

## Folks at the FCC

My specialty is broadband. I wrote a book DSL: A Tech Brief (Wiley, 2002), and edit the industry newsletter DSL Prime, which I founded in 1999. My work has been cited by the FCC, the GAO, academic papers, and nearly every major newspaper and business magazine in the U.S. I believe what I have learned reporting gives me a special reason to speak to the issues.

Merger agreements require strong, specific terms, easy to understand, interpret, and enforce. I believe this particularly important in this case because SBC has not adhered to previous merger terms, and paid forfeitures and fines at least 60 times in the seven years I have been reporting about the company.

First issue: Is AT&T complying with the FCC Four Freedoms today, and will they do so tomorrow.

I have not been able to obtain any evidence that AT&T is in substantial compliance with the merger agreement that joined SBC and the former AT&T in their commitment to net neutrality. In particular, while CEO Ed Whitacre has testified to the Senate in this proceeding that “we will not block or degrade” content coming from the Internet, it is generally believed that AT&T often does in fact degrade such content. This is particularly important for live video streams at bit rates appropriate for television watching. Significant degradation of those signals, whether jitter, latency, or packet loss, results in visible artifacts that make it hard for Internet TV providers to compete with AT&T own IPTV service. 99.999% quality is unreasonable to expect, Ed Whitacre and Jim Cicconi of AT&T have both testified they can prevent degradation. That requires a robust edge network and a modest investment. I’ve calculated the cost of the upgrade to a typical DSL network to make it effectively neutral is less than \$1.50/customer/per month on reasonable traffic assumptions.

AT&T can easily demonstrate by November 3 they are in compliance, using servers they already have in place at peering points or working with Akamai, Vitalstream, or several other commercial carriers. They simple need to stream a statistically valid set of video at commercial rates from their peering points to customers being served with Lightspeed and their traditional DSL service. You can do this with equipment available in the typical Radio Shack and installable within hours.

Recommendation 1 - AT&T should demonstrate it is not degrading Internet traffic from the peering edge of their network to their customers, the most important test of Net Neutrality. If they cannot, a clear plan to achieve that within 6 months should be outlined with independent objective tests to meet. If AT&T intends to offer HD TV, as they announced in their financial call, the test should include HD TV at 8-10 megabit data rates. Again, if they are not meeting this standard, they should be given 6 months to do so and provide independent verification.

Recommendation 2: AT&T should offer at comparable prices an alternative to their closed set top box that can view all the programming originating from the web. This could be accomplished with an equivalent to a “cable card” or by making a web browser and the most popular codecs part of their equipment offering.

#### Issue 2: Affordable broadband for All Americans in 2007

In 1999, Ed Whitacre announcing Project Pronto said he would have 80% broadband coverage in 2002 and “everyone else within the next few years.” The UK is at 97-99% DSL coverage and many small rural carriers in the U.S. close to 100%. There is not technical or economic reason he cannot do similar. The handful difficult to serve with DSL or WiMax should receive the best practical broadband at affordable rates, comparable to what AT&T is charging for DSL. Pricing two to four times as high does not satisfy George Bush’s promise.

Recommendation 3: AT&T should offer all customers in their ILEC territory broadband of 1.5 megabits per second downstream, 500K upstream, at a price no higher than the average cost of similar service in the United States. The FCC should not determine the technical choice, allowing AT&T to deciding between DSL, DSL extended, Wireless, or satellite.

#### Issue 3: Effective Security in Individual and Community Disasters

FCC Commissioner Tate said “At the second meeting of the FCC Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks in Mississippi, I heard personal accounts of the devastation caused by Hurricane Katrina. The one clear message I heard was the need for redundancy in communications networks.” Getting another network deployed will save lives in emergencies, whether massive hurricanes or an individual with a heart attack. After Katrina, I wrote, “The debate over whether to add a WiFi/Wimax network should be over. Get those base stations up on light and flagpoles, etc. by whatever means necessary.” There’s a reasonable debate about whether it should be built by cities, independents like EarthLink, or even incumbents. Commissioner Tate is on target, however, seeking to resolve those issues and provide this essential safety net.

AT&T and BellSouth have unused spectrum perfect for Wimax, and could easily divest. The FCC made a major mistake not demanding the same from Sprint/Nextel. The Sprint CFO told Wall Street giving up the spectrum would have minimal impact, because it had been already written down.

Recommendation 4: AT&T and BellSouth should divest enough spectrum to allow a complete service providing basic data and voice connectivity.

#### Issue 4: Unbundled DSL

Unbundling DSL allows consumers to choose VOIP and other applications of their choice, and therefore encourages competition. Verizon is offering unbundled DSL at \$5 more than the service is offered with a Verizon phone service. SBC in California is charging more for unbundled DSL than for the customer to have DSL + SBC basic phone service. This is a sham.

Recommendation 5: AT&T should offer unbundled DSL for \$5-\$7 more per month than the bundled service.

#### Issue 5: Abuse of the spirit of the Sunshine Principle

The FCC has strong precedent that the major issues be discussed in public filing and publicly reported ex parte meetings. In this case, many of the most important issues were brought to the fore in private during the sunshine period.

Recommendation 6: AT&T should make their proposals public through press releases and ex parte filings with full details.

Recommendation 7: If AT&T's proposals are substantially different from those offered previously, they should be made open for a very brief Sunshine Period, perhaps three days.

#### Issue 6: Universal Service

An important goal.

For broadband:

Recommendation 8: AT&T should provide a detailed map of any territories they won't serve with 1.5/600K broadband by the end of 2007. Then the FCC can find an alternate method to meet the government goal. This should be a worldwide requirement of any carrier with unserved areas.

Recommendation 9: Any place AT&T (or other incumbents) doesn't serve should have a special requirement: essential facilities should be provided at cost plus a small profit. Dark fiber and cageless collocation are the most important. I'm not suggesting reopening the endless UNE debates, just carving out a special procedure in the (very few) places the telco doesn't serve. The telco has already decided these territories aren't profitable, so giving up the lines will cost little.

Recommendation 10: Besides honoring the spirit of free access to content, Whitacre could agree to follow another of the "four freedoms" - consumers should be permitted to attach any devices they choose to the connection in their homes. I spoke today with a set top box maker who wants to bring his product to retail sales in the U.S. with features AT&T's set tops don't offer. The FCC

requires cable companies to offer a “cable card” or a downloadable alternative, and that provision makes sense here as well. Consumers buying their own set top/PVR save AT&T \$200 in capex, so it’s an easy concession for Whitacre to make.

For affordability of service for all

Recommendation 11: AT&T should offer a ten cent a minute long distance plan with no fixed charge and no minimum if you use their local service. Verizon voluntarily offered exactly that before old AT&T Long Lines and MCI disappeared. Kevin Martin needs to do something about the continuing increase in long distance prices for many Americans since the mergers. These fees on people who rarely call long distance are a tax on the poor. LD in the U.S. costs a penny or two wholesale, so ten cents when you already are billing the customer for local service is a highly profitable service.

Recommendation 12: Bill and keep is overdue as a complete replacement for intercarrier compensation at the larger carriers. Eliminate the extra transaction costs needed only for billing would reduce the cost of phone service for everyone. AT&T has long supported this, but is angling for even better terms in the Missoula petition. (Missoula moves about a \$B a year to AT&T in the most likely scenario.) Details of ICC belong in a separate discussion, but it is essentially an incumbent subsidy. It therefore is a major drag on innovation including VOIP and independent broadband networks. Because of AT&T’s large LD business, they pay so much in ICC that this will cost them little. There is no reason, incidentally, to cover this with an increase in now obsolete SLC charges. California, Texas, New York, Illinois and most other states have virtually eliminated price regulation, so the Bell can raise rates directly if that’s appropriate.

Recommendation 13: A price cap for lifeline rates, which would keep down USF costs.

Issue 7: Parental choice of programming

AT&T would happily agree to offer per channel video pricing, a major goal for Martin. Bundling channels that have “indecent” programming forces consumers to pay for something they may not want and offends Martin’s conservative supporters. AT&T’s original plans included a a la carte as a differentiator against cable, but the networks would not go along. If the government required it, however ...

Recommendation 14: A la carte pricing for video service.

Issue 8: International Relations

Recommendation 15: AT&T should eliminate their high transit charges for the poorest of nations. The

total revenue involved probably is less than they spend on Ed Whitacre's plane, but Internet peering issues continually create a diplomatic problem. Most of the world believes the U.S. domination of the net allows U.S. backbone carriers to charge unfairly. Whether that's true or not, this concession for the poorest nations costs so little it's the right move to make.

Issue 9: maintaining BellSouth at least at the current plan quality and reliability of service

After Katrina, the fist of these recommendations should be a minimum.

Recommendation 16: Maintain at least as many employees trained and ready for disaster service as BellSouth currently has.

Recommendation 17: Provide 10 meg down, 30 meg up (or higher) service speeds on the 1.5M homes BellSouth has already connected with fiber to the curb.

Recommendation 18: Establish a national principle and enforceable norms that all incumbent carriers provide an internationally competitive level of service. Paris, Berlin, Amsterdam, Tokyo, Taipei, Seoul, Boston, Washington, and New York are all schedule to receive service at a rate of 50/10 or higher. This is being provided by incumbent carriers, competitors, and government owned companies. Houston, Atlanta, Chicago, and San Francisco deserve no less.

Here is some of my recent reporting that I'd like to include in the record.

#### Meaningless "Concessions" From AT&T

Copps and Adelstein had the courage to insist on making the AT&T "concessions" public before the vote. They knew people would laugh at how empty they were. All the "new" broadband proposals were things they were already doing, except for a new customer promotion. AT&T agreed

To raise DSL coverage to 85%. BellSouth already is at 85%.

To resell satellite where they don't have DSL. AT&T does that already. The price is more than twice as high and includes a generous markup. It is not "affordable broadband."

To sell DSL without their phone service. AT&T does that already in California, but they price standalone DSL higher than the combined cost of buying both.

To provide a free modem on a twelve month contract. AT&T does that already, as do almost all DSL providers.

To resell DSL, but without any commitment about price that would make this meaningful. AT&T does that already.

The proposals read as if Randall ordered, "Give them nothing."

## Editorial: AT&T Shouldn't Disrespect George Bush

President promised "affordable broadband to all Americans"

Kevin Martin faces a tough choice on December 31, 2007. Unless he takes strong action very soon, the U.S. will not have "affordable broadband" for 5-12 million homes. He can say "we failed in meeting Bush's promise," and most people will ignore that as let another politician's promise unmet. Or he can fudge, claim that satellite is "affordable," and declare "We did it." No one but a few insiders will recognize that as "politician speak." If satellite is included, the U.S. already had 100% coverage in 2004, and the often repeated Bush promise was already fulfilled.

If AT&T honestly respected George Bush, they can fulfill Bush's promise of "affordable broadband for all Americans in their half of the U.S. for amazingly little. Take DSL to the previously planned 90% coverage, and add repeaters, Wimax, remote DSLAMs or Ciena SLC upgrades to take that to 95-98%. My numbers suggest a modest profit over 2-5 years, as BT and FT have already proven by doing it. Buy satellite in volume for a modest offering to the last 2-5%, and the total "subsidy" to get to 100% coverage would be less than 2/10ths of one percent of the BellSouth purchase price.

Whitacre could also make the "net neutrality" debate a minor issue simply by honoring his word. He testified to the U.S. Senate that they "would not block or degrade" anything coming from the Internet; Cicconi, his man in D.C., keeps repeating the same words, and folks like Ted Stevens take this at face value. Test the network by sending video from the edge and prove to Martin the content really does get through without minimal packet loss, latency and jitter. Reality is that will require upgrading the AT&T edge network, peering and DSLAMs to "make it so." The needed investment is small, again a fraction of the extra \$12B Whitacre is absorbing on BellSouth.

## Killing the AT&T Deal is No Longer Unthinkable

AT&T shareholders share the public interest

This isn't a good deal for AT&T shareholders, and is only going forward because of Ed Whitacre's desire for one last conquest, the rebuilding of the old AT&T. AT&T is paying \$15-20B more than BellSouth was selling for before the deal, a huge premium that probably is beyond the real value to shareholders. About the only ones besides the bankers to benefit if the deal goes through are BellSouth shareholders. No one at AT&T will even whisper it, but the stock price might go up if the deal fails.

Steven Pearlstein comments “Everyone knows but nobody seems to remember in the adrenaline rush of announcing a major deal: Mergers and acquisitions are always hard, usually overpriced, rarely as imperative as portrayed -- and they almost never work out as planned.” BellSouth and AT&T are huge companies, big enough that a merger into an even larger company offers almost no natural efficiencies of scale. The coming cuts will affect capability as well as costs, no matter what the company suggests to wall street. Like most layoffs, they perhaps improve the numbers in the short term, but the company pays a price over time. Study after study show “merger synergies” are almost always a fiction among companies this large; inefficiency of giant organizations is also a factor. Telecom giants are now so big they are hurting innovation, which is not in the public interest.

#### AT&T’s Backroom Lobbying “Probably Legal”

NuVox and XO suit needs more evidence

AT&T lobbying during the seven day “sunshine period” before an FCC vote obviously stank of impropriety and an abuse of what’s supposed to be an open process. It is ordinary Washington behavior, of course, and if they went through the motions probably legal according to a former FCC Chief of Staff. He writes, “the rule allows the government officials to ask questions of the companies and the companies to answer them. It’s often done in these kinds of situations.” After questions from this reporter and a lawsuit from NuVox and Xo, Robert Quinn was careful to write they “participated in a series of telephone conversations with, and initiated by, Michelle Carey, Senior Legal Advisor to Chairman Martin, and Tom Navin, Chief of the Wireline Competition Bureau.”

Jeremy Pelofsky of Reuters broke the important story of AT&T private proposals made after comments were closed by regulation. Marguerite Reardon at CNET notes suggestions “any last-minute pleas should be made in public and not behind closed doors.” CNET also supplied the title I borrowed above. What might seem a silly question of procedure and filing dates is in this case relevant. If AT&T had put their suggestions out publicly, they would have been exposed as without any substance. Cops and Adelstein deserve credit for bringing this to the light of day. Some reporter should probably be filing a freedom of information act request for all emails between AT&T’s team and senior FCC people.

Here’s the broadband proposals from AT&T. As noted above, nearly all of this is already in place.

#### Promoting Accessibility of Broadband Service

1. By December 31, 2007, AT&T/BellSouth<sup>1</sup> 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. 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.

(db BellSouth reported six months ago they had 84% coverage, and by now almost surely have passed 85%.)

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.

(db - AT&T currently offers a free modem, as do most other carriers.)

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.

(db - This is an interesting promotion, and would be important if offered to all customers. More than half the broadband buyers in their territory are excluded because they already have service. Making a guess at the take rate, it will add \$40-80M to AT&T customer acquisition costs and \$70-125M in gross revenues. )

1. Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers 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.

(db AT&T currently offers this in California, at a price that often is higher than if the customer bought phone and DSL service as well. If AT&T offered unbundled DSL at Verizon the Verizon premium of \$5, this would be meaningful. At \$15-30 higher, as in California, it's meaningless. As noted above, cable companies are similar.)

2. AT&T/BellSouth will extend until thirty months after the Merger Closing Date the availability within

AT&T's in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the SBC/AT&T Merger Order (FCC 05-183). AT&T/BellSouth 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.

(db AT&T currently offers similar resale, at a price so unattractive fewer than 10% of the market is involved. Over half of the DSL lines in the U.K. do not go through BT Retail.)

Whitacre's actual comment on universal broadband was "we are serving everyone" and he reminded me that was cheaply and easily accomplished. His operations people never followed through, of course. I had asked Whitacre about his 1999 Pronto promise to reach 80% in 2002 and "all his customers" a few years after that. They just needed to discover whether DSL or another technology was right for the last group. Whitacre, the ultimate hard-hatted CEO and Fred D'Allessio, a Verizon President, are my favorite citations when some ill-informed lobbyist says near-universal broadband is not practical.

#### AT&T/BellSouth: Small Changes That Make a Difference

##### Low cost to AT&T, real public benefit

As I go to press, no news on the AT&T/BellSouth merger. Ed Whitacre would have made concessions worth billions to get the deal approved, but today's FCC is reluctant to negotiate that hard. So I've focused on items that cost AT&T little or nothing, as evidenced by other carriers implementing them voluntarily. This report is too late to influence the deal, but perhaps these ideas will be useful other times and other places.

1) "Affordable Broadband for All," as Whitacre promised in 1999 and confirmed in 2005. With carriers from Vermont to the U.K. providing 98%+ coverage, it's clearly practical. 90-95% coverage is clearly profitable at AT&T and nearly any other territory. (I'm defining "profitable" as marginal contribution at least 2-4x the cost of capital.) The largest single group of unserved are the millions of homes AT&T has marked to dump and stopped investing in. No regulator should accept poor service to a group like that. Ed Whitacre is one of my authorities that the second largest group, homes with 15,000 to 28,000 foot loops, could be easily served with repeaters. In bulk, repeaters cost well under \$150. The more expensive installation is less than a quarter of the three year average revenue of over \$1000 per home and \$700 operating income typical for AT&T DSL.

With 100% coverage, Ed Whitacre could then claim to be a champion of Bush's 'Affordable broadband for all Americans in 2007,' making the President's promise true for half the U.S. Let their engineers make the efficient decision between DSL extenders, Wimax, or other technologies. AT&T

can ensure “affordable broadband” for the small group (1-5%) best served by satellite by buying in bulk and or even sharing the costs of a satellite. Let them use their purchasing volume to reduce the cost and pass it on to consumers. The goodwill from policymakers should more than repay the effort.

The Imminent, Unnecessary Antitrust Violation by AT&T

Offering HD video while denying an “essential facility”

AT&T is about to provide what should be a clear test of “access to content of your choice.” They are going to start offering HD TV of Ed Whitacre’s choice on Project Lightspeed, but effectively prevent anyone who wants to watch any other live HD programming. Their own HD takes about 9 megabits according to the last official comment and they are blocking the customer from anything more than 6 megabits for TV from the net. Since there are typically only two possible paths from the Internet to consumers for HD video, and sometimes only one, this meets the traditional antitrust definition of an “essential facility” and a “bottleneck.” At least two parties are preparing such a suit, although the cost of going against AT&T in court is so high they may be discouraged. There definitely will be an issue raised with the Antitrust Division of the Justice Department, although I predict Justice will wimp out.

AT&T is inviting this suit by refusing to let people buy the 20 megabits every Lightspeed line is designed to support. It’s dumb policy, because AT&T needs to offer that speed for competitive reasons. DSL in Japan went to 10-20 megabits in 2002 with ADSL2+, and much of Europe has already followed. Cable is routinely going to 10-15 megabits, and in 2008-2010 will jump to 50-100 megabits down, 20-50 megabits up with DOCSIS 3.0. The only logical reason for AT&T to maintain the 6 megabit limit is to protect their video program, and it just isn’t worth it.

Martin probably won’t choose to make this the test case for Net Neutrality, because AT&T would respond by burying the issue in deceptive technicalities. U.S. antitrust has been weak on anything that isn’t overt price-fixing and easy to prove. Anyone who understands the issue, AT&T has crossed the line not just of “net neutrality” but also of decades of antitrust precedent.

BellSouth: 100 meg VDSL To Over a Million Homes

\$100/home where fiber is in place

Bob Blau in 2004 told Washington Bellsouth would move to 50 and 100 meg for their million fiber homes, and the maturing 100 meg VDSL has led them to promise to begin in 2007. BellSouth in the 1990’s installed fiber to the curb in most new neighborhoods and rebuilds, now reaching about 1.3M homes according to Nikos Theodosopoulos at UBS. 100/100 VDSL is shipping in the millions. I don’t know what Tellabs, the likely supplier, will charge, but the necessary gear costs less than \$100 per home in Asia. That’s less than AT&T is spending on Lightspeed, but 2-50 times the speed. The fiber is already paid for.

BellSouth’s plans before the AT&T deal were far beyond what AT&T is planning in their territory. Where they didn’t have fiber, they intended to bond two lines to most homes for speeds over 30

megabits downstream, enough for watch one/tape one HD or two HD TV's. They intended to move to a next generation all IP network within three to five years, almost as fast as British Telecom and years ahead of AT&T. They currently have a third fewer homes who can't get DSL, 15% compared to AT&T's 24%.

BellSouth capex is 90-100% of depreciation. AT&T is closer to 70%. The network reflects that.

Editorial: Protect the BellSouth Engineers

Most experienced hurricane response team in the world

After Katrina, it's amazing that Bill Smith and his team are not guaranteed their positions after the SBC/BellSouth merger. While Bill would be the first to tell you they have procedures that need improvement, the BellSouth response to the crisis was professional and (relatively) effective. Disaster preparedness is not revenue generating, so the folks planning 10,000 layoffs may need to be reminded how crucial protecting these skills are.

September 26th, the FCC Commissioners will proudly introduce a new Public Safety and Homeland Security Bureau. The new bureau will presumably continue the often complimented job of the FCC getting regulations out of the way during Katrina crisis. But D.C. bureaus and committees are not enough. Real public safety requires the most skilled professionals at the companies involved.

One part of the soon to come merger approval should be a quiet conversation between the FCC Chairman, Randall and Ed. A simple comment that the commission will be watching the staffing and level of investment in disaster preparedness will probably do the trick. AT&T has plenty of good reasons to take advantage of the BellSouth engineering talent.

AT&T Building Again

DSL now so cheap it can go almost anywhere

After stopping the DSL buildout in 2002-2003, AT&T is now filling in many of the gaps. In Indiana, George Fleetwood says they are raising availability from 72% at the beginning of 2006 to 80% yearend and 85% by the end of 2007 (MD Times.) AT&T's last announced national availability was 76%. George Bush is committed to "affordable broadband for all Americans in 2007." Kevin - how will we get there?

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