

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

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| In the Matter of Application of BellSouth Corporation, Transferor, and AT&T Inc., Transferee, For Consent to Transfer Control of Licenses and Authorizations |) |) |
| |) | WC Docket. No. 06-74 |
| |) | DA 06-2035 |
| |) | |
| |) | |

**COMMENTS OF T-MOBILE USA, INC.
ON PROPOSED CONDITIONS**

I. INTRODUCTION

T-Mobile USA, Inc. (“T-Mobile”)¹ urges the Commission to augment the conditions recently proposed by AT&T Inc. (“AT&T”) and BellSouth Corp. (“BellSouth”) (collectively, the “Applicants”)² before approving the transfer of control of BellSouth and its subsidiaries to AT&T (the “AT&T-BellSouth merger”). Approval of the AT&T-BellSouth merger will not be in the public interest unless the Commission strengthens and adds to the proposed conditions for special access services and stand-alone DSL service.

¹ T-Mobile is one of the major national wireless carriers in the United States with licenses covering 46 of the top 50 U.S. markets and serving over 24 million customers, and a network reaching over 275 million people (including roaming and other agreements). Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in approximately 8,000 convenient public locations such as Starbucks coffeehouses, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world.

² See FCC Public Notice, *Commission Seeks Comment on Proposals Submitted By AT&T Inc. and BellSouth Corporation*, WC Docket No. 06-74, DA 06-2035 (Oct. 13, 2006) (“Public Notice”). The Public Notice requested comment on proposals from the Applicants made in a letter from Robert W. Quinn, Jr., AT&T, to Hon. Kevin Martin, Chairman, Federal Communications Commission, WC Docket No. 06-74 (Oct. 13, 2006); *erratum filed* Oct. 16, 2006 (“Applicants’ Proposals”).

As T-Mobile explained earlier in this proceeding,³ an AT&T-BellSouth merger would create the largest incumbent local exchange carrier (“ILEC”) in the United States,⁴ which would own the largest wireless carrier, Cingular,⁵ and the largest long-distance business. T-Mobile is one of the few remaining independent national wireless carriers, with a rapidly growing base of mass market and business customers throughout the United States. T-Mobile is a major customer of AT&T and BellSouth for special access telecommunications services in these ILECs’ respective service areas. Nationally, T-Mobile is a retail competitor of the Applicants and their Cingular wireless affiliate, and T-Mobile is poised to become an important competitor in the emerging “intermodal” marketplace for local exchange services of which these ILECs are the dominant providers in their regions.

The record in this proceeding demonstrates that the proposed AT&T-BellSouth merger raises serious concerns about competitive special access services. As Sprint Nextel and Comptel have explained, the proposed merger would increase the merged company’s leverage to benefit from raising rivals’ costs more than either pre-merger

³ See T-Mobile Response, WC Docket No. 06-74, at 2-3 (Jun. 20, 2006) (“T-Mobile Merger Response”). All comments and petitions to deny submitted in this proceeding in or about June, 2006, will hereinafter be short cited.

⁴ AT&T claims to be “the largest telecommunications company in the United States and one of the largest in the world.” See AT&T Corporate Profile, <http://att.sbc.com/gen/investor-relations?pid=5711> (last visited Oct. 24, 2006). BellSouth serves “substantial portions of the population” within 9 states. See BellSouth - About Us: Communications Group, http://www.bellsouth.com/investor/ir_busprofile_coredigital.html (last visited Oct. 24, 2006).

⁵ AT&T currently owns 60 percent of Cingular and BellSouth owns the remaining 40 percent of Cingular.

AT&T or BellSouth could achieve separately by expanding the combined company's service territory.⁶

More specifically, an AT&T-BellSouth merger without effective conditions would harm the public interest by increasing the Applicants' ability to discriminate in the provision of special access services. A merger without such appropriate conditions also would limit the potential availability of new Internet-based services that rely on broadband pipes such as stand-alone DSL if it is not available at reasonable prices.

II. BECAUSE THE SPECIAL ACCESS CONDITIONS PROPOSED BY AT&T AND BELL SOUTH ARE FAR TOO LIMITED, ADDITIONAL SPECIAL ACCESS CONDITIONS ARE NEEDED.

T-Mobile demonstrated in the Commission's long-pending *Special Access Rulemaking*⁷ that the special access marketplace is not competitive and that current regulation of that marketplace is inadequate.⁸ T-Mobile and its customers depend on AT&T and BellSouth throughout those ILECs' extensive service areas for the special access services that are critical inputs to T-Mobile's competitive wireless offerings.

T-Mobile has already explained that, in the respective AT&T and BellSouth service areas, there are virtually no alternatives to the special access links provided by each Applicant from T-Mobile's cell sites to the Applicant's central offices and between

⁶ See Sprint Nextel Merger Comments at 6-7; see also Comptel Petition to Deny at 9-11.

⁷ See *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) ("*Special Access Rulemaking*").

⁸ See, e.g., Comments of T-Mobile, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (Jun. 13, 2005) ("T-Mobile Special Access Comments"); Reply Comments of T-Mobile, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (Jul. 29, 2005).

the Applicant's central offices.⁹ The proposed merger will significantly degrade the little competition that exists in the special access marketplace. In the past year alone, mergers have eliminated MCI and AT&T as independent providers of special access. To the very limited extent that AT&T has been a competitive provider of special access services in BellSouth's service area, the merger would eliminate that competition.¹⁰

Unless this merger is subject to effective conditions to address this issue, customers will suffer because independent wireless carriers cannot compete on a level playing field with integrated carriers like AT&T-BellSouth-Cingular. The merged company will have strong incentives and great ability to discriminate against wireless competitors and their customers in providing special access services on which those competitors rely. This consolidation of ownership would increase the combined company's incentives to discriminate against T-Mobile and other wireless competitors because the combined company would realize the full extent of any benefits from such conduct.¹¹

In its initial response to the AT&T-BellSouth merger, T-Mobile urged the Commission to reform special access regulation in the pending *Special Access Rulemaking* and require the merged company to reduce all special access rates to reasonable levels.¹² T-Mobile also supported several conditions that sought to remedy

⁹ See T-Mobile Merger Response at 2-3, 5.

¹⁰ See Sprint Nextel Merger Comments at 11-12; Time Warner Telecom Petition to Deny at 16-17.

¹¹ See Sprint Nextel Merger Comments at 9-10; Comptel Petition to Deny at 10.

¹² See T-Mobile Merger Response at 4, 7-8.

several types of special access discrimination by the merged company for thirty-six months, until the Commission resolves the *Special Access Rulemaking*.¹³

Although the Applicants' Proposals contain several "potential merger conditions" that purportedly address special access,¹⁴ AT&T and BellSouth completely ignore the need to reduce special access rates from their current supra-competitive levels and to reform the current pricing flexibility regime under which AT&T and BellSouth provide special access to T-Mobile and others. The Applicants' Proposals on special access constitute, at best, short-term interim measures that by themselves are inadequate to address the special access problems posed by the AT&T-BellSouth merger. Adoption of the Applicants' Proposals as they currently stand would fail to serve the public interest.

Therefore, the Commission should treat the Applicants' Proposals on special access as a "floor" on which to build effective conditions to address special access issues.¹⁵ Moreover, on September 22, 2006, several parties presented a set of additional special access conditions (the "September 22 conditions") that more fully address the negative effects of the merger while the *Special Access Rulemaking* is pending.¹⁶ As one

¹³ See *id.* at 6-7. T-Mobile also recommended that the Commission impose nondiscrimination requirements on the merged company, so that all transactions with its affiliates and with Verizon and its affiliates are at arms length, reduced to writing, and available for public inspection.

¹⁴ See Applicants' Proposals at 3-5.

¹⁵ For those safeguards proposed with a term of 30 months, the Commission should increase the term to at least 36 months, as T-Mobile suggested, so that the Commission can complete the *Special Access Rulemaking* and reduce all special access rates to reasonable levels.

¹⁶ See Letter from Karen Reidy, Vice President Regulatory Affairs, COMPTTEL et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-74 at 4-8, Exhibits A, B (Sept. 22, 2006) (the "September 22 Merger Letter"). See also Letter from A. Richard Metzger, Jr., Counsel, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-74, at Attachment 2 (Sept. 29, 2006).

of the few independent wireless carriers that compete nationwide with the Applicants, T-Mobile believes that, in conjunction with the conditions described in T-Mobile's initial response, the Commission should consider additional conditions similar to the September 22 conditions, especially the following:

1. Eliminate Phase II pricing flexibility for DS1, DS3, Ethernet, and local transmission services offering similar revenue opportunities within the merged company's service area. Retroactively impose the 6.5 percent X-factor for these services.
2. Adopt a baseball-style, best and final offer arbitration procedure for use by those seeking to purchase special access under volume-term contracts rather than price caps.
3. Impose a one-year "fresh look" requirement for affected special access customers and agreement that any forbearance grant shall not affect the merged company's responsibilities under these conditions.¹⁷

Together with the conditions that T-Mobile recommended in its response, these conditions would provide the necessary framework to ensure that the AT&T-BellSouth merger does not further harm the provision of special access to the Applicants' customers and consumers.

III. THE COMMISSION SHOULD CONDITION APPROVAL OF THE MERGER ON THE AVAILABILITY OF STAND-ALONE DSL OFFERED ON A NONDISCRIMINATORY, REASONABLY-PRICED BASIS.

As T-Mobile stated in its initial response to the AT&T-BellSouth merger application, stand-alone or "naked" DSL is essential to the viability of intermodal competition and broadband deployment.¹⁸ T-Mobile is exploring the possibility of

¹⁷ The September 22 Merger Letter describes these conditions in greater detail. *See* September 22 Merger Letter at 4-8 and Exhibit B.

¹⁸ ILECs generally offer dial-tone voice service tied to DSL. In contrast, a stand-alone or "naked" DSL offering from an ILEC does not include the dial-tone voice service, whether circuit-switched or voice-over-IP ("VoIP")-based.

offering a variety of integrated Internet Protocol-based (“IP-based”) advanced services.¹⁹ For such services to be cost-effective for consumers, potential customers need access to unbundled broadband offerings, such as stand-alone DSL, that are available on a nondiscriminatory basis and do not include additional charges for bundled voice services.²⁰ Moreover, the public interest requires that the Commission act to promote development of intermodal competition as an alternative to the services offered by the wireline companies. Ensuring unbundled broadband access would serve that mandate.

AT&T and BellSouth, as owners of Cingular, have every incentive to withhold or overprice stand-alone DSL, in order to restrain innovative forms of broadband-based competition from T-Mobile and other wireless providers. Potential customers need access to *cost-based* stand-alone DSL if T-Mobile and other innovators are to provide economically viable intermodal competition through certain types of IP-based services. Because many consumers have little choice in selecting a broadband service provider, it is especially important that DSL be freely available from ILECs without their voice or other offerings.

Although the Applicants’ Proposals contain a “potential merger condition” regarding ADSL service,²¹ the proposed condition does not provide for stand-alone DSL offerings that are in the public interest. The Applicants’ proposed condition does not

¹⁹ On October 23, 2006, T-Mobile began a trial in Seattle of a service that allows a single handset to communicate over both mobile networks and Wi-Fi hot spots. *See* Ken Belson, *T-Mobile Tests Dual Wi-Fi and Cell Service*, N.Y. Times, Oct. 24, 2006, at C2.

²⁰ *See* Letter from Jeannine Kenney, Senior Policy Analyst, Consumers Union (“CU”), to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-74 at 2 (Oct. 19, 2006) (“CU October 19 letter”).

²¹ *See* Applicants’ Proposals at 5.

require reasonable pricing or nondiscriminatory availability of stand-alone DSL. The condition would also permit an overly lengthy period – twelve months – after the merger closing date before BellSouth is required to offer stand-alone ADSL, during which time consumers will be making crucial service provider choices. Additionally, because BellSouth only would have to offer stand-alone ADSL service for a short time (no longer than 42 months after the merger closing date), consumers may be hesitant to rely on that service and then to switch back when such service is no longer offered. Thus, the Applicants' proposal could actually deter, not advance, intermodal competition.

Therefore, as a condition to approval of the AT&T-BellSouth merger, the Commission should require the Applicants to provide stand-alone DSL, separate from circuit-switched or VoIP-based voice service or other services, in their service area at reasonable prices and on a nondiscriminatory basis. The Commission should consider seriously the suggestion in the CU October 19 letter that stand-alone DSL be priced at rates no higher than the merged company's lowest available discounted DSL service offered to new customers for a significant period of time.²² Moreover, the Commission should require BellSouth to offer stand-alone DSL within its service area within six months of the merger closing date and for a longer total period of time than the 42-month term of the Applicants' Proposals.²³ The Commission should require stand-alone DSL to be available in the states throughout the combined company's entire service area for a substantial time period after the merger closing date.

²² See CU October 19 letter at 2.

²³ See, e.g., Consumer Federation of America/CU Petition to Deny at 9 (proposing a term of five years after the date the last BellSouth state complies with this provision).

A condition requiring the merged company to provide stand-alone DSL at reasonable, nondiscriminatory rates will advance the public interest by helping to ensure that competing providers will be able to offer new services despite consumers' reliance on the last-mile broadband links of the ILECs.

IV. CONCLUSION.

The conditions proposed by the Applicants as to special access services and stand-alone DSL are inadequate and should be strengthened. Without augmented conditions, the proposed merger will harm U.S. consumers, competition, and the public interest.

Respectfully submitted,

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October 24, 2006

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I hereby certify that on October 24, 2006, a copy of the foregoing COMMENTS was served by electronic mail upon the following:

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