

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Application for consent to transfer of
control filed by AT&T Inc. And BellSouth
Corporation

)
)
)
)
)
)
)
)
)
)

WC Docket No. 06-74

To the Commission:

**COMMENTS OF THE
UNITED STATES INTERNET
INDUSTRY ASSOCIATION ("USIIA")**

**David P. McClure
President & CEO
US Internet Industry Association
1800 Diagonal Road, Suite 600
Alexandria, VA 22314
(703) 647-7440 Voice
(703) 647-6009 Fax
David.p.mcclure@usiia.org
<http://www.usiia.org>**

Introduction and Summary

The US Internet Industry Association ("USIIA") submits these comments with regard to the Application for consent to transfer of control filed by AT&T Inc. And BellSouth Corporation and the associated Errata¹ filed by AT&T.

The Commission seeks input into the conditions proposed for consideration in relation to the transfer of control. The commitments proposed by the applicants go to the heart of one aspect of USIIA's policy goals—encouraging the widespread deployment of broadband access. The Commission has recently demonstrated its commitment to this same policy goal by eliminating regulatory barriers to broadband deployment. While we continue to favor such an approach, the commitments proposed by AT&T/BellSouth offer a unique opportunity for the Commission to incent the build-out of broadband to rural and low-income consumers. We strongly urge the Commission to once again demonstrate its support for this goal by accepting these conditions and approving the merger.

The USIIA endorses the commitment of AT&T/BellSouth to the specific deployment objectives set forth in the Errata:

1. By December 31, 2007, AT&T/BellSouth¹ 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

¹ "Notice of Ex Parte Filing," October 13, 2006

Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.

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.

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.

As a leading proponent of broadband deployment nationwide, USIIA believes these commitments are significant and would constitute a substantial step towards the ultimate goal of making affordable broadband available to all American consumers. As such, we believe there is no question ~~that they are in the public~~ interest. In particular, USIIA believes that it is imperative to our long-term national economy that the Commission continue to look for ways to promote the availability of broadband throughout the United States, including to low-income and rural consumers. Accordingly, USIIA strongly urges the Commission to accept these commitments and approve the merger expeditiously so that the companies can begin to make broadband a reality to these communities.

Deleted: but

At the same time, however, USIIA believes that it is unconscionable for the Commission to consider holding these commitments hostage to the whims of those who advocate the rogue issue of "network neutrality."

AT&T/BellSouth has already made it clear within the Errata that it embraces the Commission's stated policy on this matter:

"Effective on the Merger Closing Date, and continuing for thirty months thereafter, AT&T/BellSouth will conduct business in a manner that comports with the principles set

forth in the FCC's Policy Statement, issued September 23, 2005 (FCC 05-151)."

USIIA submits that the proposed statement is an appropriate reflection of the intentions of AT&T/BellSouth within the "network neutrality" framework established by the Commission in the public interest. USIIA continues to support the principles that embody the Commission's policy statement. USIIA believes that consideration of any further conditions on this topic would be inappropriate for four reasons:

1. It discriminates against a single broadband network operator, interfering in a competitive marketplace with no clear benefit to consumers;
2. It seeks to regulate a market condition that does not exist;
3. It would interfere with the development of innovative technical capabilities and commercial arrangements that are essential to the future growth of the Internet; and
4. It contravenes both the merger review process and established procedures for rule making at the Federal Communications Commission.

Statement of Standing

USIIA is a national trade association of competitive companies engaged in Internet commerce, content and connectivity. Its members constitute a broad cross-section of the Internet industry, providing consensus on policy issues that breach the competitive interests of any single member or segment of the industry.

USIIA reaches its public policy positions through a process of consensus that is directed by a Board of Directors elected annually by the members of the Association. Those positions are based on the best interests of the majority of members and of the industry as a whole. These positions are not subject to the whim of any single segment of the industry, and are not affected by financial arrangements, marketing agreements or other external forces.

As the appointed representative of its members charged with advancing their economic interests and assisting in achieving and maintaining their legal and competitive parity, and to continue to advocate for the expansion of broadband networks, USIIA has standing to file these comments.

Statements and Conclusions

The US Internet Industry Association believes that a coherent national policy must be created in order to deal as rapidly as possible with the competitive issues related to the widespread deployment of broadband and next generation services, including bandwidth-intensive video services. As the companies have stated, the expansion of video services in the BellSouth territory is another public interest benefit of this merger. It is the Commission's charge to develop this national policy to promote future investment in broadband networks and the Commission has made admirable progress in this regard through its recent decisions reducing regulatory impediments to such deployment. Allowing AT&T/BellSouth to merge and proceed to implement the commitments to further broadband deployment—particularly with respect to underserved low-income and rural communities—would be another significant step towards the ultimate goal of ubiquitous and affordable broadband access. Specifically, the Association submits that imposing a new “net neutrality” requirement on the combined AT&T/BellSouth:

1. **Discriminates against a single broadband network operator, interfering in a competitive marketplace without justification.** Should the Commission elect to impose new conditions on the merger of AT&T with BellSouth in the name of “network neutrality,” those conditions would apply only to the new merged entity. Because such conditions would apply only to the merged entity, this would place AT&T/BellSouth at a serious competitive disadvantage that is not justified by market conditions or other factors related to the merger. Such discrimination is unwarranted and in fact may not fall within the responsibilities of the Commission with regard to merger review. Moreover, such a one-sided condition would be a complete abandonment of the

Commission's long-standing commitment to competitively neutral regulations.

2. **Seeks to regulate a market condition that does not exist.** Proponents of “net neutrality” conditions claim that the absence of new regulation or legislation will “divide the Internet into technology ‘haves’ and ‘have nots,’” will “allow large, special interests to saddle consumers and small businesses alike with new and discriminatory fees over and above what they already pay for Internet access,” and is “akin to hurling a giant wrecking ball at the Internet.”² What the proponents cannot do is explain how or why this would happen. Wild charges have been raised against some individual network operators (e.g., charges that Comcast blocked access to Craigslist), but in the only known instance of a possible violation of neutrality – Madison River Communications -- the FCC acted swiftly to resolve the matter. Proponents of “neutrality” demand sweeping, punitive and discriminatory conditions to prevent a threat for which there is no evidence. Rather than surrendering to this groundless hyperbole, the Commission should maintain its well-established course of “avoid[ing] regulation based solely on speculation of a potential future problem.”³

3. **Interferes with the development of innovative technical capabilities and commercial arrangements that are essential to the future growth of the Internet.** Proponents of “net neutrality” have claimed that more regulation would simply maintain the Internet as it is today and has always been. This egalitarian sentiment completely misstates how the Internet actually works. It overlooks both advances in Internet applications and the network management systems already in place to keep the Internet operating, day after day.

² Statement by Sen. Ron Wyden for the Congressional Record, June 28, 2006.

³ The FCC and the Unregulation of the Internet, Jason Oxman, FCC Office of Plans and Policy, Working Paper No. 31 (July 1999).

The Internet was never designed to handle the high-bandwidth applications that are increasingly commonplace today,⁴ much less the applications we envision for the future. In fact, these applications are already making the Internet of the past unsuitable for the present. Peer-to-Peer networking applications, for example, have a “super node” feature that can bring down a network through their ability to take control of all available bandwidth, choking out other applications. The rise of social networking sites has imposed additional new demands for traffic on ISPs. While early viewing of videos over the Internet was modest, today sites such as YouTube serve up 70 million video downloads per day⁵. These may soon rival peer-to-peer networking applications as the dominant bandwidth hogs. Without doubt, the combination of peer-to-peer and video downloads can crowd out other applications’ access to consistent performance.⁶

A July, 2006 study of more than a million Voice over IP (VoIP) telephone calls by Brix Networks (which makes equipment that tests VoIP quality over the Internet) shows that nearly one out of five calls suffers from poor quality, and that the number of acceptable calls is falling as more people use the technology. According to Brix Chief Technology Officer Kaynam Hedayat, “[T]he network is ready for VoIP. But now that there are more services

⁴ It was precisely because the public, “best-efforts” Internet was prone to highly variable performance that Internet 2 consortium was launched to study bandwidth intense exchanges by the higher education and research community. Likewise, many business and government customers for Internet services contract for managed services that deliver consistent levels of quality and throughput that are unavailable from the “best efforts” public Internet.

⁵ “With NBC Pact, YouTube Site Tries to Build a Lasting Business”, WSJ.com, page A1, 6/27/06

⁶ “Online Video Confirmed as an Effective Vehicle for Reaching the Male 25-34 Segment”, comScore Networks Inc., press release, May 23, 2006. “In total, consumers viewed 3.7 billion video streams in March and slightly less than 100 minutes of video content per viewer per month, compared to an average of 85 minutes in October”

running over the same pipe, carriers need to differentiate packets and prioritize service."⁷

Yankee Group analyst Zeus Kerravala agrees: "Prioritizing traffic is going to have to happen. The vision for many service providers is to offer video, Internet access and voice on one pipe. And the addition of video is going to be a huge hit on the network. I think consumers will be less tolerant with jittery TV than they have been with voice, so service providers better get the prioritization mechanisms in place today before they try to sell the public on Internet-based video."⁸

More recently, Nortel networks Chief Technology Officer John Roesse has warned that the surge in high-bandwidth applications will stretch the Internet to its limits unless there is immediate investment in additional infrastructure. "The only reason YouTube didn't destroy the Internet is because there was a bit of a bubble in terms of excess capacity out there. But, boy, don't take that for granted," Roesse stated.⁹

"Net neutrality" conditions would not only prohibit prioritization of VoIP and video services over the public Internet, thus severely limiting their quality and acceptance by consumers, but would also eliminate the incentives of broadband service providers to invest in the next generation network technologies necessary to ensure high-quality services in the future. Indeed, if the net neutrality proponents who advocate for "dumb pipes" get their way, the U.S. may go from a world-leader in Internet technology to a backwater of commoditized, cookie cutter networks.

⁷ "Quality of VoIP calls dropping; will Net neutrality make the problem worse?" at <http://arstechnica.com/news.ars/post/20060725-7348.html>

⁸ Id

⁹ "Video-Hungry Users Could Push Net To Brink," <http://today.reuters.com>

USIIA has consistently warned that poorly conceived net neutrality regulations would have serious unintended consequences. Imposing “net neutrality” conditions on AT&T/BellSouth will not only distort the commercial Internet environment in which AT&T/BellSouth and other providers compete, but will also send a strong signal to Wall Street that U.S.-based broadband providers can expect a future filled with investment-draining common carrier style regulation. If this Commission is truly concerned about broadband deployment in the U.S keeping up with the rest of the world, it will reject the sky-is-falling rhetoric of net neutrality proponents and embrace its long-standing practice of letting the marketplace, not the government, pick the winners and losers in the communications industry.

4. **Contravenes both the merger review process and established procedures for rule making at the Federal Communications Commission.** The Commission already has a procedure to assess whether new rules are needed for the communications industry, and is reportedly in the process of invoking this procedure on the topic of “network neutrality” through a notice of inquiry. USIIA supports such a notice of inquiry because it would allow the Commission to cut through the cursory blogosphere and media coverage of net neutrality in order to examine the technical, quantifiable and practical facets of the “neutrality” debate. Accordingly, rather than shooting first (i.e., imposing conditions on AT&T/BellSouth) and asking questions later (i.e., subsequently issuing an NOI), the Commission should gather all of the relevant facts about the Internet marketplace through an NOI so that it can make an informed judgment about whether net neutrality regulation is even necessary in the first place.

Conclusions

The Commission has a duty to review the merger of AT&T and BellSouth to assure that the merger serves the public interest. With AT&T/BellSouth’s plans to

expand the availability of video services in BellSouth's service territory and AT&T/BellSouth's new commitments to widely deploy broadband to even more consumers in their combined territory, this merger is clearly in the public interest.

USIIA urges the Commission to approve the merger subject only to the conditions noted above. These commitments to deploy broadband to low-income and rural communities are indisputable significant and their benefits will accrue to the American public. In contrast, conditions put forth by numerous other commenters are just as clearly in the interests only of the commenters themselves and the benefits of such conditions would only be received by such parties. In particular, the Commission should reject the urgings of some parties to use this proceeding to extract so-called net neutrality obligations from AT&T/BellSouth in exchange for approving the merger.

The Commission does not, however, have a duty or a right to discriminate against one company to the benefit of others; to make de facto rules that do not redress any specific harms or serve any identifiable interests of the public; to irreparably damage the ability of network operators to continue to manage traffic in a manner that best serves the needs of the marketplace and consumers; or to ignore its own procedural processes in order to impose a partisan political condition on the merging companies.

USIIA asks that the Commission reject calls for additional conditions for the AT&T/BellSouth merger based on "network neutrality," instead accepting the written endorsement of the merged entity of the existing and carefully considered policy for neutrality embodied in the FCC's Policy Statement, issued September 23, 2005 (FCC 05-151).

Respectfully submitted,

US INTERNET INDUSTRY ASSOCIATION

David P. McClure

President & CEO

Dated: October 24, 2006