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

**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.

<table>
<thead>
<tr>
<th>AT&amp;T’s PRICING</th>
<th>CA Measured Local Service ($5.70/month)</th>
<th>CA Flat Rate Local Service ($10.69/month)</th>
<th>300 Minutes Long Distance ($16.00/month) Plus Flat Rate Local Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>DSL 1.5 Mbps Downstream: Standard Price – $29.99/month</td>
<td>$35.69/month</td>
<td>$40.68/month</td>
<td>$56.68/month</td>
</tr>
<tr>
<td>DSL 6.0 Mbps Downstream: Promotional Price – $27.99/month</td>
<td>$33.69/month</td>
<td>$38.68/month</td>
<td>$54.68/month</td>
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EarthLink, Inc. Ex Parte -- WC Dkt. Nos. 06-74; 05-65
AT&T Has Violated its Stand-Alone ADSL Merger Commitment

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

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

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

*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.