

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

In the Matter of)	
)	DA 06-2035
Application for Consent to Transfer of Control)	
Filed By AT&T Inc. and BellSouth Corporation)	WC Docket No. 06-74

**COMMENTS OF TEXALTEL ON THE NOTICE OF THE COMMISSION ON
PROPOSALS SUBMITTED BY AT&T INC. AND
BELLSOUTH CORPORATION**

TEXALTEL

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TEXALTEL is a trade association that represents competitive telecommunications carriers¹ that operate in Texas but provide service throughout the country, including the service territories served by AT&T and BellSouth as incumbent local exchange carriers (“ILECs”). TEXALTEL members provide a varying array of services to their customers including basic local telephone service, prepaid services, xDSL and other high speed data services, including cable and Voice over Internet Protocol services, also known as VoIP. TEXALTEL members have a vested interest in ensuring that the largest carriers cannot engage in anticompetitive conduct that would impair competitors’ ability to compete and/or artificially inflate the cost of

¹ TEXALTEL is a trade association of competitive telecommunications providers that do business in Texas. TEXALTEL was formed in 1982 as an association of long distance providers, but today its members have a wide array of business plans and provide a wide array of telecommunications, internet and other services. TEXALTEL’s designated representative is the undersigned. TEXALTEL’s members included: Alpheus, Bestline Communications, Capital Telecommunications, Covad Communications, DPI Teleconnect, Grande Communications, Huntleigh Communications, Local Telephone Service, Logix Communications, McLeod USA, Meriplex Communications, nii communications, NovoLink Communications, Southern Telecom Network, Tex-Link Communications, TeleNetwork, TRC Telecommunications.

network facilities purchased by competitors to finish the services they offer to customers. Similarly, as participants in the telecommunications marketplace, TEXALTEL advocates public policy that keeps the marketplace open to competitive carriers allowing consumers to have choices in services and providers for their communications needs. As such, our members have a substantial interest in this proceeding as our members compete predominantly in the AT&T ILEC regions but also to a lesser extent, in the BellSouth ILEC region.

TEXALTEL comes before the Federal Communications Commission (the Commission or FCC) today to submit comments on the Commission's Notice seeking Comment on Proposals Submitted by AT&T Inc. and BellSouth Corporation. We appreciate the Commission providing the opportunity to provide comment in this proceeding.

INTRODUCTION AND SUMMARY

TEXALTEL files these comments in response to the *Notice* regarding the AT&T/BellSouth proposals for conditions on their merger. As a preliminary matter, TEXALTEL believes there will be rare circumstances when such a merger, between two of the largest carriers in the country and what has already become a more consolidated industry will be in the public interest. And, in this matter, TEXALTEL believes the most appropriate decision would be a denial of the merger as being in opposition to the public interest.

That said and in the alternative, the proposals submitted by AT&T/BellSouth could be considered a reasonable first step. The Commission should be commended for making it apparent to the carriers that approval of the merger as it stood prior to AT&T/BellSouth's October 13, 2006 filing was problematic.

In these comments TEXALTEL does three things. First, TEXALTEL briefly explains its rationale for its primary position that the public interest would be best served by denying the merger. Second, TEXALTEL discusses the specific conditions raised by AT&T/BellSouth and demonstrates where those proposals need to be improved to make them meaningful. Last, TEXALTEL provides two additional conditions that must be included if the “merger with conditions” approach is going to have an opportunity for success in preventing the merged company from eliminating competition.

I. BASED ON THE RESULTING HORIZONTAL CONCENTRATION IN THE WIRELINE MARKET AND THE VERTICAL INTEGRATION WITH OTHER SECTORS, SUCH AS WIRELESS, THE MERGER IS NOT IN THE PUBLIC INTEREST.

TEXALTEL believes that the proposed merger is ultimately not in the public interest. AT&T is already a collection of AT&T long distance and the Regional Bell Operating Companies (“RBOCs”) Ameritech, Southwestern Bell, and PacBell, as well as Southern New England Telecommunications (“SNET”). If this collection of RBOCs plus the mother of long distance companies, AT&T was not enough, BellSouth would be added to the collection. The result will be a company that is only 2 steps (only missing Qwest/US West and Verizon) away from being more of a monopoly (with the addition of GTE companies to Verizon) than that which was broken up in 1983 and would be a goliath without sufficient restraints. At one time the FCC touted the maintaining of multiple RBOCs as a check on best practices and reasonableness. While recent consolidations have limited the ability of the FCC to monitor RBOCs through comparison, the loss of BellSouth as a separate RBOC all but permanently closes the door on the FCC being able to use that tool to do its job.

The potential for market abuse is substantially exacerbated when one adds Cingular to the mix. With Cingular becoming a wholly-owned affiliate, the potential for anticompetitive corporate policies and unilateral self-dealing increase exponentially. Consider one product that AT&T has been advertising, unified messaging. With unified messaging, AT&T tells the customer that the customer can have one voicemail box for all of the customer's needs. So, for example, voice messages from wireless calls will go to the same voice mailbox as voice messages from wireline calls. At first blush, this appears to be a consumer friendly product. The question, however, is why is such a simple concept both from a technical and marketing perspective "new" today and not offered by the competition. The answer is that Cingular is self-dealing with AT&T in an anticompetitive manner. Wireless carriers are generally reluctant to offer forwarding functionalities even for voice messages. So, Cingular creates the "problem" by refusing to include a message forwarding service, and then "solves the problem" by providing the equivalent of voice message forwarding when a customer buys wireline service from its affiliate. Cingular, however, does not provide such voice message forwarding in a nondiscriminatory manner to competitors. The result is a tying relationship that can severely distort the wireline market. If regulators allow this degree of consolidation, more regulation will be required in the future to prevent, or to stop, anticompetitive activity that AT&T/BellSouth will not be able to stop itself from engaging in.

II. IN THE ALTERNATIVE, IF THE COMMISSION IS INCLINED TO APPROVE THE MERGER WITH CONDITIONS WITHIN THE STRUCTURE OFFERED BY AT&T AND BELL SOUTH, THERE ARE CERTAIN MODIFICATIONS THAT WOULD MAKE THE CONDITIONS MORE MEANINGFUL AS A POSSIBLE AMELIORATION OF MARKET POWER.

In some ways, the proposed conditions filed by AT&T/BellSouth ("AT&T/BellSouth Proposal") are a sufficient first step. It highlights many of the areas where there can be market

abuse and provides a start at addressing these problems. As discussed in greater detail below, the start in the AT&T/BellSouth Proposal generally stops far short of being meaningful. That said, like with any start, the opportunity presented is one where the proposal can be improved to achieve a set of conditions that have value.

A. Timing

The AT&T/BellSouth Proposal contains an upfront limitation that diminishes the value of every following proposal. The first sentence of the proposal would have the conditions apply “for a period of thirty months from the Merger Closing Date and would automatically sunset thereafter.” This is a wholly unacceptable limitation. All the debates and discussions regarding the specific conditions are meaningless if this limitation is in place. The most appropriate conclusion would be to not have any time period limitation on the conditions. Instead, the conditions would stay in place until the merging parties could obtain an affirmative ruling that a particular condition was no longer necessary. In this way, facts – rather than speculation – will control expiration of any given condition.

On the other hand, if a fully fact-based expiration mechanism is not acceptable from a political perspective, then any time-based expiration must allow sufficient time for the Commission to conclude that the conditions would have been in place long enough to offset any potential market abuses due to the consolidation of market power. TEXALTEL believes a ten (10) year window may be sufficient for that purpose. Even with a ten (10) year window, the Commission should have the opportunity to review market conditions prior to the expiration in order to determine whether further extension is warranted.

By way of example, just last week the Wright Amendment that restricted significant air travel out of the Dallas Love Field airport was repealed after roughly thirty (30) years. Despite the fact that restrictive legislation was in place for so long, the Congress and President still required an eight (8) year phase-out period. That legislation recognizes that markets cannot adjust to such monumental changes in a brief and artificial fashion. It takes time. Certainly more than the minimalist thirty (30) months offered by AT&T and BellSouth.

B. Broadband Deployment and Broadband Services

AT&T/Bell South have offered:

1. By December 31, 2007, AT&T/BellSouth² will offer broadband Internet access service (i.e., Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory.³ To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the “Wireline Buildout Area”). The merged entity will make available broadband Internet access service to the remaining living units using alternative technologies and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.⁴
2. AT&T/BellSouth will provide an ADSL modem without charge (except for shipping and handling) to residential subscribers within the Wireline Buildout Area who, during calendar year 2007, replace their AT&T/BellSouth dial-up Internet access service with AT&T/BellSouth’s ADSL service and elect a term plan for their ADSL service of twelve months or greater.

² AT&T/BellSouth refers to AT&T Inc., BellSouth Corporation, and their affiliates that provide domestic wireline services.

³ As used herein, the AT&T/BellSouth “in-region territory” means the areas in which an AT&T or BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i).

⁴ For purposes of this commitment, a low income living unit shall mean a living unit in AT&T/BellSouth’s in-region territory with an average annual income of less than the \$35,000, determined consistent with Census Bureau data, see California Public Utilities Code section 5890(j)(2) (as added by AB 2987) (defining low income households as those with annual incomes below \$35,000), and a rural area shall consist of the zones in AT&T/BellSouth’s in-region territory with the highest deaveraged UNE loop rates as established by the state commission consistent with the procedures set forth in section 51.507 of the Commission’s rules. 47 C.F.R. § 51.507.

3. AT&T/BellSouth will offer to retail consumers in the Wireline Buildout Area who have not previously subscribed to AT&T's or BellSouth's ADSL service broadband Internet access service at a speed of up to 768 Kbps at a monthly rate (exclusive of any applicable taxes and regulatory fees) of \$10 per month.

It is not clear that the AT&T/BellSouth Proposal offers anything of substance in the area of broadband deployment. Like offering sleeves from a vest, the merging parties offer to do what they are deploying already. AT&T in particular makes the same and similar commitments to federal and state legislatures and commissions all the time. Beyond the fact that there is never a compliance check, these are actions they are taking already. Particularly when the AT&T/BellSouth Proposal relies on satellite to meet its commitment, this proposal is more of a "feel good" offer than one of substance. And particularly when there is no price commitment, AT&T's offer of ubiquitous broadband rings hollow when it retains the ability to redline by price where it would rather not serve.

Regarding the service commitments, TEXALTEL does not take a position other than to make the Commission cognizant of the fact that conditions may not be used to sanction anticompetitive results. If AT&T/BellSouth are committing to offer services at retail prices below the imputed UNE costs that similar facilities would cost, then the result is anticompetitive. As such, any commitment regarding retail pricing must include a similar reduction to the UNE inputs that a CLEC would have to order to provision its own DSL service.

Regarding the commitment to wireless broadband trials, the commitment is one that AT&T and BellSouth would be expected to do, notwithstanding this merger, as prudent research.

C. Public Safety and Disaster Recovery

AT&T/BellSouth have offered:

1. By June 1, 2007, AT&T will complete the steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory in the event of an extended service outage caused by a hurricane or other disaster.
2. In order to further promote public safety, within thirty days of the Merger Closing Date, AT&T/BLS will donate \$1 million to a section 501(c)(3) foundation or public entities for the purpose of promoting public safety.

The real question here is if BellSouth is not taking all "steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory in the event of an extended service outage caused by a hurricane or other disaster", what enforcement action should the FCC be taking? Public safety in coastal areas, i.e. New Orleans, is not a game, particularly in the aftermath of hurricanes Katrina and Rita. BellSouth has a present duty to do exactly what it is implicitly threatening that it will not do if its merger is not approved. Rather than being an offer of good will, BellSouth shows a great degree of hubris as it holds public safety and the lives of coastal residents and communities hostage.

D. UNEs

AT&T has proposed:

1. The AT&T and BellSouth incumbent LECs shall continue to offer and shall not seek any increase in State-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. This condition shall not limit the ability of the AT&T and BellSouth incumbent LECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.
2. AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (i.e., own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation

arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.

3. AT&T/BellSouth shall terminate all pending audits of compliance with the Commission's EELs eligibility criteria and shall not initiate any new audits.

(1) Application to all AT&T and BellSouth ILECs

TEXALTEL believes the intent of the UNE commitments was to have them apply to all of AT&T/BellSouth ILECs. However, only UNEs item #1 of the AT&T/BellSouth Proposal is fully explicit on that point (stating "The AT&T and BellSouth incumbent LECs") and unclear in items #2 and #2 (stating "AT&T/BellSouth). We urge that the FCC be explicit that all UNE commitments must apply to all AT&T/BellSouth ILECs.

(2) Recalculation of Wire Center Data

In what TEXALTEL hopes was inadvertent, the last section of the wire center recalculation discussion states that lines to be excluded include "special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date." This condition is incomplete. The recalculation should also assure that the calculation exclude "special access lines obtained by AT&T from any previous SBC ILECs as of the day before their respective merger closing date." The concern being addressed, i.e. the potential skewing of wire center results caused by the merger are equally applicable for all AT&T/BellSouth ILEC mergers since the Commission's Triennial Review Remand Order⁵ ("TRRO"). The merger condition must have similar completeness.

Additionally, such recalculations should take into account all pending mergers between collocating companies. For example, Level 3 announced the acquisition of Broadwing. Do to

⁵ *Unbundled Access to Network Elements (WC Docket No. 04-313); Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338)*

the impending merger, those companies should be counted as affiliated companies for purpose of the recalculated wire center data.

(3) Platform Pricing at Introductory Levels

The elimination of the UNE-Platform has had the effect that most predicted – many competitors that relied exclusively on the UNE-Platform have exited the market, and their customers have by and large have been taken back by the ILECs. In AT&T territory, the take-it-or-leave-it pricing with regard to UNE-switching replacement products, coupled with promotional retail prices lower than the Local Wholesale Complete prices have had a devastating impact on competition. One of the biggest regulatory failures has been the failure to set “just and reasonable” rates pursuant to FTA section 271. Losing the potential for wholesale competition from these large carriers further exacerbates the problem.

There should be a condition that would require the offering of either UNE-switching or a replacement thereto at pricing levels consistent with the previously determined cost-based rates decided by state commissions when a carrier has volumes below a certain level in a given LATA. If a carrier has less than a critical mass of customers in a given LATA to justify deploying a switch, a cost-based replacement product is a necessary alternative. TEXALTEL suggests that an appropriate threshold should be 25,000 DS0 equivalent ports per LATA, as that is approximately the point at which installation of a standalone switch may be come economically feasible. By imposing this condition, the Commission will be addressing one of the economic affects of the loss of key market participants, but will not be reopening the use of UNE-P ports as a long-term, large-scale business strategy.

E. Special Access

AT&T/BellSouth have offered:

1. AT&T/BellSouth affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Act (“AT&T/BellSouth BOCs”)⁶ will implement, in the AT&T and BellSouth Service Areas,⁷ the Service Quality Measurement Plan for Interstate Special Access Services (“the Plan”), similar to that set forth in the SBC/Ameritech Merger Conditions. The AT&T/BellSouth BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed therein. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T/BellSouth BOCs’ monthly performance in delivering interstate special access services within each of the states in the AT&T and BellSouth Service Areas. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T and BellSouth section 272(a) affiliates, (ii) their BOC and other affiliates, and (iii) non-affiliates.⁸ The AT&T/BellSouth BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The AT&T/BellSouth BOCs shall implement the Plan for the first full quarter following the Merger Closing Date. This condition shall terminate on the earlier of (i) thirty months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T/BellSouth files its 10th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.
2. AT&T/BellSouth shall not increase the rates paid by existing customers (as of the Merger Closing Date) of DS1 and DS3 local private line services that it provides in the AT&T/BellSouth in-region territory pursuant to, or referenced in, TCG FCC Tariff No. 2 above their level as of the Merger Closing Date.
3. AT&T/BellSouth will not provide special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.
4. To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified contract tariffed service under section 69.727(a) of the Commission’s

⁶ For purposes of these conditions, AT&T Advanced Solutions, Inc. and the Ameritech Advanced Data Services Companies, doing business collectively as “ASI,” shall not be considered a BOC.

⁷ For purposes of this condition, “AT&T and BellSouth Service Areas” means the areas in which the AT&T and BellSouth Bell operating company subsidiaries, as defined in 47 U.S.C. § 153(4)(A), are incumbent local exchange carriers.

⁸ BOC data shall not include retail data.

rules to its own section 272(a) affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates. AT&T/BellSouth also will not unreasonably discriminate in favor of its affiliates in establishing the terms and conditions for grooming special access facilities.

5. AT&T/BellSouth shall not increase the rates in its interstate tariffs, including contract tariffs, for special access services that it provides in the AT&T/BellSouth in-region territory and that are set forth in tariffs on file at the Commission on the Merger Closing Date.

(1) Rate Freeze

We hope that it is AT&T's intent that the rates in special access contracts will continue to be available for the life of the merger condition #5 above. However, more skeptical minds suggest an interpretation that AT&T could "comply" with the condition by not increasing the rates in those contracts but not renewing them when they expire. We suggest adding "Additionally, all existing contracts will be extended for the life of the merger conditions and geographic limitations removed, upon request" to condition #5 above.

If a customer, whether an end user or another carrier has a contract, AT&T/BellSouth should be required to extend the existing contract for the duration of the merger condition. Moreover, since the market is losing BellSouth as a potential entrant in the AT&T ILEC regions and AT&T as a competitor in the BellSouth ILEC region, it is imperative that carriers with existing special access contracts that refer to particular states or MSAs be able to add additional states/MSAs to the existing agreement without restriction.

While we appreciate the promise of limited stability in the Special Access marketplace, we would observe that in many instances even interstate special access prices are many times relevant costs. AT&T has given away the sleeves to the vest by promising not to increase them. Coupled with a tragic regulatory failure to set just and reasonable rates pursuant to FTA section

271 for transport and other elements that are (non-impaired) no longer UNEs, competitors are facing huge cost increases where they do not have competitive choices for transport.

These modifications to the AT&T/BellSouth Proposal would accomplish two critical things. First, it would create rate certainty in a meaningful way in the special access marketplace that would blunt some ill affects from the merger. Second, it would expand ease of entry into other geographic markets. If the merging carriers are not going to be competing with one another, then the geographic limitations in these contracts must be removed.

(2) Rate Nondiscrimination

The AT&T/BellSouth proposal states that the AT&T/BellSouth companies would be barred from providing rates to itself that are not available to similarly-situated special access customers.

The problem is there are no similarly-situated special access customers. Rate nondiscrimination can only be achieved if all carriers have the ability to adopt the contracts of AT&T/BellSouth affiliated companies without the enforcement of any poison pill provisions including, but not limited to, volume commitments, waiver of existing UNE rights, waiver of any self-certification rights, meeting any special access ratio commitments, etc..

We suggest: “AT&T/BellSouth will make special access services available to all carriers at prices no higher than those charged to its affiliates and will not impose volume commitments, waiver of existing UNE rights, waiver of self certification rights, special access ration commitments or other restrictions on the availability of said prices.”

F. Transit Service

AT&T offers:

The AT&T and BellSouth incumbent LECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T and BellSouth incumbent LECs provide in the AT&T/BellSouth in-region territory.⁹

The AT&T/BellSouth proposal on transit service is important because of the implicit acknowledgment that in most places and for a long time to come, there is and will not be a fully developed market for transit service. Consistent with earlier discussion regarding timing, there is no reason to suggest that transit service will be ubiquitously competitive any time soon. So, a commitment to freeze rates for a limited thirty (30) months is unacceptable. Instead, the transit service rate freeze should remain in place at least for the full merger period of 8 to 10 years. The one concession would be that if the FCC addresses transit service rates in a broader intercarrier compensation proceeding. In such case, the FCC should also be able to apply the results of that proceeding to AT&T/BellSouth prior to the expiration of the conditions so that the FCC can act as uniformly as it deems appropriate.

G. Forbearance

AT&T offers:

For thirty months from the Merger Closing Date, AT&T/BellSouth will not seek a ruling, including through a forbearance petition under section 10 of the Communications Act (the "Act") 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

⁹ Tandem transit service means tandem-switched transport service provided to an originating carrier in order to indirectly send intraLATA traffic subject to § 251(b)(5) of the Communications Act of 1934, as amended, to a terminating carrier, and includes tandem switching functionality and tandem switched transport functionality between an AT&T/BellSouth tandem switch location and the terminating carrier.

We assume that the intent here is that any forbearance petitions that are pending at the time of merger consummation will also be withdrawn. If this is not clear to the FCC, then it should be clarified. In addition, it is often unclear as to exactly what constitutes a loop or transport UNE. For example, a multiplexer which is used to connect loop and transport UNEs may not, to some people, be considered either loop or transport. In order to avoid ambiguity, we urge that this condition apply to all UNEs.

As urged regarding other merger conditions, there logically is no need for this merger condition to expire until such time as the market power that the combined companies possess after merger has declined substantially. If there must be a hard deadline for this (and other) merger conditions to expire, we again suggest 8-10 years.

H. Net Neutrality

Similar to discussion in the context of other issues, the commitment to comport with the FCC's Policy Statement on net neutrality is a step in the right direction. But, limiting the commitment to thirty (30) months largely negates any benefits of the commitment. We note that AT&T/BellSouth state in their letter that they have discussed the net neutrality with Chairman Martin. We are unable to ascertain what that statement is intended to mean substantively. We urge that there be a clearly worded merger condition that the companies will treat all content and service providers, including affiliates, the same, and that there will be no charges or other actions taken that gives one service or content provider any prioritized treatment over another.¹⁰ The net

¹⁰AT&T's letter states: "In addition to those conditions, we also discussed the possibility of further conditions relating to the repatriation to BellSouth territory of jobs that had been expatriated to overseas locations, Internet backbone peering arrangements, network neutrality non-discrimination, and the impact of Commission forbearance decisions on any conditions that might be imposed."

neutrality commitment should continue until the FCC issues rules addressing net neutrality in a broader context.

I. Wireless Affiliate Nondiscrimination

As discussed in Section I of these comments, tying arrangements between the wireless affiliate and the AT&T/BellSouth ILECs can be extremely harmful to the development of the wireline and wireless markets, respectively. The example discussed above shows how discriminatory arrangements can allow the AT&T/BellSouth companies to offer integrated products, such as unified messaging that competitors cannot provide simply due to the affiliation between the AT&T/BellSouth ILECs and Cingular.

To address these circumstances, a condition should be added that states as follows;

AT&T/BellSouth wireless affiliate(s) will not provide any offerings to its wireline affiliates that are not available to other wireline carriers on the same terms and conditions. The wireless affiliate(s) further agree that it will not incorporate any volume or other commitments in its contract that would cause a disproportioned benefit to its wireline affiliates relative to a requesting competitive wireline carrier.”

