

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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)
Control of BellSouth Corporation to)
AT&T, Inc.)

**Comments of the Computer & Communications Information Association
On the Proposed AT&T-BellSouth Merger Conditions**

CCIA has promoted open markets, open systems and open networks since it was founded in 1972. As such, we take a keen interest in this proceeding, which turns almost entirely on the competitive effects of the largest telecom merger in history.

AT&T's letter of October 13 to the Federal Communications Commission ("the Commission") touches on many of the issues involved in the merger, and agrees to abide by a number of conditions along the way. In one case – that of non-discriminatory access to broadband – it shows goodwill in agreeing to abide by the Commission's four Internet freedoms. At the same time, AT&T maintains that the merger should be consummated "without any conditions whatsoever."

We hope that AT&T and the Commission will see to it that the pro-competitive sentiments expressed in the letter grow into real policies in the very near future. The health of our entire industry – computer and communications alike – will falter if market power such as that held by certain incumbents is allowed to grow unchecked.

Pursuant to the Commission's October 13 public notice in the above-captioned

proceeding,¹ we respond to specific sections of the AT&T letter.

Thirty-Month Sunset

AT&T suggests that its conditions should apply for 30 months, unless, otherwise specified. We take the opposite tack. **Merger conditions should remain in place until it can be established that the new entity lacks market power in any market segment related to that condition.** Rather than being something negative or punitive that goes away after an arbitrary time, we believe that merger conditions must be seen as positive steps that should remain in place until they are no longer necessary. At a minimum, the Commission should commit to completing a mandatory review of the state of competition for every service subject to the proposed conditions prior to the 30th month. Expiration of any of the conditions should only occur if the Commission has made an affirmative finding that competitive alternatives for the underlying services are available, and that consumers will not be adversely affected by the removal of the conditions.

Improving Availability of Broadband Service: Wired and Wireless

AT&T proposes to offer broadband 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. 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

¹ *Application for Consent to Transfer of Control Filed by AT&T Inc. and BellSouth Corporation: Commission Seeks Comment on Proposals Submitted by AT&T Inc. and BellSouth Corporation, Public Notice, WC Docket No. 06-74, DA 06-2035 (Oct. 13, 2006).*

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.” (AT&T October 13 letter at page 2, item 1. Footnotes omitted.)

Broadband build-out and intermodal local access competition are major U.S. policy priorities championed by the Commission. With U.S. broadband penetration having slipped below availability in a dozen other countries, overregulating network infrastructure is not the answer. However, the Commission is in the unique position of having jurisdiction over all providers of broadband technology: telco wireline, cable and wireless. Unfortunately, the build-out offered by AT&T/BellSouth will only achieve the “bare minimum” broadband speed. Rather than using an utterly outdated, years-old standard such as 200 kbps in one direction, AT&T should promise real broadband capable of delivering modern information services even if it takes another year or two to achieve. We recommend that the new company be required to offer 1.5 Mbps downstream service with a minimum of 640 kbps upstream as soon as practicable.

The Commission’s goal of promoting intermodal broadband competition is very important and should be advanced rather than impeded by this merger. Rapid broadband deployment will be especially important given the lack of competitive pressure the merged company will face in many of its incumbent local exchange carrier (ILEC) regions following the merger. Such services, moreover, should be delivered over wireline facilities or wireless spectrum. Satellite broadband service is substantially more expensive than either cable modem broadband or DSL. We think AT&T should complete its proposed merger condition by committing to provide 100 percent of customers in the BellSouth region with access to either wireline broadband or fixed wireless broadband. Real intermodal competition beyond duopoly is

possible if consumers and businesses can choose from DSL or wireless and/or cable broadband.

It is not pro-competitive for a company dominant in one “pipe into the home” to also control the most promising local technology for a second conduit. The new entity, therefore, should divest itself of all so-called “WiMax” fixed wireless spectrum in the BellSouth region, except in markets where it is actually used by December 2007 by AT&T/BellSouth to offer wireless broadband ahead of or in place of fiber deployment. If the new company wants to initiate broadband service via wireless in those areas in 2008 or beyond, it should do so by leasing capacity from others. The merged company should retain its "out of region" spectrum on a “use it or lose it” basis. That is, AT&T/BellSouth should also be required to use its frequencies to provide a competitive broadband access alternative within a reasonable timeframe, perhaps the same 30 months AT&T/BellSouth has proposed for other pro-competitive measures, or relinquish it to an entity that will use it to expand broadband access to end users.

ADSL and Copper Loop Retention

AT&T offers to provide ADSL separate from telephone service for 30 months. This is an excellent idea, but we also believe it should be the rule as long as the new company offers ADSL generally. Some customers may wish to purchase DSL from AT&T/BellSouth but still get voice and/or fax service from another provider, be it a CLEC or a mobile wireless carrier. Stand alone DSL could be phased out once broadband competitors have achieved a modest market share, perhaps as little as 10-20 percent.

ADSL, in any case, is a second-best approach in telecom. Bell companies are currently deploying (or planning to deploy) fiber to the home (FTTH) and hybrid fiber-copper technology. We strongly support this deployment, which is further supported by the Commission’s deregulation of fiber. Nonetheless, we have read disturbing reports to the effect that Bell

companies are ripping out regulated copper lines as fiber is installed. Pursuant to Section 214(a) of the Communications Act, 47 U.S.C. § 214(a), the merged AT&T/BellSouth should be required to leave these copper lines connecting end users to the PSTN in place if they are being used – or could be used – by CLECs or ISPs to reach customers.

With new technologies, such as ADSL2 and VDSL, the existing copper loops are still capable of carrying very high capacity services. In short, there is much value remaining in these loops, which were deployed using ratepayer dollars. If competitive carriers, Internet service providers, and enterprises can use these valuable facilities, AT&T/BellSouth should not be allowed to destroy them. No obligation should be imposed on the merged AT&T/Bellsouth to continue to service and maintain these lines. The costs of maintenance should be borne by the users of these facilities, providing a market-based mechanism for realizing the value remaining in these publicly-funded facilities.

Non-discrimination Safeguard for Broadband Access

AT&T states that it is willing to abide by the Commission’s statement of “Network Neutrality” principles. However, there are no specific guidelines for applying these principles and no specific consequences if these principles are violated. The Commission’s September 2005 Policy Statement on broadband access indicated end users are entitled to competitive alternatives for network transport, applications, information services and Internet content. Yet regrettably, consumers in barely half the country (by zip code) have even two choices for broadband access, and the rest still have only one or none. That is duopoly at best and zero competition (or even no service) at worst.

The Commission should of course utilize the minimum level of regulation necessary to ensure competition at the edges of network infrastructure, and to protect the existing vibrant free

market in website content, applications and services. Even if competitive safeguards apply nowhere else, this is a case of the largest owner/operator of legacy local network infrastructure (financed largely by monopoly ratepayers). Absent safeguards, this telecom network giant will disadvantage some Internet users and favor others whenever it makes sense for its own business purposes.

We believe that this largest of all incumbent telecom mergers presents the most compelling case yet for a specific non-discrimination requirement.² Such a requirement would obligate AT&T/BellSouth to treat equally all Internet traffic on its local or “last mile” broadband access facilities, regardless of content or point of origin. Content providers should not be able to strike special deals with a broadband provider facing no actual competition to have their traffic handled as a higher priority or delivered at a higher speed.³ This non-discrimination safeguard could expire when, and if, the competitiveness of Internet access markets in the AT&T-BellSouth region improves. For example, once AT&T/BellSouth can demonstrate that some reasonable measure of broadband access competition (beyond duopoly) has been achieved in any of its in-region geographic markets, the Commission could lift the safeguard for that market. By the same token, parties aggrieved by any non-compliance with the non-discrimination safeguard, could file a detailed complaint seeking expedited enforcement of the non-discrimination rule.

Conclusion

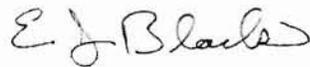
The public interest in broadband access, competitive access alternatives and Internet

² The non-discrimination safeguard need not be so broad as to interfere with legitimate operations and maintenance of a company’s networks. For example, AT&T/BellSouth should be allowed to prioritize voice and/or video traffic over regular non-latency sensitive data. However, if AT&T/BellSouth does prioritize by class of traffic, it must still treat all “packets” of that particular class of traffic equally.

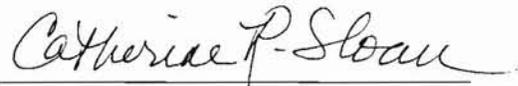
³ However, high volume website operators or content providers could certainly invest in more servers and broadband connections (paying AT&T/BellSouth more) in order to increase capacity and speed.

freedom is too important to be entrusted, throughout AT&T/BellSouth's massive local exchange regions, to pre-merger statements of goodwill or marginal promises not to act anti-competitively right away. We urge the FCC to act decisively to put users ahead of the largest network provider until real competition can take the place of safeguards.

Respectfully submitted,



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Dated: October 24, 2006