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January 22, 2009

Ms. Helen Helton
General Counsel
PSC
P.O. 215
Frankfort, KY 40602

Re: In the Matter of Debbie MacConnel v. AT & T Corp.

2009-00033

Dear Ms. Helton:

Enclosed for filing please find an original and four copies of a Complaint to be filed on behalf of Debbie MacConnel.

Should you have any questions regarding the enclosed, please do not hesitate to contact me. Thank you for your assistance.

Yours very truly,

William A. Dykeman

William A. Dykeman

WAD/wlg
Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN RE: THE MATTER OF:

DEBBIE MacCONNEL

COMPLAINANT

vs. **COMPLAINT** CASE NO.:_____

AT & T, CORP.

DEFENDANT

* * * * * * *

The complaint of Debbie MacConnel respectfully shows:

(a) That Complainant is Debbie MacConnel, 3274 Waterworks Road, Winchester, Kentucky 40391.

(b) That Defendant is AT & T, Corp., a foreign corporation doing business in the State of Kentucky and whose registered agent is CT Corporation System, 4169 Westport Road, Louisville, Kentucky 40207.

(c) That AT & T refuses to install the necessary equipment in our neighborhood for Internet DSL service. Other providers such as Windstream are not allowed into the area. Therefore, AT & T is the only option for high-speed internet. Complainant is a retail customer who works from home and this service is necessary to effectively access the internet.

I understand that Federal Commission Order designated FCC 06-189 released March 26, 2007, approved the AT & T/BellSouth merger wherein AT & T, as a condition of the merger, agreed to provide stand-alone DSL at the rate of $10.00 and/or $19.95 per month. (See attached Statement of Commissioner Michael J. Copps).

The closing date of the merger was December 29, 2006, and the service was to be offered to affected consumers, including those in Kentucky, for a period of not less than 30 months. To date, the stand-alone DSL service has neither been offered nor provided to customers in West Clark County, Kentucky, and competing companies have not been permitted to offer this service in our area.

WHEREFORE, Complainant asks that AT & T/BellSouth be required to install and offer stand-alone DSL internet service to the Complainant and others similarly situated.

Dated at Winchester, Kentucky, this 21 day of January, 2009.

Debbie MacConnel

DYKEMAN & ROSENTHAL
31 West Hickman Street
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BY: _____
WILLIAM A. DYKEMAN

CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

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

We celebrate today not a triumph for huge corporate mergers but a modest victory for American consumers. The AT&T-BellSouth transaction is the largest telecommunications merger ever, the latest in a litany of former Bell Company mergers that has gone on for nearly a decade. When it comes to consolidation among communications giants, we operate in a world that is certainly not of my choosing. Nor do I think it is what Congress had in mind when it passed the Telecommunications Act of 1996. That particular Congress intended to create a "pro-competitive, deregulatory" communications environment. In the past several years, the FCC has been disastrously selective in its reading of this two-fold charge. We couldn't act quickly enough to approve every call to deregulate, but we studiously avoided our obligation to encourage the kind of fair competition necessary to protect consumers in a deregulated world. I have made my disaffection with this course of Commission decision-making clear ever since I came here more than five years ago. But as I have said before, in the end we are charged with considering these mergers in the context of the world that is, not the one that might have been. With that as prologue, I began my consideration of this transaction wondering if there was some equation by which I could support the combination before us today—some way to ensure that consumers actually derive tangible value instead of being left once again holding the bag of higher prices and less competition.

We embarked upon a strange and tortured odyssey in October when the U.S. Department of Justice incomprehensibly concluded that it had no concerns about the AT&T/BellSouth merger. Instead of providing a reasoned analysis of the effects this unprecedented merger might have on the highly-complicated and increasingly concentrated telecommunications market, all DOJ could produce was a "hear no evil, see no evil, speak no evil" press release. Surreal as that was, we Commissioners were initially asked to approve the merger the very next day ***without a single condition*** to safeguard consumers, businesses, or the freedom of the Internet. This is all the more astonishing when you consider that this $80-some odd billion dollar acquisition would result in a new company with an estimated $100 billion dollars in annual revenue, employing over 300,000 people, owning 100% of Cingular (the nation's largest wireless carrier), covering 22 states, providing service to over 11 million DSL customers, controlling the only choice most companies have for business access services, serving over 67 million access lines, and controlling nearly 23% of this country's broadband facilities.

It became clear to Commissioner Adelstein and me that if there were going to be any consumer-friendly results from the transaction, it would be up to us to represent and deliver upon the many concerns that consumers had expressed to the Commission. To make matters still worse—in a farce transcending the comedic, we were expected to negotiate for safeguards without knowing who of the Commissioners were actually participating in the proceeding—an ambiguity that could have been resolved months earlier but for the alleged strategic benefits of creating uncertainty in the process and the outcome. Fortunately, just two weeks ago, this progress-inhibiting underbrush was finally cleared away and we were able to accelerate the job of reaching an outcome.

From the start I made plain to all parties and stakeholders that it would be a very steep hill for me to climb to support a merger of this magnitude and consequence. Meeting with the parties, I raised many concerns that questioned whether the merger would be consistent with the public interest and represent an improvement over the status quo.

Before creating the largest Internet access provider in history, there was the glaring need to ensure this merger would not usher in an age of discrimination on the Internet—that wonder of technology whose freedom and openness is so dramatically refashioning all of our lives. It was time to

add a fifth principle of neutrality to protect the huge network the merged entity would control. How could we be party to a transaction that would enhance both the capacity and the commercial incentive of the new company to discriminate on the Net? History, it seems to me, documents that when a firm has both the technological ability and the business incentive to control a network to its own advantage, it will at some point attempt to do just that.

We also heard the pleas of consumers, small businesses and others that this transaction should bring tangible gains in terms of services and prices to them and bring them now, not at some promised future date. A company this deeply involved in controlling telecommunications networks should also be expected to do its part to ensure that broadband is deployed more quickly throughout the nation, including to rural America and other under-served parts of the country. Finally, before accumulating enormous additional market power in the special access market, the company should address the well documented concern that businesses are being charged inflated prices for high-volume voice and data services—behavior that retards small business growth, inhibits America's international competitive posture, and eventually trickles down to consumers in higher costs.

Over the course of the intensely-busy weeks and months since we were asked to approve a condition-less merger proceeding, I have had wide-ranging discussions with many, many stakeholders that have been useful, substantive and productive. Mergers of this magnitude cannot and should not be considered without ongoing consultation with as many stakeholders as possible. This is what Commissioner Adelstein and I fought for and we were pleased when the Chairman provided, at our request, an additional period of public comment during the course of our deliberations. Indeed, I believe that this proceeding has allowed for more comment and sharing of knowledge by interested parties than any merger consideration that I have participated in during the five years I have served on the Commission. It's still short of a perfect process, but like the merger result itself, it ended better than it began.

After much hard work and countless hours of deliberation on all sides, the applicants have now offered unprecedented and substantial commitments that I believe will safeguard and serve the public interest to a degree few envisioned at the time the merger item was presented to the Commission. Would I have preferred to do even more? Of course. Am I entirely satisfied? No. Do I agree with much of the analysis contained in the Order? Decidedly not. The analysis falls far short of the mark in many important respects. This is a major reason for my concurrence—which is predicated on voting for the overall results of the Order, including the commitments the applicants have made, without endorsing all of the reasoning set forth in the Order. But I do believe the overall outcome is a genuine step forward on the fronts I enumerate below. I believe that the commitments concerning the future of the Internet; consumer access to broadband, video, and advanced wireless services; business prices for high-volume voice and data services; competitor access to UNEs and interconnection; public safety and disaster relief; and the repatriation of jobs to the United States comprise a package that will benefit the American public for years to come, and I am pleased to have worked toward this end. And the conditions are expressly enforceable by the Commission. The results we approve today allow me to concur in this Order.

I should make clear that this is a package of commitments composed of many individual elements. Not every Commissioner has equal enthusiasm for each element of the final item, so I am grateful for my colleagues' willingness to look at the package as a whole in order to produce a majority to approve or concur in the result we reach today. I think it is a real credit to the strength of the institution and the working relationships we have forged that we have been able to reach this result.

Network Neutrality. Perhaps most important, we have taken steps that will preserve and encourage the truly transformative openness and power of the Internet. The Internet is surely this generation's most transformative technology—perhaps as transformative as any technology in history. It

was conceived and nurtured in freedom and it empowered not those who controlled the pipes but those at the edges—consumers, you and me. I know there are some who still believe that the government has no business overseeing any aspect of the Internet (ignoring, of course, government's formative role in creating the Internet in the first place). Their theory is that technology mandates from on high will inevitably stifle innovation and are antithetical to the de-centralized, non-hierarchical genius of the Internet. My response is that in an age when the Internet is increasingly controlled by a handful of massive private network operators, the source of centralized authority that threatens the Internet has dramatically shifted. The tiny group of corporations that control access to the Internet is the greatest threat to Internet freedom in our country today. If left unchecked, the merged entity resulting from today's decision would have gained the ability to fundamentally reshape the Internet as we know it—in whatever way best serves its own profit motives, rather than preserving the integrity and the effectiveness of the Internet.

The condition builds upon the four principles of net neutrality unanimously adopted by this Commission and made enforceable in the context of the Bell mergers completed last year. In addition to the company's compliance with these four principles, the condition agreed to by the merged entity includes a fifth principle that requires the company to maintain a "neutral network and neutral routing" of internet traffic between the customer's home or office and the Internet peering point where traffic hits the Internet backbone. The company is prohibited from privileging, degrading, or prioritizing any packets along this route regardless of their source, ownership, or destination. This obligation is enforceable at the FCC and is effective for two years. It ensures that all Internet users have the ability to reach the merged entities' millions of Internet users—without seeking the company's permission or paying it a toll. The next Drudge Report, Wikipedia, Craigslist, Instapundit, or Daily Kos should not have to seek a massive corporation's blessing before it can begin reaching out to the American public, and we can take considerable comfort from the fact that today's condition prohibits such behavior. While I might have preferred a longer duration, prior mergers resulted in similar time periods for the net neutrality conditions and it is in my view sufficient to allow Congress to take longer-term network neutrality action if it chooses to do so.

Relatedly and importantly, the merged entity is required to continue to maintain the present number of Internet backbone peering relationships for the next three years. Thus the status quo in the Internet backbone market is preserved by preventing the merged entity from using its larger size and immense last-mile customer base to terminate the settlement-free peering relationships that are fundamental to the Internet as we know it. Read in conjunction with the network neutrality obligation, this peering provision will help to protect the Internet experience and the powerful opportunities it promises for the future.

Consumer Benefits. This Order clearly prevents the merging parties from tying their Internet access service to the purchase of traditional telephone service. Additionally the merged entity commits to offer stand-alone DSL service at a more consumer-friendly price of $19.95/month. This should prove an enormous boon to customers who are happy with their wireless service and seek to "cut the cord" on wireline telephone service, or who want to take advantage of competing VoIP services that have the potential to lower consumer phone bills.

At a more macro level, I have long maintained that consumers have been sorely burdened by our nation's lack of a national broadband strategy. Today, large swaths of rural America, low-income areas, and other underserved populations lack access to affordable broadband services, and our nation ranks 16th in the world in broadband penetration according to the International Telecommunications Union (ITU). In a more recent and nuanced ITU Digital Opportunity Index, the United States ranks 21st! These are not rankings to be proud of. There will be no end to this downward spiral absent a comprehensive national strategy to reverse it—just as every other industrialized country on the planet has developed its own

national broadband strategy. But, again, the focus of today's merger proceeding cannot be on what might have been, but rather on making sure that our Commission action doesn't make an already bad situation even worse. So, even though we cannot promulgate such a broad strategy, we do secure in this merger real, tangible, and important broadband commitments that will ensure that this mega-merger does not send us even further in the wrong direction and, yes, even tips the balance a bit in the right direction.

First, the merged entity has committed to offer broadband to ***100%*** of the customers in its 22-state region by the end of 2007. There are no exceptions for sparsely populated areas; in fact, the company has committed that at least 30% of its new deployment will be in rural and low income areas. Would I have liked this commitment to apply to the faster speeds of fiber rather than to copper wire? Absolutely—but this is at least a credible commitment and a tangible beginning. And the company has agreed to at least accelerate its fiber build-out for the AT&T region by acknowledging its intention to pass at least one and a half million homes in the BellSouth region with fiber facilities by the end of 2007. The new company will need to come back to the FCC at the end of next year to tell us whether it has met its responsibility. I, for one, will be watching closely to ensure that it does.

Second, in terms of affordable broadband, the company has agreed in its 22 states to offer new retail consumers its basic broadband service for $10 per month as well as a free modem to current dial-up customers in order to make broadband affordable and available to many more people than have it today. Put this commitment together with its broadband deployment obligation, its $19.95 Stand Alone DSL commitment, and its commitment to preserve network neutrality, and I believe we have a framework that will help provide affordable, user-friendly broadband for consumers around the country.

Third, the more this agency can do to spur "third pipe" options for competitive broadband services, the better. Without conditions the merged entity would have held onto spectrum that it has not substantially developed but that is uniquely suited to wireless broadband applications. We know the merged entity will have little business incentive to invest in building out this spectrum, because doing so would just cannibalize its wireline broadband offerings as well as the broadband wireless services it offers through Cingular. I am therefore pleased that the company has agreed to divest its 2.5 GHz spectrum licenses within 12 months and to use its 2.3 GHz spectrum licenses in a timely manner or forfeit this spectrum as well. In doing this, we have taken substantial steps to enable entrepreneurs to use their talents to develop new, exciting wireless broadband applications and we have ensured that the new company has the right incentives to innovate with the spectrum it retains.

In crafting a set of measures to avoid the new company's abuse of its Internet market power, we have also taken pains to preserve competition in the very important market for plain old voice service—which is still one of the more daunting bills that American households must pay each month. One bright spot on the FCC's radar screen is the progress that cable and other competitive providers are making through offerings of facilities-based telephone service to residential customers. This merger initially raised the specter of a consolidated entity—one owning nearly all of the telephone network in roughly half the country—using its market power to reverse the inroads that new entrants have made and, in fact, to squeeze them out of the market altogether. To mitigate this concern, the merged entity has agreed to allow the portability of interconnection agreements and to ensure that the process of reaching such agreements is streamlined. These are important steps for fostering residential telephone competition and ensuring that this merger does not in any way retard such competition.

Benefits for Enterprise Services: Today's Order makes substantial strides in limiting the merged entity's ability to use its stranglehold over business access services in 22 states to raise prices for special access to even more unreasonable heights. Nowhere is the FCC's folly in de-regulating without ensuring competition more apparent than in the special access market. As the Government Accountability Office

(GAO) recently pointed out, only 6% of buildings with demand for special access services have any competitive alternative besides the incumbent LEC. Indeed, the GAO report concludes that the FCC's de-regulatory "price flex" regime has actually led to higher prices in the very areas where one would ordinarily expect to find lower prices. Today's Order helps restore balance by reinstituting price caps throughout the 22 state footprint of the merging parties—a measure that should result in approximately $500 million in savings to competitors. The Order also prohibits reliance on certain anti-competitive contract conditions. Importantly, these protections are in effect for a period of four years. While this is real progress, we still have far to go. It is time for the FCC to finish its long-dormant special access proceeding that has been languishing for years.

Additional Benefits: A detailed reading of the merged entity's commitments will show other important benefits in addition to the ones I have already described. Let me briefly highlight just a few of these. Because the loss of jobs is so often the first cost-cutting move of any merger, I am pleased at the company's willingness to repatriate approximately 3,000 jobs from overseas back to the United States, with at least 200 jobs being created in the hurricane-ravaged area of New Orleans. I believe this commitment is the first such job repatriation ever to accompany a telecom merger. While I fear other jobs will be lost, this provides at least some job comfort for the company's employees. The revolution in communications that we are witnessing must not come at the expense of America's hard-working communications workers. Indeed, these high-quality, dedicated, and organized workers are key to bringing us the next generation of communications services.

I am also pleased that the merged company has made public safety commitments that will help protect our nation's communications networks in the event of a natural or man-made disaster. As I have often stated, providing for the safety of the people is the most important role that a government can fulfill. So I am pleased that the merged company will ensure that legacy AT&T's first-rate disaster recovery resources will now be made available in the former BellSouth states. The company should be commended for developing these advanced capabilities beyond any government mandate to do so, and I believe that expansion of this capability to an additional broad swath of the nation is an important step forward in readying ourself for the next disaster. I have also stated that the FCC should lead the charge in securing the security, reliability, and robustness of our networks, including through public-private partnerships. Towards that end, the merged company will donate $1 million to non-profit or public entities for the purpose of promoting public safety.

Our disabilities communities get easily left behind in such huge transactions. So I am pleased that the merged entity has agreed to produce an important report on its service to consumers with disabilities—a report that can help the Commission in its mission, mandated by statute, to ensure the availability of effective and comparable communications tools to ***all*** our people. I should note that Cingular Wireless—which will now be owned wholly by the merged entity—has distinguished itself in its willingness to work with us on disabilities and public safety issues. I look forward to continuing that relationship in the years ahead, as well as to learning what new initiatives and policies the merged entity will pursue to make sure that every American has access to the wonders of the communications revolution.

Further, in what many might see as a very technical agreement, but an important one nonetheless, the company has agreed not to use our forbearance procedures to evade or frustrate any of the commitments it has made here. We have also been quite cognizant in recent months of the Tunney Act proceeding concerning the prior merger between SBC and AT&T that is currently pending in district court. While the resolution of this issue will ultimately be between the federal courts and the Justice Department, I do believe the FCC's public interest review of this merger must take into account a concern about whether the ultimate decision in the prior mergers will be reflected in this current, related merger. To alleviate this concern, the company has agreed to come back to the FCC after the courts and the

Justice Department have resolved the pending proceeding to work with us in good faith to ensure that any remedies ultimately imposed in the prior merger are adequately addressed here.

In sum, I believe that we have made this transaction at least minimally acceptable to American consumers. It brings price reductions rather than price increases, more broadband rather than less, a free and open Internet rather than one rife with opportunities to degrade and limit, and numerous other safeguards and protections.

I would be remiss in not expressing gratitude to all parties who participated in these discussions. So I thank them one and all. I wish to thank the Chairman and Commissioner Tate who have spent so much time and energy on this transaction for so many weeks and months. It detracts from no one's effort to pay special thanks to my friend and colleague Commissioner Adelstein for vision and perseverance that were so important in getting us where we are today. My colleagues' personal staffs worked long and hard to get this done and we appreciate particularly the long hours and excellent contribution made by Scott Bergmann of the Adelstein Office. I am grateful to the Bureau for all the work it has done during the course of this proceeding. Most of all, I thank my dedicated, hard-working and downright brilliant staff for their tireless exertions during the pendancy of this proceeding. Scott Deutchman, joined by Bruce Gottlieb, worked literally around the clock on many occasions. They gave up family vacations, sacrificed holidays, and pushed themselves far beyond what anyone should rightly expect. Their good judgment, always-incisive analysis and remarkable outreach skills are a huge reason why this agreement was reached.