. 060308-TP
ORDER NO. PSC-06-0531-PAA-TP
Filed: July 14, 2006

**PROTEST OF PROPOSED AGENCY ACTION AND
PETITION FOR FORMAL PROCEEDING**

COMES NOW the Petitioner, Time Warner Telecom of Florida, L.P. (Time Warner Telecom) and files this Protest of Proposed Agency Action and Petition for a Formal Proceeding pursuant to Rule 28-106.201, Florida Administrative Code and pursuant to Section 120.57, Florida Statutes and would show the Commission the following:

1. The name of the agency affected by this petition is the Florida Public Service Commission. The agency's file identification number regarding this Proposed Agency Action is "In re: Joint application for approval of indirect

DOCUMENT NUMBER - DATE

06219 JUL 14 06

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transfer of control of telecommunications facilities resulting from agreement and plan of merger between AT&T Inc. (parent company of AT&T Communications of the Southern States, LLC, CLEC Cert. No. 4037, IXC Registration No. TJ615, and PATS Cert. No. 8019; TCG South Florida, IXC Registration No. TI327 and CLEC Cert. No. 3519; SBC Long Distance, LLC, CLEC Cert. No. 8452, and IXC Registration No. TI684; and SNET America, Inc., IXC Registration No. TI389) and BellSouth Corporation (parent company of BellSouth Telecommunications, Inc., ILEC Cert. No. 8 and CLEC Cert. No. 4455); and BellSouth Long Distance, Inc. (CLEC Cert. No. 5261 and IXC Registration No. TI554);” Docket No. 060308-TP, Order No. PSC-06-0531-PAA-TP, Issued June 23, 2006.

2. The name, address and telephone number of the Petitioner are:

Time Warner Telecom of Florida, L.P.
c/o Carolyn Marek
233 Bramerton Court
Franklin, Tennessee 37069
Carolyn.Marek@twtelecom.com
(615) 376-6404 (phone)
(615) 376-6405 (fax)

3. The name, address and telephone number for Petitioner’s attorneys, which shall be the address for service purposes during the course of this proceeding, are:

Peter M. Dunbar (FBN 146594)
pete@penningtonlaw.com
Howard E. Adams (FBN 322210)
gene@penningtonlaw.com

Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
215 South Monroe Street, 2nd Floor
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(850) 222-2126 (fax)

4. The Florida Public Service Commission on June 23, 2006, issued its Notice of Proposed Agency Action approving the indirect transfer of control between AT&T, Inc., and BellSouth Corporation, as well as other subsidiaries. The Commission, using its public interest standard outlined in Section 364.01, Florida Statutes, and pursuant to its jurisdiction and authority under Section 364.33, and Section 364.355, Florida Statutes, voted to approve the application for transfer of control. The Commission went on to state that it has broad legislative grant of authority to protect “the public’s health, safety and welfare as it relates to basic local telecommunications services.” (Proposed Agency Action, pp. 3-4). While historically the Public Service Commission has limited its “public interest” to financial, management or technical capabilities of the applicant under the change of control petition, these three grounds for review are not the only grounds which the P.S.C. may consider, and indeed should consider given the size and significance of this merger. Section 364.01, Florida Statutes, also provides that the Commission “shall exercise its exclusive jurisdiction” to (a) protect the public’s health, safety and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate and

service regulation; (b) promote competition; (c) ensure that all providers of telecommunications services are treated fairly by preventing anti-competitive behavior and continue the Commission's role as a surrogate for competition against monopoly services. See, Section 364.01 (4)(a-i), Florida Statutes (emphasis added).

5. The Commission has failed to utilize any of the cited statutory references in the exercise of its jurisdiction to review the requested transfer. The Commission limits its public interest review to only a public health, safety and welfare standard concerning limited administrative, technical and financial capabilities. The Florida Public Service Commission limits its approach to simply the review and acceptance of the assertions made by the joint applicants. These assertions include that the merger will have no effect upon the management employees of BellSouth Corporations following the closing of the merger (PAA, p. 4 and see, Joint Application, p. 11, para. 24). Such an assertion, which has not been tested by cross examination, production of witnesses or supporting evidence should be required to undergo further scrutiny in order to assure the Commission that such a transfer is in the public interest. These assertions also belie business economics and the realities that duplicate overhead and administrative costs must be reduced in order to effectuate an efficient merger of companies and in order to maintain competitiveness as well as efficient operational objectives in the

competitive markets. The companies at a minimum should be required to put in writing that employees and administrative structure will remain unchanged – a difficult task given that the joint applicants announced the layoff of 200 employees just the day after the Commission approved the merger.

6. Further, the applicants assert that market forces will not be affected, that competition will not be affected and that video markets and research and development will in fact be enhanced by the merger. These assertions have not been tested by production of evidence, cross-examination of witnesses or review of those assertions. If the assertions of the joint applicants are in fact true, than committing to them in writing as voluntary merger conditions would be the “sleeves out of their vest”.

7. Florida’s Attorney General, The Honorable Charlie Crist, wrote to the Public Service Commission on June 19, 2006. Attorney General Crist stated in his letter that this merger, by creating one of the nation’s largest telecom service providers and the nation’s largest wireless carrier, will “dominate the telecommunications markets in which it competes, particularly the wire line market. Therefore, unless proper conditions are attached, the merger could indeed have a detrimental impact on competition”. The Attorney General further wrote “...my concern here is that the merged company might squeeze out real competition to the detriment of consumers, particularly seniors and residential and

small business customers.” The Attorney General further urged the Commission to forcefully seek adoption of appropriate merger conditions and fulfill its statutory mandate to “ensure the availability of service at reasonable prices and encourage competition in the wire line market”. The Attorney General’s comments recognize the Commission’s jurisdiction and obligation to review the assertions made in the Petition of the Joint Applicants and to exert its jurisdiction to ensure that the consumers of Florida are not affected by this merger and that such merger does not result in anti-competitive effects or behavior. The Commission should not limit its jurisdiction to only the three administrative areas of review but instead should also review those areas at a minimum asserted by the Attorney General for compliance review.

8. On July 7, 2006, an Order was issued by the Honorable Emmet Sullivan of the United States District Court for the District of Columbia questioning the impact of the Verizon/MCI and the SBC/AT&T mergers. The Order and a recent article were attached. The federal judge is considering major modifications to the two largest telephone mergers which actually were much smaller than the merger proposed by the Joint Applicants – this instant merger being the fifth largest merger in the history of the United States. The recent scrutiny of the impact of these mega-mergers on competition should give this

Commission pause as it reconsiders whether it should revisit this merger application and the imposition of merger conditions.

9. Petitioner's substantial interests will be affected by this agency determination and Proposed Agency Action as follows:

a. Time Warner Telecom, is a competitive local exchange carrier operating in the State of Florida under a valid certificate issued by the Florida Public Service Commission. Time Warner Telecom is a substantially interested party in that it is both a competitor and customer of wholesale special access services of BellSouth Corporation. Time Warner Telecom has a substantially affected interest in this transfer of control as this transfer will result in Time Warner Telecom as a competitive local exchange carrier losing further market power and competitive influence over segments of the marketplace.

b. The proposed merger will result in the elimination of competition by elimination of an actual competitor in some locations. By eliminating BellSouth as a potential competitor in the AT&T ILEC region and eliminating AT&T as a significant actual CLEC in the BellSouth region, the competitive influence of AT&T is lost.

c. Legislation enacted by the Florida Legislature in 2005, Section 364.011, Fla. Statutes, exempting from commission jurisdiction all broadband services, VOIP and intrastate inter-exchange telecommunications services, has the

potential to remove from commission oversight and jurisdiction the provision of all competitive services. Time Warner Telecom currently purchases, special access services from BellSouth. As BellSouth and AT&T transition their traditional network to the internet protocol (IP) network, a legitimate question may arise as to whether such special access services are broadband or special access services. Denying access and usage of this IP network, which AT&T and BellSouth control, could deny Time Warner access to the “last mile” and to its customer base. Such anti-competitive behavior would directly affect Time Warner’s ability to service customers and will directly affect competition in the State of Florida. If special access services are classified as broadband access, Time Warner could be without access to a competitive environment or without any effective remedy or jurisdictional review at the Florida Public Service Commission. This lack of ability to access jurisdictional review would be detrimental to Time Warner’s competitive abilities in the State of Florida.

d. The proposed merger will also have a deleterious affect on internet interconnection or “peering” for Time Warner Telecom. Without a specific merger condition obligating AT&T and BellSouth to peer their IP networks, the Joint Applicants could block access to their immensely large base of customers. After this merger, AT&T and BellSouth have stated that they will invest over \$4.8 billion in their IP network and will immediately control 23% or more of the total

residential and small business broadband lines throughout the nation. (Such a percentage could be higher in Florida given BellSouth's market presence.) BellSouth and AT&T could refuse to accept terminating and transit traffic on their IP network or make onerous demands for peering – the inability of Time Warner Telecom to peer its IP network with the Joint Applicant's IP network could result in the loss of customers who would move to an IP network with the greatest amount of coverage (“eyeballs and content”).

e. Time Warner Telecom is a substantially interested party in that the proposed merger would affect directly customers and consumer access, rates, regulation and service issues. Time Warner Telecom has filed comments on this proposed transfer of control with the Federal Communications Commission on June 5, 2006, In re: AT&T, Inc. and BellSouth Corporation applications for approval of transfer of control, WC Docket No. 06-74. These comments more fully explain the market and competitive harm resulting from this approval of transfer of control without conditions.

f. Time Warner Telecom is a substantially affected party and has also been and will be an active participant in proceedings in Tennessee, Mississippi and Georgia. These State regulatory authorities are reviewing the transfer of control and regulatory issues.

10. Petitioner Time Warner Telecom received notice of the Agency's decision from the website of the Florida Public Service Commission and through faxed notices received from the Office of the Clerk regarding decisions filed and in which Time Warner had participated and asked for notice.

11. The issues of material fact asserted by Petitioner Time Warner Telecom are:

(a) that competition may not be encouraged by the approval of this merger and it in fact may result in monopoly control of services and further monopolistic control by the telecommunications companies;

(b) that the monopoly services provided by the merged entity telecommunications company cannot be subjected to effective price, rate or service regulation;

(c) that this transaction may not prevent anti-competitive behavior and may enable the merged entity to treat other competitors unfairly in the marketplace by denying access to broadband or special access services; that the public's health, safety and welfare are not protected by allowing this telecommunications company merger in that such a monopolistic telecommunications company cannot be subject to effective price, rate or service regulation; and

(d) that basic local telecommunication services will not continue to be available to all consumers at a reasonable and affordable price.

12. Time Warner Telecom, as Petitioner requests:

(a) that the Florida Public Service Commission modify its Proposed Agency Action to provide the transfer of control is not approved without further hearings on the matter;

(b) allow the testimony of Time Warner Telecom or other interested parties on how the merger will affect competition, the marketplace, or access to services by competitors and customers;

(c) a review of how the merger and transfer of control of these corporations may affect anti-competitive behavior; and

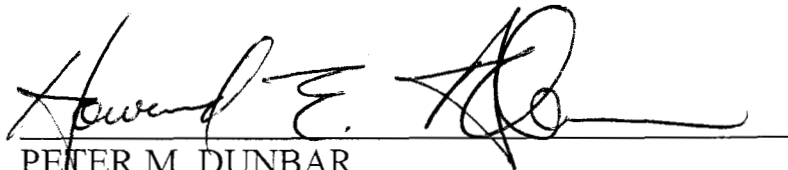
(d) proposing such conditions on the transfer of control as necessary to protect the public's health, safety and welfare as provided through the exercise of the Commission's jurisdiction pursuant to Chapter 364.01, Florida Statutes.

13. Time Warner Telecom as Petitioner states that the Commission's Proposed Agency Action may be modified through exercise of the jurisdiction of the Florida Public Service Commission pursuant to Section 364.01, Florida Statutes, Section 364.33, Florida Statutes and Section 364.335, Florida Statutes regarding the operation, transfer or control of telecommunications facilities.

14. Time Warner Telecom seeks relief with respect to the Florida Public Service Commission Order by modifying a Proposed Agency Action to hold a full formal and public hearing including the taking of testimony and presentation of

evidence before the Commission and modification of the Proposed Agency Action to impose conditions on the transfer of control sufficient to ensure that the transfer of control is in the best interest of the public, competitors, consumers and the State of Florida.

Respectfully submitted this 14th day of July 2006.



PETER M. DUNBAR

Florida Bar Number 146594

HOWARD E. ADAMS

Florida Bar Number 322210

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Attorneys for Time Warner Telecom of Florida,
LP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Formal Proceeding was served via First Class U.S. mail this _____ day of July, 2006, to the following:

AT&T Communications of the Southern States, LLC
Tracey Hatch
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Tallahassee, FL 32301

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San Antonio, TX 78205-2233

AT&T Long Distance
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BellSouth Long Distance, Inc.
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Atlanta, GA 30346-1231

BellSouth Telecommunications, Inc. (061)
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Holland & Knight LLP (06)
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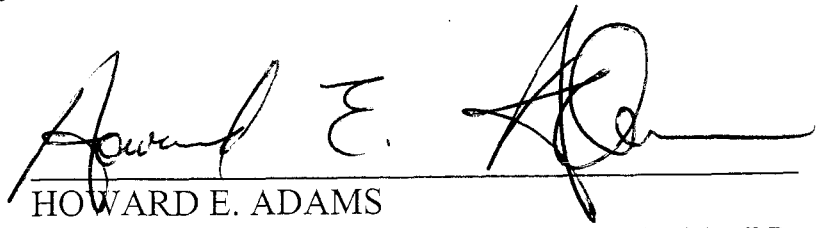
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HOWARD E. ADAMS
Attorney for Time Warner Telecom of Florida, LP

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)
UNITED STATES OF AMERICA)
	Plaintiff,)
	v.) Civil Action No. 03-2512 (EGS)
)
SBC COMMUNICATIONS, INC. and)
AT&T CORP.)
	Defendants.)
<hr/>)
UNITED STATES OF AMERICA)
	Plaintiff,)
	v.) Civil Action No. 03-2513 (EGS)
)
VERIZON COMMUNICATIONS, INC. and)
MCI, INC.)
	Defendants.)
<hr/>)

ORDER

A motions hearing is currently scheduled for July 12, 2006, at 9:00 AM. That hearing shall be organized and conducted in the following manner. The Court hereby

ORDERS that the principal parties to the above-captioned cases, United States, SBC Communications, Inc. ("SBC"), and Verizon Communications, Inc. ("Verizon") shall each have 45 minutes to make their principal arguments as to why the Court

shall approve the government's Proposed Final Judgments ("PFJs"); and it is

FURTHER ORDERED that the *amici curiae*, COMPTEL and ACTel, shall each have 45 minutes to make their principal arguments as to why the PFJs are not in the interest of the public; and it is

FURTHER ORDERED that all of the principal parties and both *amici curiae* shall each have 15 minutes to respond to any arguments presented by any of the parties; and it is

FURTHER ORDERED that the parties are to consider the following questions in preparing for the hearing. However, these questions and areas of inquiry neither reflect the Court's intent to limit the scope of a party's presentation at the hearing nor reflect the Court's intent to limit the scope of the Court's inquiry at the hearing.

(1) What authority, if any, does the Court have to question the scope of the government's Complaints in these two cases?

(2) What authority, if any, does the Court have to inquire of the government as to what other alternative remedies it (and the defendants) considered and why those alternatives were rejected in view of the remedies suggested?

(3) What weight should the Court give to the legislative history of the amended Tunney Act, 15 U.S.C. §16, in its determination of what the appropriate standard of review is under the 2004 amended Tunney Act?

(4) The government and the defendants contend that the Court should continue to be deferential to the government in its Tunney Act review. Is that consistent with the legislative history of the amended Tunney Act, which purport to overturn this Circuit's precedents that employed what Congress considered to be too deferential a standard in evaluating consent decrees?

(5) What specific evidence is the government relying on for its assertion that its proposed remedies would replace the competition that would be lost as a result of the two mergers?

(6) Has the government provided the Court with sufficient information for it to make an independent determination as to whether entry of the proposed consent decrees is in the public interest? If not, what other information should the government have provided to the Court?

(7) What weight, if any, should the Court give to the findings of the FCC as related to these two mergers?

(8) Through the eyes of a layperson, the mergers, in and of themselves, appear to be against public interest given the apparent loss in competition. In layperson's terms, why isn't that the case?

(9) Why isn't the government's selected remedy broader in time - i.e. IRUs longer than ten years - and in substance - i.e. focus on the transport as well as the last-mile connections?

(10) What consideration should the Court give the arguments of the Attorney General of New York, Elliot Spitzer, that the mergers will adversely affect digital subscriber lines ("DSL") and the Internet backbone?

(11) What criteria did the government use in determining which buildings should be covered by the PFJs?

IT IS SO ORDERED.

SIGNED: EMMET G. SULLIVAN
UNITED STATES DISTRICT COURT
JULY 7, 2006

July 8, 2006

Judge Looks Into Modifying Terms of 2 Phone Mergers

By STEPHEN LABATON

WASHINGTON, July 7 — A federal district judge in Washington is considering the imposition of major modifications to the two largest telephone mergers in history: SBC Communication's acquisition of AT&T and Verizon's purchase of MCI.

In a surprising order issued Friday afternoon, Judge Emmet G. Sullivan raised a series of questions about the Bush administration's review of the two deals that he said should be answered by the Justice Department and the phone companies at a hearing next week.

Both deals have already closed, and lawyers said that the judge could not unravel them, although he could try to impose significant conditions or divestitures.

The proceedings will probably shed light on the administration's antitrust enforcement program at a time when officials have put up virtually no roadblocks to deals and imposed few restrictions in other areas of antitrust law.

Still, the proceedings could affect the government's review of BellSouth's proposed acquisition by AT&T, the name the company took after AT&T was swallowed by SBC. The proceedings are also the first significant test of changes in the law that have given federal judges greater authority to scrutinize antitrust settlements.

Federal judges have been examining such settlements since the 1970's, when they were given the authority under the Tunney Act, which was adopted in response to the scandal involving the Nixon administration's decision to settle an antitrust proceeding against ITT.

Ever since a federal appeals court ruled in 1995 that Judge Stanley J. Sporkin of Federal District Court had acted outside of his authority in striking down a proposed antitrust agreement between the government and Microsoft, judges have generally approved settlements with relatively little scrutiny. But in 2004, Congress gave judges greater latitude to consider such deals.

In his order Friday, Judge Sullivan asked the lawyers to address what authority he had to question the settlements. He then raised several questions that suggested he had concerns with the settlements.

"Through the eyes of a layperson, the mergers, in and of themselves, appear to be against public interest given the apparent loss in competition," he wrote. "In layperson's terms, why isn't that the case?"

Another question he posed asked, "What consideration should the court give the arguments of the attorney general of New York, Elliot Spitzer, that the mergers will adversely affect digital subscriber lines (DSL) and the Internet backbone?"

While he could ultimately reject the deals, lawyers involved said they did not expect it would unravel them. At most, they said, a rejection could lead to changes in the settlements and possible divestitures, although the government and phone companies would probably appeal any decision that sought to rewrite the deals substantially.

Challenges to the two telephone deals have been filed by Mr. Spitzer and by organizations representing smaller rivals, some of whom buy the lines of the telephone companies at wholesale rates and then resell them. The companies have asked the court to find that the deals are not in the public interest because the Justice Department failed to force the companies to shed some overlapping assets.

The top lawyer for the companies challenging the settlements has been Gary L. Reback, a California lawyer who was the intellectual and tactical leader in the effort in the 1990's by a group of companies that persuaded the government to prosecute Microsoft for antitrust violations.

In a court brief filed last month, Mr. Reback attacked the phone companies and the Justice Department.

"At issue is judicial review of the successful efforts of the two largest local telephone monopolists, SBC and Verizon, aided and abetted by the current administration of the antitrust division of the Department of Justice, to reconstitute as a nationwide local and long-distance duopoly what was formally the Bell System monopoly," he wrote.

The Bush administration said that it had carefully examined the deals and ordered the appropriate divestitures. It said the judge's authority to review the government's handling of the deals was limited.

"The purpose of a Tunney Act proceeding is for a court to examine the proposed remedy, and determine whether it is in the public interest," the Justice Department said in its brief. "It is not for a court to reinvestigate the underlying merger at the behest of disappointed competitors or put the Department of Justice on trial to justify its prosecutorial decision making."

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