

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
AT&T Inc. and BellSouth Corporation) WC DOCKET No. 06-74
Applications for Approval of)
Transfer of Control)
)

REPLY OF *AD HOC* TELECOM MANUFACTURER COALITION

This Reply is filed by a group of companies that make a wide variety of telecom hardware and software used by service providers and consumers. While we express no view on the broad question of whether the FCC should approve this merger, we file our Reply in order to respond to the request by three parties that the agency condition any merger approval on compliance either with (i) the “network neutrality” regulation set forth in the agency’s Policy Statement¹ but for a longer period than was mandated in previous merger approval orders,² or (ii) a more stringent network neutrality regulatory regime than is reflected in the Policy Statement.³ We oppose both suggestions because we believe either option risks unnecessarily slowing investment in telecom products, and we file this Reply to explain the basis for this conclusion.

In deciding whether to condition approval of a telecom merger on compliance with any given regulatory requirement, the Commission is required to balance any public interest harm that could result from imposing that condition against any benefit that might result, and it may not impose the condition

¹ See “Appropriate Framework for Broadband Access to the Internet over Wireline Facilities”, FCC No. 05-151 (Sept. 23, 2005).

² Consumer Federation *et al* Pet. to Deny at 9 (asking FCC to require that the merged AT&T/BellSouth comply with the agency’s network neutrality Policy Statement for five years from the closing date, whereas the agency has required other merged ILECs to comply with the Policy Statement for two years); Center for Digital Democracy Pet. to Deny at 4 (same).

³ Access Point *et al*. Pet. at 34 (asking FCC to impose “substantial new safeguards” as a condition of merger approval to ensure network neutrality).

if the harm exceeds the benefit.⁴ A merger condition that provides a disincentive to invest in telecom infrastructure or other telecom products represents one that produces a public interest harm.⁵

A growing body of new evidence suggests that a major disincentive to invest in telecom infrastructure will result from network neutrality regulation and that this disincentive to invest in infrastructure also will depress spending for all other hardware and software products that are required to provide consumers with the new services these networks make possible. First, the consensus on Wall Street and among venture capitalists appears to be that the imposition of network neutrality regulation provides a disincentive to invest in telecom infrastructure and related products. For example, Sanford C. Bernstein and Company's senior telecom analyst recently concluded that "[m]andated 'Net Neutrality' would further sour Wall Street's taste for broadband infrastructure investments, making it increasingly difficult to sustain the necessary capital investments [to deploy these networks]."⁶ Likewise, John Rutledge, President of Rutledge Capital, has stated that network neutrality regulation would "put a chill on badly-needed investment in America's consumer broadband infrastructure."⁷

Investment bankers and venture capitalists are not alone in believing that network neutrality regulation will provide a disincentive to invest in telecom hardware and software. Several new economic studies likewise have concluded that network neutrality regulation will depress demand for telecom products. One example is a study released this month by the American Consumer Institute:

⁴ See, e.g., *SBC/Ameritech Merger Order* at ¶ 47, 14 FCC Rcd. 14712 (1999); *AT&T/SBC Merger Order* at ¶ 16, 20 FCC Rcd. 18290 (2005).

⁵ *SBC/Ameritech Merger Order, supra*, at ¶ 50; *AT&T/SBC Merger Order, supra*, at ¶ 17.

⁶ See, e.g., Bernstein Research Weekly Research Notes, "Net Neutrality – Beware the Law of Unintended Consequences" at 3 (April 7, 2006).

⁷ Rutledge and Company News Release dated April 27, 2006, avail. at <http://biz.yahoo.com/prnews/060427/clth533.html?v=21>.

“[Network neutrality regulation will] make investment in network infrastructure more risky, . . . reduce expected earnings for risk taking shareholders and . . . reduce expected growth of cash flow from broadband network services [and these factors,] in turn, [will] raise capital costs, lower the optimal rate of rolling out broadband networks, and delay and/or reduce infrastructure investment.”⁸

Of equal significance is new study by the Phoenix Center for Advanced Legal & Economic Public Policy Studies, which concludes that network neutrality regulation “is likely to deter [development of competing broadband access networks], reduce the expansion and deployment of [such] . . . networks, and . . . lead to the monopoly provision of . . . broadband services in many markets.”⁹

CONCLUSION

In order to avoid creating a disincentive to invest in telecom products, the Commission should not condition approval of the proposed AT&T/BellSouth merger on compliance with the “network neutrality” regulation set forth in the agency’s Policy Statement for a longer period than mandated in

⁸ Larry F. Darby, “Consumer Welfare, Capital Formation and Net Neutrality: Paying for Next Generation Broadband Networks” at 8 (June 2006), avail. at [www.theamericanconsumer.org/Net Neutrality Study.pdf](http://www.theamericanconsumer.org/Net_Neutrality_Study.pdf).

⁹ Phoenix Center Policy Paper No. 24, “Network Neutrality and Industry Structure” (April 2006) at 2-3, avail. at <http://www.phoenix-center.org/pcpp/PCPP24Final.pdf>. See also Broadband Working Group MIT Communications Futures Program and Cambridge Univ. Communications Research Network, “The Broadband Incentive Problem” (Sept 2005) (concluding that the “broadband value chain”, including investment in broadband networks and in hardware and software products that make broadband networks work, “is headed for a train wreck” unless broadband network operators are permitted to experiment with new ways to recover network costs, including the right to recover some costs from companies that use the networks to provide services and applications to consumers), avail. at http://cfp.mit.edu/groups/broadband/docs/2005/Incentive_Whitepaper_09-28-05.pdf.

previous merger approval orders. Nor should it condition merger approval on compliance with a more stringent network neutrality regulatory regime than set forth in the Policy Statement.

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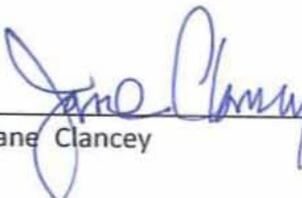
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