

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

In the Matter of Application of BellSouth Corporation, Transferor, and AT&T, Inc., Transferee, For Consent to Transfer Control of Licenses and Authorizations))
)	WC Docket. No. 06-74
)	DA 06-904
)	
)	

RESPONSE OF T-MOBILE USA, INC.

I. INTRODUCTION

T-Mobile USA, Inc. (“T-Mobile”) shares concerns with many of the parties that oppose the applications for approval of transfer of control of BellSouth Corp. (“BellSouth”) and its subsidiaries to AT&T, Inc. (“AT&T”) (collectively, the “Applicants”).¹ In particular, T-Mobile urges the Commission to impose conditions on the proposed AT&T-BellSouth merger that address the merger’s likely adverse impacts on competition for special access and emerging services.

This transaction is the latest step in a trend of consolidation in the telecommunications industry. The proposed AT&T-BellSouth merger would result in the formation of the largest incumbent local exchange carrier (“ILEC”) in the United States,

¹ T-Mobile holds licenses covering more than 275 million people in 46 of the top 50 U.S. areas and currently serves about 22.7 million customers. Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in more than 7000 convenient public locations, such as Starbucks coffee houses, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world. All comments/petitions to deny submitted in this proceeding on or about June 5, 2006, will hereinafter be short cited.

which would own the largest wireless carrier, Cingular,² as well as the largest long-distance business. In order to preserve the benefits of competition in the telecommunications marketplace, the Commission must analyze this transaction closely, especially on the heels of the AT&T-SBC merger, the Cingular-AT&T Wireless merger, and the Verizon-MCI merger, all of which the Commission approved *with conditions* in the past eight months.³

T-Mobile is one of the few remaining independent national wireless carriers, with a rapidly growing base of mass market and business customers throughout the United States. As such, T-Mobile is a major customer of AT&T and BellSouth for special access telecommunications services in their service areas, and it is a retail competitor of these ILECs and their Cingular wireless affiliate nationwide. AT&T's service area covers 13 states and it already claims to be "the largest telecommunications company in the United States and one of the largest in the world."⁴ BellSouth describes itself as "the leading communications service provider in the southeastern United States" and serves "substantial portions of the population" within 9 states.⁵

Throughout these large service areas, T-Mobile depends on AT&T and BellSouth for special access services that are critical inputs to T-Mobile's competitive wireless

² AT&T currently owns 60% of Cingular, while BellSouth owns the remaining 40% of Cingular.

³ The remedial conditions needed to address the AT&T-BellSouth transaction are independent of those that the Commission imposed in considering last year's AT&T-SBC merger and their terms should be measured from the date of completion of the AT&T-BellSouth transaction.

⁴ See AT&T Company Overview, <http://att.sbc.com/gen/investor-relations?pid=5711> (last visited Jun. 19, 2006).

⁵ See BellSouth - About Us: Communications Group, http://www.bellsouth.com/investor/ir_busprofile_coredigital.html (last visited Jun. 19, 2006).

offerings. The proposed merger will significantly degrade what little competition remains in the special access marketplace. Such competition is already depleted due to the recent loss of MCI and AT&T as independent providers of special access.

In addition to special access services, stand-alone or “naked” DSL is essential to the viability of intermodal competition and broadband deployment.⁶ T-Mobile is exploring the possibility of offering certain types of Internet Protocol-based (“IP-based”) advanced services, which are already beginning to be offered by other providers to the benefit of consumers. For such services to be cost-effective, potential customers need access to unbundled broadband pipes, such as naked DSL, that are available on a nondiscriminatory basis and do not include additional charges for bundled voice services.

This merger is of particular concern to T-Mobile as both a large customer and a competitor of the Applicants. T-Mobile competes vigorously in the mobile wireless marketplace with Cingular and other wireless providers. T-Mobile also is poised to become an important competitor in the emerging “intermodal” marketplace for local exchange services in which the Applicants are the dominant providers throughout their regions. In fact, T-Mobile’s provision of high-quality wireless service to the American public can allow consumers the option to “cut the cord” and rely on T-Mobile for their communications needs. But T-Mobile’s effectiveness in fostering such nascent intermodal competition depends on its ability to obtain services and facilities from ILECs such as AT&T and BellSouth on nondiscriminatory terms and reasonable cost-based prices.

⁶ ILECs generally offer dial-tone voice service tied to DSL. In contrast, a “naked” DSL offering from an ILEC does not include the dial-tone voice service, whether circuit-switched or voice-over-IP (“VoIP”)-based.

As the petitions and comments show, the proposed AT&T-BellSouth merger risks harm to competitor/customers like T-Mobile - and to consumers - by increasing the Applicants' ability to discriminate in the provision of special access services and by limiting the potential availability of unbundled broadband service or naked DSL. Thus as with the recent AT&T-SBC and Verizon-MCI mergers, the Commission should impose special access and naked DSL conditions on the AT&T-BellSouth transaction. To do otherwise would exacerbate the harms to consumers that result today from anticompetitive special access pricing and provisioning and the unavailability of naked DSL in BellSouth's service area.

II. WITHOUT MERGER CONDITIONS, THE EXISTING LACK OF COMPETITION IN THE PROVISION OF SPECIAL ACCESS BY AT&T AND BELLSOUTH WILL WORSEN.

The Commission and Congress should make a priority of comprehensively reforming special access regulation. To that end, the Commission should expediently complete the pending special access rulemaking.⁷ T-Mobile and others have demonstrated in that rulemaking and in earlier merger proceedings that the special access marketplace is not competitive and that the Commission's current regulation of that marketplace is inadequate.⁸ But, until such special access reform is complete, the Commission must consider any special access problems caused by transactions like the AT&T-BellSouth merger and impose needed remedial conditions.

⁷ See *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005). The formal comment period for this rulemaking has been closed for almost 11 months.

⁸ See, e.g., Comments of T-Mobile, WC Docket No. 05-25 (filed Jun. 13, 2005) ("T-Mobile Special Access Comments"); Reply Comments of T-Mobile, WC Docket No. 05-25 (filed Jul. 29, 2005).

T-Mobile has extensive experience as a customer of the special access services provided by the Applicants. Because few competitive alternatives exist, T-Mobile relies on ILEC special access offerings to provide the several types of high-capacity links needed to connect T-Mobile's facilities and create its integrated wireless network. Nationally, for the DS1 base station-to-central office links that T-Mobile purchases as channel termination service, the ILEC is the only special access provider in about 96 percent of ILEC service areas.⁹ Similarly, for DS1 interoffice transport links that T-Mobile purchases as channel mileage service, ILECs nationwide are the only special access provider in about 94 percent of the service areas.¹⁰ In most cases, T-Mobile has no viable alternatives to the use of these ILEC services. ILECs are already able to exploit their positions of market power to raise prices above competitive levels and raise the costs of rivals, such as T-Mobile, who depend on special access connections to offer their own services.

T-Mobile's special access experience in the service areas of AT&T and BellSouth is consistent with T-Mobile's experience nationwide. In their respective service areas, AT&T and BellSouth are T-Mobile's primary sources for the special access services that are essential to the operation of T-Mobile's network.

Based on its experience as a special access customer, T-Mobile agrees with the concerns expressed in the initial round of petitions and comments about the negative impacts of the proposed merger on special access competition. As Sprint Nextel notes, an AT&T-BellSouth merger would create the largest special access provider in the

⁹ See T-Mobile Special Access Comments at 7-8 and Att. C at 2.

¹⁰ See *id.* at 8 and Att. C at 2.

country.¹¹ To the very limited extent that AT&T has been a competitive provider of special access services in BellSouth's service area, the merger would eliminate that competition.¹² T-Mobile agrees with Sprint Nextel and Comptel that, by expanding the combined company's service territory, the proposed merger would increase the company's leverage to benefit from raising rivals' costs more than either pre-merger AT&T or BellSouth could achieve separately.¹³

Of particular concern to T-Mobile, the proposed merger would result in Cingular becoming a wholly-owned subsidiary of the combined company. This consolidation of ownership would increase the combined company's incentives to discriminate against T-Mobile and other wireless competitors because the combined company would realize the full extent of any benefits from such conduct.¹⁴ Because of the dominance of AT&T and BellSouth over special access services, discrimination in the provision of such services must be stemmed.

To prevent the proposed AT&T-BellSouth merger from resulting in the foregoing harms to the special access marketplace, T-Mobile generally supports the mergers conditions proposed by Sprint Nextel,¹⁵ particularly the following:

First, the Commission should require the combined company to include facilities in BellSouth's existing service area in future reports showing monthly performance

¹¹ See Sprint Nextel Merger Comments at 2-3.

¹² See *id.* at 11-12; Time Warner Telecom Petition to Deny at 16-17.

¹³ See Sprint Nextel Merger Comments at 6-7; *see also* Comptel Petition to Deny at 9-11.

¹⁴ See Sprint Nextel Merger Comments at 9-10; Comptel Petition to Deny at 10.

¹⁵ See Sprint Nextel Merger Comments at ii-iv, 12-15.

results for special access provisioning measured in accordance with the Service Quality Measurement Plan for Interstate Special Access Services adopted in the *AT&T-SBC Merger Order*.¹⁶

Second, the Commission should prohibit the combined company from taking any of the following actions for a period of three years¹⁷ following the closing of the merger:

- Increasing the rates paid by either AT&T's or BellSouth's existing customers of DS1 and DS3 local private line services;
- Providing special access offerings to affiliates that are not available to other similarly situated special access customers on the same terms and conditions;
- Providing a new or modified contract tariffed service to any section 272(a) affiliate(s), unless the company first certifies to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon or its wireline or wireless affiliates;
- Discriminating unreasonably in favor of affiliates in establishing the terms and conditions for grooming special access facilities; or
- Increasing the rates in either AT&T's or BellSouth's interstate tariffs, including contract tariffs, for special access services that either company provides in its in-region territory.¹⁸

Thirty-six months are necessary for these conditions to permit the Commission and Congress to complete general reform of the Commission's special access regulations.

¹⁶ See Sprint Nextel Merger Comments at 13; *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18415-21 (2005) ("*AT&T-SBC Merger Order*").

¹⁷ Sprint Nextel proposes the term of these conditions to be 30 months. See Sprint Nextel Merger Comments at 13.

¹⁸ See Sprint Nextel Merger Comments at 13; *AT&T-SBC Merger Order*, 20 FCC Rcd at 18412-13.

Third, the Commission should require the combined company to reduce all special access rates to reasonable levels.¹⁹

Fourth, the Commission should impose nondiscrimination requirements on the merged company, so that all transactions with its affiliates and with Verizon and its affiliates are at arms length, reduced to writing, and available for public inspection.²⁰

III. TO ENCOURAGE INTERMODAL COMPETITION, THE COMMISSION SHOULD CONDITION APPROVAL OF THE MERGER ON THE AVAILABILITY OF NAKED DSL OFFERED ON A NONDISCRIMINATORY BASIS.

Consistent with several proposals in the initial round of petitions and comments,²¹ the Commission should condition approval of the AT&T-BellSouth merger on the availability, throughout the combined company's service area, of naked DSL.²² Specifically, the combined company should be required to offer naked DSL, separate from circuit-switched or VoIP-based voice service or other services, on a cost-based, nondiscriminatory basis.²³

The proposed AT&T-BellSouth merger has the potential to harm existing competition and stifle the introduction of new technologies and advanced services. Refusals by ILECs to offer naked DSL appear to be misguided efforts to restrict the use of ILEC networks by potential competitors or to limit their use in conjunction with

¹⁹ See Sprint Nextel Merger Comments at 14.

²⁰ See *id.* at 15.

²¹ See Consumer Federation of America/Consumers Union Petition to Deny at 8-9; Access Point *et al.* Petition to Deny at 73; Georgia PSC Comments at 2-3.

²² See Comments of T-Mobile, WC Docket No. 03-251 (filed Jun. 13, 2005).

²³ See Consumer Federation of America/Consumers Union Petition to Deny at 9 (proposing condition for a term of five years after the date the last BellSouth state complies with this provision).

potentially competitive services.²⁴ Less than eight months ago the Commission imposed a limited form of naked DSL requirement on AT&T as a condition of the *AT&T-SBC Merger Order*, but, to date, BellSouth has refused to offer naked DSL in any form.²⁵

In particular, AT&T and BellSouth, owners of Cingular, have incentives to withhold naked DSL, in order to restrain innovative forms of broadband-based competition from T-Mobile and other wireless providers. Potential customers need access to cost-based naked DSL if T-Mobile and others are to provide economically viable intermodal competition through certain types of IP-based services. Because many consumers have little choice in selecting a broadband service provider, it is especially important that DSL be freely available from ILECs without their voice or other offerings.

Given the consolidation of the wireline industry as a result of other recently approved mergers, the public interest requires that the Commission act to promote development of intermodal competition as an alternative to the services offered by the wireline companies. Provision of naked DSL as a condition to approval of the proposed merger will help ensure that competing providers will be able to offer new services despite reliance on the last-mile broadband links of the ILECs.

IV. CONCLUSION.

The Commission should approve the proposed AT&T-BellSouth merger subject to targeted remedial conditions addressing the likely harms that the post-merger AT&T

²⁴ “Port blocking” is another potential form of anticompetitive conduct that the Commission should be vigilant to prevent and police. *See generally Madison River Communications, LLC and Affiliate Cos.*, Consent Decree, 20 FCC Rcd 4295 (EB 2005) (Consent decree between Commission and small ILEC that allegedly blocked ports used for VoIP applications, thereby affecting customers’ ability to use VoIP through one or more VoIP service providers).

²⁵ *See Georgia PSC Comments at 2.*

could inflict on customers of special access service that are its competitors. The Commission should also condition approval of the merger on the availability of efficiently priced naked DSL. Without such conditions, the proposed merger would harm competition and U.S. consumers.

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