

## AT&T Has Violated its Stand-Alone ADSL Merger Commitment

*AT&T committed to offer stand-alone ADSL to all customers.*

- AT&T now refuses to sell stand-alone ADSL to certain customers and is engaging in anticompetitive pricing designed to discourage all consumers from benefits of stand-alone ADSL.
  - ***AT&T offers its “No Voice” broadband service for \$44.99/month – more than the same AT&T DSL broadband service with local voice which is \$40.68/month.***
    - ***AND, with the “standard promotional rate” for DSL, the bundle is \$23.68/month.***
- AT&T’s failure to offer stand-alone ADSL violates FCC’s SBC/AT&T merger conditions.
- AT&T should be subject to a specific ADSL stand-alone condition with additional FCC oversight.

## AT&T Has Violated its Stand-Alone ADSL Merger Commitment

*AT&T's commitment to offer stand-alone ADSL was clear.*

- AT&T committed in the *SBC-AT&T* merger to offer stand-alone ADSL service to “ADSL-capable customers” within the AT&T territory. (*SBC Ex parte*, FCC Dkt. No. 05-65, October 31, 2005).
- “After meeting the implementation date in each state, SBC/AT&T will continue deployment so that it can offer the service to all ADSL-capable premises in its in-region territory within twelve months of the Merger Closing Date.” (*SBC-AT&T Merger Order*, 20 FCC Rcd 18290, fn 576.)
- AT&T filed a certification letter stating that as of June 13, 2006, it had met this condition throughout the former SBC 13-state region.

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*AT&T's anticompetitive pricing is inconsistent with the spirit and letter of the ADSL stand-alone commitment.*

- AT&T has priced its “No Voice” broadband service for \$44.99/month – significantly more than DSL with voice service.

AT&T's PRICING	CA Measured Local Service (\$5.70/month)	CA Flat Rate Local Service (\$10.69/month)	300 Minutes Long Distance (\$16.00/month) Plus Flat Rate Local Service
DSL 1.5 Mbps Downstream: Promotional Price – \$12.99/month	<b>\$18.69/month</b>	<b>\$23.68/month</b>	<b>\$39.68/month</b>
DSL 1.5 Mbps Downstream: Standard Price – \$29.99/month	<b>\$35.69/month</b>	<b>\$40.68/month</b>	<b>\$56.68/month</b>
DSL 6.0 Mbps Downstream: Promotional Price – \$27.99/month	<b>\$33.69/month</b>	<b>\$38.68/month</b>	<b>\$54.68/month</b>

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*AT&T is unlawfully refusing to provide stand-alone ADSL to Internet Service Providers even though ISPs are eligible stand-alone ADSL-capable customers.*

- EarthLink (and any other ISP) is an “ADSL-capable customer” under the terms of the merger condition.
- Long-standing FCC precedent confirms that ISPs are treated as end-user service customers.
- Accordingly, AT&T’s refusal to sell stand-alone ADSL service to EarthLink and other ISPs violates both the *SBC-AT&T Merger Order* merger condition and Title II of the Act.

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*The SBC/AT&T merger condition was designed to ensure that consumers have a viable stand-alone ADSL service.*

- Reasonable terms and pricing are essential to ensuring that the consumer benefits of stand-alone ADSL are attained.
  - **To ensure consumers benefit, the FCC committed in the *SBC-AT&T Merger Order* to issuing “an annual report assessing the competitiveness of the broadband market and whether there is evidence of anticompetitive conduct in this market.”**
- Commissioner Copps stated: “I hope we will have the good sense to find it anti-competitive if the price for stand-alone DSL is not significantly less than the price for bundled voice and DSL.”
- Commissioner Adelstein also stressed the importance of ensuring the stand-alone ADSL services are “being made available to consumers at reasonable prices and under fair terms.”

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*The SBC/AT&T merger condition was designed to encourage VoIP competition, not to be priced so as to discourage VoIP offerings.*

- AT&T's pricing is patently unreasonable and renders both the offering and the *AT&T-SBC Merger Order* condition meaningless, especially for consumers that may wish to use it for VoIP and other services competitive with AT&T's offerings.
- Commissioner Adelstein: The condition was to "create an opportunity for development of competitive Voice Over Internet Protocol (VoIP) and help spur innovative communications technologies."
- Commissioner Copps underscored the importance of the condition for "the development of VoIP".

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*Industry practices underscore the unreasonable nature of AT&T's anticompetitive conduct.*

- While AT&T and Verizon were both subject to stand-alone ADSL obligations, only AT&T is non-compliant.
  - Unlike AT&T, Verizon offers its stand-alone ADSL service to all ADSL-capable customers, including ISPs.
    - Verizon offers its stand-alone service for \$19.95/month.
- AT&T's conduct demonstrates its flagrant disregard for its commitments, FCC process and consumer welfare.

## AT&T Has Violated its Stand-Alone ADSL Merger Commitment

*AT&T's stand-alone commitment was unconditional.*

- Unlike the AT&T condition, the FCC required Verizon only to serve new customers or existing customers that port to a VoIP provider or other facilities-based provider.
- Notably, the FCC did not narrow the class of customers that must be served by AT&T's stand-alone ADSL but rather agreed it should be offered to *all* ADSL-capable customers without limitation.

## AT&T Has Violated its Stand-Alone ADSL Merger Commitment

*AT&T's failure to offer stand-alone ADSL as promised also violates its net neutrality commitments.*

- AT&T agreed to comply with net neutrality conditions which include the ability of consumers to:
  - Run applications and use services of their choice; and
  - Enjoy competition among network providers, application and service providers, and content providers.
- AT&T's "stand-alone" pricing and practices undermine its net neutrality commitments.
  - By charging consumers more for a stand-alone ADSL-based information service than for the voice bundle, AT&T is clearly impeding consumers' right to decide which information, VoIP and advanced services they prefer.

## AT&T Has Violated its Stand-Alone ADSL Merger Commitment

*AT&T should be subject to a specific ADSL stand-alone condition with additional FCC oversight.*

- AT&T should be subject to a clear and specific stand-alone ADSL condition given its willingness to violate the letter and spirit of its promises.
  - The FCC should expressly specify that AT&T offer stand-alone ADSL on a non-discriminatory basis as a telecommunications service on just and reasonable terms and conditions without any resale or use restrictions.
- AT&T should be required to web-post its stand-alone ADSL offering and to retain sufficient information to ensure that the service prices and terms are just and reasonable.
  - The FCC should require AT&T to respond to allegations of unreasonable and anticompetitive conduct on an expedited basis to ensure consumers are served.