

## **EXHIBIT C**

AT&T (F/K/A SBC) AND BELL SOUTH HISTORY OF NONCOMPLIANCE

Company/Action	Date	Penalty	Cite	Synopsis
<b>MERGER VIOLATIONS</b>				
SBC: <i>Forfeiture Order</i>	10/09/02 (FCC release) 5/13/05 (Court Decision)	\$6 million (vacated by D.C. Circ)	17 FCC Rcd 19923; 407 F.3d 1223 (D.C. Cir.)	FCC determined that SBC violated the condition of its merger with Ameritech that requires them to offer CLEC's access to shared transport for intraLATA toll traffic. The court determined that, among other errors, the FCC had not adequately described when the requirement was waivable, and therefore vacated and remanded the forfeiture order.
SBC: <i>Consent Decree</i>	06/28/99	\$1.3 million	14 FCC Rcd 12741	SBC acquired Southern New England Telecom Corp. and in its merger discussions with the FCC represented that it would be in full compliance with §272 after the merger. SBC was not in compliance with §272 afterwards and made misrepresentative statements to the FCC as to its planned compliance.
SBC: <i>Consent Decree</i>	05/28/02	\$3.6 million	17 FCC Rcd 10780	FCC determined SBC did not adequately meet the terms of its previous <i>Consent Decree</i> (above) stemming from a merger and also had §271 violations.
SBC: <i>Forfeiture Order</i>	03/15/01	\$88,000	16 FCC Rcd 5535	SBC "willfully and repeatedly" violated conditions of its merger with Ameritech by failing to report certain data in accordance with the Business Rules established in the merger.
SBC: <i>Memorandum Opinion &amp; Order</i>	04/17/03	N/A	18 FCC Rcd 7568	SBC violated conditions of their merger and therefore §201(b) of the Act by failing to let CLEC use unbundled network element to transport IntraLATA phone traffic
SBC: <i>Consent Decree</i>	03/20/03	\$250,000	18 FCC Rcd 4997	Settlement of reporting errors in violation of SBC's merger with Ameritech. This is the same thing that they were fined \$88,000 for in 2001, but really made no changes to improve resulting in this consent decree.

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<b>GENERAL NONCOMPLIANCE</b>				
Ameritech: <i>Order to Show Cause</i>	03/03/95	N/A	10 FCC Rcd 5606	FCC issued this order after NECA discovered Ameritech was not complying with mandated accounting rules and reporting requirements.
Ameritech: <i>Consent Decree</i>	11/04/96	\$150,000	11 FCC Rcd 15476	Ameritech entered into a consent decree after NAL charging that it violated the Act by constructing new communications facilities
Ameritech: <i>Consent Decree</i>	11/01/96	\$1.2 million price cap index reduction	11 FCC Rcd 14831	Response to 03/03/95 <i>Order to Show Cause</i> (above)
SBC: <i>Forfeiture Order</i>	05/24/01 02/25/02 (reducing amount)	\$94,500 (Reduced to \$84,500)	16 FCC Rcd 10963 17 FCC Rcd 4043 (reducing amount)	Violated rules requiring ILEC's to post notice of premises that have run out of collocation space. (Amount was reduced by 02/25/02 Order)
SBC: <i>Forfeiture Order</i>	04/15/02	\$100,000	17 FCC Rcd 7589	Deliberate refusal to provide a sworn statement in response to FCC request
Ameritech, Qwest, U.S. West: <i>Memorandum Opinion &amp; Order</i>	10/07/98	N/A	13 FCC Rcd 21438	Establishing that Ameritech and U.S. West violated §271 and may have violated equal access and nondiscrimination obligations of §251.
BellSouth: <i>Notice of Apparent Liability</i>	03/25/04	\$75,000	19 FCC Rcd 5310	BellSouth allowed one of its affiliates to provide operations, installation and maintenance for its §272 affiliate in violation of FCC rules
BellSouth: <i>Consent Decree</i>	07/17/03	\$1.4 million	18 FCC Rcd 15135	Violations in connection with (1) the marketing and provisioning of in-region interLATA services in states where BellSouth had not received authorization to provide such services pursuant to section 271 of the Act and (2) allegations that BellSouth improperly rejected the local service requests of CLECs

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BellSouth: <i>Consent Decree</i>	11/02/00	\$750,000	15 FCC Rcd 21756	<i>Consent Decree</i> stems from a failure to negotiate in good faith the terms and agreements of an amendment to an interconnection agreement with Covad. Commissioner Furchtgott-Roth issued a scathing dissent against the FCC for pursuing this
BellSouth: <i>Consent Decree</i>	11/01/96	No money, just tighter regulations	11 FCC Rcd 14803	BellSouth entered into the consent decree after an audit found improper reporting techniques
AT&T: <i>Notice of Apparent Liability</i>	01/30/06	\$100,000	21 FCC Rcd 751	AT&T failed to have a corporate officer with knowledge execute a statement that the company has established adequate compliance with rules governing consumer proprietary network information
SBC: <i>Consent Decree</i>	12/16/04	\$500,000	2004 FCC Lexis 7455	SBC Connecticut had a series of violations of the E-Rate USF program
SBC: <i>Consent Decree</i>	10/01/03	\$1.35 million	18 FCC Rcd 19880	Settlement from violations where SBC provided IntraLATA service without FCC authorization
SBC: <i>Notice of Apparent Liability</i>	10/16/01	\$2.52 million	16 FCC Rcd 19091	Violations related to willful misrepresentations made to the FCC about its intraLATA operations and failing to comply with earlier consent decree
Ameritech: <i>Ohio NAL</i>	06/20/02	\$8.5 million	2002 Ohio PUC Lexis 564	Failing to meet Ohio's minimum telephone service standards (noting that they could have fined Ameritech over \$122 million)
Southwestern Bell: <i>Notice of Apparent Liability</i>	10/31/96	\$1,000	11 FCC Rcd 13973	Failure to file a form on time

## **ATTACHMENT 1**

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

In the Matter of	)	
	)	
Application for Consent	)	WC Docket No. 06-74
To Transfer of Control Filed by	)	
AT&T Inc. and BellSouth Corporation	)	
	)	

**DECLARATION OF CHRISTOPHER PUTALA**

I, Christopher Putala, declare under penalty of perjury on this 5th day of June 2006 that the following statements are true and accurate to the best of my knowledge and belief:

1. I am the Executive Vice President, Public Policy, for EarthLink, Inc.
2. I have reviewed the attached Petition to Deny and the statements made therein are true and accurate.
3. In January 2006, BellSouth required EarthLink, as a condition for renewal of its RBAN service, to accept several anticompetitive limits on the service.
4. There are no legitimate business reasons for these new restrictions against EarthLink, and these conditions are clearly anticompetitive and designed to prevent EarthLink from offering competitive services within BellSouth's regions.
5. While AT&T has discussed several ideas for a long-term broadband transmission arrangement with EarthLink, AT&T has refused to provide EarthLink any written draft proposal, nor even a draft agreement, so that the parties may secure a long-term agreement.

6. Prior to the *Wireline Broadband Order* deregulation, New Edge was conducting business as a CLEC with collocated equipment in the BellSouth region and as a reseller of BellSouth's DSL services. New Edge utilized BellSouth's DSL services to provide virtual private networks for multi-site business customers. BellSouth's DSL services were delivered via an ATM/PVC platform (Layer 2) pursuant to its federal tariff.

7. After FCC deregulation, however, BellSouth decided to cease offering Layer 2 DSL services to New Edge after May 17, 2006, effectively ending the ability of New Edge to offer businesses in BellSouth an alternative VPN service using ATM-over-DSL. Compounding the harm, BellSouth's plan to eliminate Layer 2 DSL service did not include any plan of action for transitioning New Edge VPN customers over to an alternative service.

8. New Edge requested that BellSouth negotiate a commercial agreement that would ensure the continuance of the ATM/PVC platform, but BellSouth has refused.

9. Further, although it would limit New Edge in the services it can offer, New Edge requested to negotiate a commercial agreement for BellSouth's RBAN service. This time, BellSouth did not refuse New Edge's request. Prior to discussing an RBAN agreement, however, New Edge would have to agree to certain conditions including: (1) the removal of all collocated facilities in the BellSouth region; and (2) New Edge's agreement not to offer VOIP services in the BellSouth region.

10. AT&T has refused even to discuss a continuing broadband transmission arrangement with New Edge.

11. Since the *Wireline Broadband Order*, New Edge has attempted to discuss with AT&T personnel a contract for broadband transmission service. AT&T, however, refuses to discuss a continuing broadband transmission arrangement with New Edge.

12. As a broadband Internet service provider and voice service provider (including VoIP), EarthLink requires “last mile” broadband connections to its customers in order to provide service to those customers.

13. A significant source of broadband transmission services for EarthLink in AT&T territory is AT&T; similarly, a significant source of broadband transmission services for EarthLink in BellSouth territory is BellSouth.

14. Other than BellSouth and AT&T, Covad is the only commercially meaningful source of wholesale DSL transmission service in BellSouth Territory and AT&T territory. Covad’s services are in a significant number of cases restricted geographically, however, and in those geographic areas, EarthLink has no alternative to the respective BOCs for DSL transmission service.

15. AT&T and BellSouth have different approaches to the provisioning of wholesale DSL and fiber-based transmission services. Those differences include (1) the extent to which the companies require purchasers to use “layer 3” services, which include a pre-selected backbone provider; (2) the extent to which copper loops are replaced with fiber, and the alternatives to DSL that are made available when such replacements occur; (3) the extent to which resale is restricted; and (4) the extent to which remote terminal are used, which limit access to customers served by such terminals.

16. Although both AT&T and BellSouth substantially restrict the nature and uses of the wholesale broadband transmission services that they sell, having the companies operate separately provides EarthLink with some ability to negotiate against one company's restrictive practices on the grounds that the other company does not impose similar restrictions. The combination of the companies would eliminate those differences and would eliminate any possibility that the two companies would ever compete across their traditional territorial boundaries – competition that would give EarthLink more opportunity to obtain commercially favorable terms and conditions for transport that it could in turn use to provide better services to its customers at better prices.

A handwritten signature in black ink, appearing to read 'C. Putala', is written over a horizontal line.

Christopher Putala

Date: June 5, 2006