

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

October 24, 2006

In the Matter of)	
)	
Application Pursuant to Section 214 of the)	
Communications Act of 1934 and)	
Section 63.04 of the Commission's)	WC Docket No. 06-74
Rules for Consent to the Transfer of)	DA 06-2035
Control of BellSouth Corporation to)	
AT&T, Inc.)	

ABOUT FISPA

FISPA stands for the Federation of Internet Solution Providers of the Americas. FISPA began in 1996 as the Florida Internet Solution Providers Association and enjoyed a rapid growth. Approaching its full potential in Florida, interest was generated in other states, particularly in the BellSouth region, in combining the interests in of the ISP community within the Bellsouth network.

Membership has grown beyond the Southeast and we now have members in every region of the country; however, the majority of our membership resides in the BellSouth region. With the growth beyond the Sunshine State, the name was changed to reflect the growth potential of the

organization.

Our ISP membership represents that group of entrepreneurs that responded to the call of Congress encouraging private investment in competition with passage of the Telecommunications Act of 1996. Our Vendor Members represent the support industry of sales, consulting, equipment, and service suppliers that enable our ISP members to bring the public the right to choose superior quality, pricing, and customer support from among competing providers.

COMMENTS OF FISPA

FISPA applauds the FCC for seeking additional comments regarding the potential AT&T/BellSouth merger. Our members are quite concerned with language in the AT&T merger conditions that would severely restrict our residential and small business offerings using the Bellsouth wholesale ADSL transport offering. We are also concerned that 30 months after the merger is certainly not enough time to build a sustainable business model.

Specifically, AT&T proposes that they “will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the combined AT&T/BellSouth territory 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.” FISPA certainly applauds this offering. However, there is no mention of how long this offering will exist, nor is there a definition of “prices comparable to those available in the overall market for wholesale broadband services.

Previous FCC decisions have led to very few wholesale broadband transport offerings, and our own members’ experiences have proven that very few cablecos have a wholesale offering or are willing to negotiate one, thus leaving no option for wholesale broadband except the incumbent LEC. Therefore, there is no standard pricing scheme to define a “comparable market for wholesale broadband services.” There is no market for these services when the ILEC is the only provider. The absence of a vibrant wholesale market is very much a sign of market failure and a reason that the FCC should act to encourage the ongoing wholesale access, particularly in the enormously large footprint of AT&T and Bellsouth.

Today, Bellsouth is in many cases offering retail DSL pricing at or below the FISPA wholesale transport rate. There is simply no way to compete with this, especially given the high cost of the ATM backbone on top of per line charges. Bellsouth’s wholesale DSL transport offering is priced too

high for independent ISP's to offer affordable broadband to residential users. This must change.

This anti-competitive practice of pricing wholesale above retail is also reflected by AT&T in their conditions of merger where they state, "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." FISPA members are currently offered a similar 256Kbps transport offering with a monthly price of approximately \$20, exclusive of taxes. This price is transport only, and does not include the cost of Internet access bandwidth. While AT&T's price is good for the consumer, it is a price that would effectively exclude independent ISP's from competing on the residential level, and thus eliminating choice.

FISPA proposes that a possible solution to this problem is add extra language to the AT&T ADSL transmission service offering that:

1. Is valid for a minimum of five years from the Merger Closing Date.

2. Is flexible to allow for promotions that mirror the AT&T retail offering.

If the AT&T retail price drops by 40%, then the per line transport rate should drop by this same percentage.

For instance, if AT&T is offering DSL access at \$30 per month, and our transport cost is \$20 per month for this same offering, in the event AT&T drops their retail price to \$20, a 33% drop, FISPA's transport rate should drop by 33% to \$13.20. If our wholesale rate does not drop, we are forced to keep selling at a much higher rate, thus there is a direct anti-competitive correlation. Dropping retail rates below wholesale is certainly an anti-competitive practice and must be remedied.

We applaud the FCC's efforts to promote universal broadband service. However, we are greatly concerned that AT&T will not offer an ADSL transport service offering that is fair and allows our members to continue to compete. The majority of our members' customers choose to buy locally from us. If the FCC fails to add this condition to the merger, our customers will lose their choice of service provider. Our members will then be forced to only sell to businesses, or go out of business. However, the same problem may also exist as business broadband prices fall. The gap is already shrinking.

FISPA would also welcome the opportunity to negotiate with cable companies, wireless carriers and ISP's, and others for a wholesale transport rate. However, these companies consistently show no desire to do this. We would love for the market to dictate the appropriate transport rate. However, the real world transport market today is controlled by the incumbent LEC, which is exactly why the FCC must act to preserve a competitive marketplace. It is for this reason that we are proposing a minimum five year time period so that we can continue to negotiate with other carriers for transport access, or build our own facilities.

OUR VISION FOR HOW TO DEPLOY BROADBAND THE FASTEST

Some of our members are also CLECs in the Bellsouth and AT&T regions. These CLECs have access to ILEC collocation facilities and could build their own DSL networks utilizing UNE loops. However, many in the Bellsouth territory have been reluctant to do this for one very important and often overlooked reason. Most towns in Bellsouth's territory are served with a central office (CO); however, increasingly the majority of the town population is fed with remote terminal (RT) equipment. For a CLEC to provide DSL to potential subscribers fed from RT's, there is a huge upfront non-recurring application fee and install fee per RT to install a DSLAM. An average 30,000 population town in Bellsouth's territory might have hundreds of RT's, each serving from fifty to over a hundred lines that today do not have access to broadband, particularly in rural areas. To deploy ubiquitous

coverage would require hundreds of thousands of dollars just in upfront non-recurring fees for CLECs, which the national providers refuse to spend for the more rural customers. FISPA thrives on the rural users and we want to build our own networks in these areas.

One possible solution to this problem is to simply eliminate the CLEC application fee at remote terminals. RT's are significantly easier to deploy a small DSLAM versus a central office (CO), and thus should not be subject to enormous application fees, albeit CO fees are dramatically overpriced as well. With the dramatic cost reduction of mini DSLAMS, our members would gladly deploy in the underserved areas if the upfront cost were greatly reduced to deploy in RT's. This would in turn lead to a competitive broadband market, even in the more rural areas. In fact, our members would be thrilled to have the collocation fees for CO's and RT's greatly reduced in UNE Zones 2 and above. We concede that most UNE Zone 1 markets already have ample competition and wholesale access. FISPA would not object to an impairment test similar to the UNE DS1 and DS3 impairment standards that exist today.

CONCLUSION

FISPA members have tirelessly worked for years to bring the Internet to the average American citizen through the Bellsouth ADSL wholesale transport program. The past year has seen our membership forced to

compete against the lowering of Bellsouth retail rates below wholesale for ADSL services. It is our opinion that without following our recommendations, FISPA members' customers will lose their choice of internet service provider. Potential users of ADSL services in the more rural areas do not have access to ADSL because DSL providers do not have affordable access to remote terminal equipment that these potential users are connected to the ILEC network. Without competition at these remote sites, Bellsouth has to date shown very little interest in deploying ADSL service. It is our opinion that if granted access to remote terminals at significantly less up front cost, our members could quickly move to build out networks in 2007 to help meet President Bush's goal of bringing affordable broadband access to every American in our membership's footprint. All we ask for is a fair and level playing field. The FCC has a chance to make this happen, and we respectfully urge the Commission to take our comments into consideration, and to grant us terms that are sustainable for several years to come.

Respectfully Submitted by Joe Moffatt,

Member of FISPA and Independent ISP Owner in Tupelo, MS

<http://www.fispa.org>

