

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of Application for)
Transfer of Control Filed by) **WC Docket No. 05-65**
SBC Communications Inc. and)
AT&T Corp.)

COMMENTS BY THE ALLIANCE FOR PUBLIC TECHNOLOGY

The Alliance for Public Technology (“APT”) appreciates this opportunity to comment on the application of SBC and AT&T for consent to their application for transfer of control. APT is a nonprofit organization of public interest groups and individuals, working together to foster broad access to affordable, usable information and communications services and technology, for the purpose of bringing better and more affordable health care to all citizens, expanding educational opportunities for lifelong learning, enabling people with disabilities to function in ways they otherwise could not, creating opportunities for jobs and economic advancement, making government more responsive to all citizens and simplifying access to communications technology.

As it has in previous transfer of control proceedings,¹ APT urges the Commission to evaluate whether the pending transaction serves the public interest, convenience and necessity² by examining whether it will promote the

¹ See, e.g., Comments of the Alliance for Public Technology, In the Matter of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control, CC Docket No. 98-184 (Nov. 23, 1998); and Response of the Alliance for Public Technology, In the Matter of Amended Applications of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc., CC Docket No. 27-211 (Jan. 26, 1998).

² 47 USC §214 (a).

goal of Section 706 of the Telecommunications Act of 1996, to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans. . . ." ³ APT believes that in the 21st century, universal access to advanced telecommunications technologies and services will be fundamental to effective communication, quality of life, and democratic participation.

SBC and AT&T (the "Applicants") assert that their merger will have a positive impact on consumers (as well as business customers), in ways that are consistent with the goals set forth in Section 706. The benefits the Applicants cite include renewed American leadership in communications, strengthened national security, increased spending on research and development, and more rapid introduction of innovative new products and services. Furthermore, the Applicants assert that consumers will not suffer reductions in competition among mass market voice, Internet, wireless and international services.

APT wishes to highlight several of these asserted benefits for further discussion.

Accelerated deployment of advanced next-generation IP networks and services.

The Application notes that SBC currently is investing \$4 billion to "implement its initial roll-out of next-generation video and other IP-based voice

³ 47 USC §157.

and data services to 18 million households within three years.”⁴ Furthermore, the Applicants expect the combined company to “increase capital spending on advanced network capabilities by approximately \$2 billion in the first few years following the completion of the transaction beyond what would have occurred without the merger.”⁵

APT applauds SBC’s current investments in advanced networks, and believes that the prospect that the merged entity will increase its capital spending on such advancements would be a very significant positive impact of the merger. However, it is not clear from the Application whether all of the customers in SBC’s service territory are likely to enjoy these benefits. SBC currently serves approximately 36 million households.⁶ The Application provides few details on SBC’s plans to provide the other half of the households in its service territory with access to next-generation technologies and services.

Before approving the merger, the Commission should seek more specific information from the Applicants. In particular, the Commission should examine how this merger will affect SBC’s deployment of advanced services in rural areas, in lower-income neighborhoods, to Native American populations, and to the other demographic segments of our society that often do not experience the deployment of succeeding generations of telecommunications technologies at the same pace as customer segments that are more attractive from a marketing standpoint.

⁴ *Description of the Transaction, Public Interest Showing and Related Demonstrations*, Application of AT&T Corp. and SBC Communications Inc., Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission’s Rules for Consent to Transfer Control of AT&T Corp. (filed February 21, 2005) (“Application”), at iv.

⁵ Application at 34 (footnote omitted).

⁶ Mehta, Stephanie N., “One Big Bad Baby Bell,” *Fortune*, March 21, 2005.

Increased research, development, innovation and other synergies.

The Application states that the merger “will increase research, development, and innovation, as well as create other significant synergies, including enhanced network performance and cost savings. Customers will benefit as existing services become more efficient, new services are introduced, and the combined company becomes a more effective competitor.”⁷ The Application describes the substantial investments that each company currently makes in research and development, and the respective strengths of their R&D efforts. It states that the combined company will invest more in new innovations than either company alone.⁸ “The broader scope of the combined entity will increase the likelihood that research and development will earn an adequate return in one or more segments of the industry, reducing the risk of investment.”⁹

APT welcomes the Applicants’ commitment to increased spending on innovations that will benefit consumers, especially those that may meet the needs of more limited market segments. In particular, the Application highlights the global leadership of AT&T Labs on Speech/Text technologies, which have the potential to benefit consumers who speak languages other than English, and persons with disabilities.¹⁰

In the case of consumers with disabilities, competitive market forces alone have not been sufficient to ensure the accessible design and manufacture of

⁷ Application at 21.

⁸ Application at 31.

⁹ Application at 32 (footnote omitted).

¹⁰ Application at 25.

products and services, which is why Congress enacted the disabilities access provisions of Sections 251 and 255 of the Act.¹¹ These provisions, of course, apply to “telecommunications” carriers, services and equipment. While the Applicants’ investment intentions are laudable, the Commission should seek additional information on how SBC’s future R&D investments in these market segments may be impacted if IP-enabled networks, and the products and services that utilize such networks, are determined to be outside the current definitions of “telecommunications,” as the result of legislative, regulatory, or judicial action.

In addition, it is likely to be a number of years before IP-enabled services completely supplant the legacy switched telecommunications infrastructure. The Commission should seek additional information from the Applicants regarding their plans with respect to their disabilities access programs that currently operate on existing networks, including AT&T’s relay centers, toll-free operator assistance services to TTY users, and similar programs.

Open networks.

APT anticipates that some commenters in this proceeding will ask the Commission to impose conditions on the Applicants to require SBC to offer “naked DSL,” or other conditions that seek to ensure that SBC’s facilities remain open to unaffiliated IP service providers.

¹¹ 47 USC § 251(a)(2); 47 USC § 255.

APT supports open, interoperable advanced networks. Such openness principles, however, should apply to *all* providers of advanced networks facilities (including cable), not merely to these Applicants.¹²

Furthermore, as former Chairman Powell noted in his “Internet Freedoms” speech, the challenge for policy makers will be to maintain an open Internet, while preserving the industry’s incentives to deploy high speed platforms.¹³ It is not yet clear whether prescriptive regulations will be needed to ensure open networks, whether swift, targeted enforcement actions¹⁴ will be sufficient to do the job, or whether marketplace forces will be enough to discipline industry behavior.¹⁵

Thus, the Commission should follow its practice of declining to consider matters in merger proceedings that are not unique to a specific merger,¹⁶ and address the issues concerning the openness of IP-enabled networks in the context of other broader Commission proceedings.

¹² Indeed, as the Application states that SBC will continue to market AT&T’s CallVantage service inside and *outside* its service territory (Application at 43), APT suspects that SBC supports such openness concepts, as well.

¹³ Remarks of Michael K. Powell, Chairman, Federal Communications Commission, at the Silicon Flatirons Symposium on “The Digital Broadband Migration: Toward a Regulatory Regime for the Internet Age.” University of Colorado School of Law, Boulder, Colorado (February 8, 2004), at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-243556A1.doc.

¹⁴ See, e.g., *In re Madison River Communications, LLC and Affiliated Companies*, Order, DA-05-543, March 3, 2005.

¹⁵ See, e.g., Richtel, Matt, “Some Verizon Customers to Get ‘Naked’ DSL, *New York Times*, April 18, 2005.

¹⁶ See, e.g., *In re Applications of AT&T Wireless Services, Inc. & Cingular Wireless Corp. et al.*, MO&O, 19 FCC Rcd. 21522, at ¶43 (2004).

Conclusion

In conclusion, APT agrees that the merger has the potential to result in “a stronger and more enduring U.S.-based global competitor than either company could be alone, capable of delivering the advanced network technologies necessary to offer integrated, innovative high quality and competitively priced telecommunications services to meet the national and global needs of all classes of customers. . . .”¹⁷ Prior to granting its approval, the Commission should seek additional information from the Applicants, and, consistent with its oversight responsibility under Section 706, monitor SBC’s deployment of advanced telecommunications capability to ensure that such benefits reach all of the customers that SBC serves.

April 25, 2005

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¹⁷ Application at iv.