

AT&T/BELLSOUTH MERGER – PROPOSED FCC CONDITIONS: SUGGESTED CHANGES

PROPOSED CONDITION: STAND-ALONE ADSL

- AT&T/BS will offer ADSL service to ADSL-capable consumers without requiring them also to purchase circuit switched voice grade telephone service.
 - ✓ AT&T/BellSouth must offer stand-alone ADSL within 12 months of Merger Closing Date (MCD). The stand-alone ADSL service will be offered for 30 months from each state “implementation date” (date in each state service is available to 80% of ADSL-equipped lines).
 - ✓ The commitment will expire no later than 42 months after the MCD.

PRACTICAL IMPACT

- AT&T is not complying with its AT&T-SBC merger stand-alone commitments today.
- Unless AT&T is required to comply with the condition as originally imposed in the AT&T-SBC merger, only consumers that subscribe to AT&T services will get the benefits of the stand-alone requirement.

SUGGESTED CHANGES

Ensure all customers can benefit:

“Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to all ADSL-capable customers, ***including Internet Service Providers and their end-users***, without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the “implementation date” in that state. For purposes of this condition, the “implementation date” for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth’s in-region territory in that state. Within twenty days after meeting the implementation date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.”

Address current contracts and migration:

“These commitments supplant any prior contractual limitations. AT&T/BellSouth shall migrate any existing ADSL customer and their end-users to the stand-alone service without charge or delay.”

Enforcement of current condition:

The FCC should expressly state that that the inclusion of language regarding “Internet Service Providers and their end-users” merely clarifies and affirms the nature of AT&T’s obligation, including its commitments made in the AT&T-SBC Merger Order. As such, AT&T is expected to comply immediately with its existing obligations in the AT&T-SBC Merger Order in addition to the additional commitment made herein.

PROPOSED CONDITION : UNBUNDLED NETWORK ELEMENTS (UNES)

- AT&T/BS will continue to offer and will not seek any price increase on UNE rates or collocation for 30 months after MCD.
- AT&T/BS will recalculate the thresholds for determining access to high capacity UNES (DS1, DS3, OC3, etc.) by excluding certain collocations, and thereby making high-capacity loops available as UNES from more wire centers in AT&T and BS regions.

PRACTICAL IMPACT

- Proposed conditions would overlap with substantially similar UNE Conditions AT&T/BS already agreed to in the SBC-AT&T Merger Order.
- Time Frame of AT&T/SBC Condition: November 17, 2005 – November, 17, 2007
- Overlap with AT&T-BS Merger Proposal: 11 ½ months.
- AT&T should not be credited in this merger proceeding with UNE commitments it made in the SBC-AT&T Merger Order.
- There is forbearance loophole that could undermine relief (e.g., by allowing AT&T/BS to seek forbearance from collocation) just as there is loophole for special access.

SUGGESTED CHANGES

Close the forbearance loophole:

Forbearance commitment should encompass forbearance regarding all UNE conditions (including collocation), as well as to withdraw currently pending petitions of AT&T and BellSouth (AT&T filed 07-13-06; BellSouth filed 07-20-06).

Extend commitment period:

The duration of the UNE commitments here should be extended to reflect the unprecedented scope and scale of this proposed merger and the Applicants' history of noncompliance.

- ✓ In mergers such as this that implicate serious competition concerns, the FCC has imposed merger conditions for significantly longer than 30 months to ensure consumers are served (e.g., *BellAtlantic-NYNEX* (48 months), *SBC-Ameritech* (48 months), *Adelphia-Time Warner* (72 months), *AOL-Time Warner* (60 months).

PROPOSED CONDITION : ADSL TRANSMISSION SERVICE

- AT&T/BS will offer ISPs an ADSL transmission service that is “functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date.”
- This wholesale offering will be at prices “comparable to those available in the overall market for wholesale broadband services.”

PRACTICAL IMPACT

- Condition presents timing issue because it is unclear what will be terms and conditions of its services offered on the MCD since under the *Wireline Broadband Order*, transition ends on November 16, 2006.
 - ✓ AT&T could also change its web-posted terms at any time prior to the MCD. AT&T is already under an obligation to offer service under the *Wireline Broadband Order*.
 - ✓ Commitment fails to provide for “stand-alone” ADSL transmission service.
 - ✓ Commitment still allows massive discrimination, similar to that found abhorrent in the *Adelphia Merger Order* (noting incentive and ability of network owners to discriminate against unaffiliated providers.)
- Cable and other providers do not offer wholesale broadband services so pricing term has little practical meaning.

SUGGESTED CHANGES

Free consumers from AT&T voice, promote reasonable rates and end service restrictions:

“AT&T/BellSouth will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ***and without requiring such retail customers to also purchase circuit switched voice grade telephone service***, ADSL transmission service in the combined AT&T/BellSouth territory, ***without any line of business or resale restrictions***, that is functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date. Such wholesale offering will be at prices comparable to those available in the overall market for wholesale broadband services, ***and in any event, less than the rate charged by AT&T/BellSouth to retail customers for comparable service, including any promotional rate offered for six months or greater.***”

Promote non-discrimination as AT&T proposed for Special Access:

“AT&T/BellSouth will not provide ADSL or functionally the same transmission services to its wireline affiliates that are not available to other similarly situated customers on the same terms and conditions.”

Extend commitment period:

The duration of the ADSL transmission commitment should be extended so as to reflect the unprecedented scope and scale of this proposed merger and the Applicants’ history of noncompliance.

