

SandraLyn Bailey

From: dolores.a.may@verizon.com
Sent: Friday, December 29, 2006 4:40 PM
To: Jonathan Adelstein
Cc: Scott Bergmann
Subject: Verizon ex parte responding to ATT merger conditions

Attachments: Dec 29 06 ATT-BS Merger Conditions Ex Parte.pdf



Dec 29 06 ATT-BS
Merger Condit...

We just filed this ex parte in the ATT SBC proceeding. Give me a call if you have any questions. My cell is 703-801-1753.

(See attached file: Dec 29 06 ATT-BS Merger Conditions Ex Parte.pdf)

Dee May
202-515-2529
Fax 202-336-7922

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Michael E. Glover
Senior Vice President and
Deputy General Counsel



December 29, 2006

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703 351-3860
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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: In the Matter of AT&T, Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, WC Docket No. 06-74

Dear Ms. Dortch:

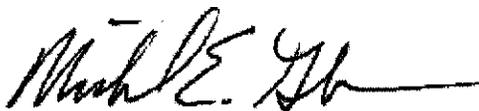
We have not participated in this proceeding to date, and take no position here on the merits of the merger or on whether any conditions are warranted. Late yesterday, however, the parties submitted a new set of proposed conditions that for the first time propose to limit the benefit of certain conditions to some carriers but not to others. Such a condition, whether proposed by the parties or imposed by the Commission, would be discriminatory on its face and would subject any carriers that are denied those benefits to a competitive disadvantage. *See, e.g.*, 47 U.S.C. § 202(a) (prohibiting unreasonable discrimination in charges or services for like communication services directly or indirectly); *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 130-31 (1990) (invalidating order allowing a carrier to charge a tariffed, regulated rate to certain customers and not others). As such, such a condition would be subject to serious legal challenge and likely would not be sustainable.

Moreover, just as flatly denying the benefit of such a condition to some carriers would be legally problematic, so too is the proposal to impose added requirements on certain carriers in order to qualify for the benefit of the condition. Not only would such a condition be unlawfully discriminatory, but merger conditions cannot be used as a backdoor way to impose requirements on a non-party to the merger. Indeed, to the extent the Commission adopts conditions here, they presumably are based on the Commission's conclusion that the conditions will alleviate some concern about potential adverse effects of *the merger* and any requirements must be limited to *the parties to the merger*. Any other issues can be addressed only through a rulemaking of general applicability in which all potentially affected parties have a full opportunity to participate. Indeed, the courts have previously invalidated Commission efforts to circumvent governing legal standards and procedures by doing through merger conditions what could only

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be accomplished through other means, such as through forbearance or rulemaking proceedings. *See Ass'n of Commc'ns Enterprises v. FCC*, 235 F.3d 662, 666 (D.C. Cir. 2001) (invalidating FCC effort to use a merger condition to circumvent the forbearance standard).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Copps", with a long horizontal flourish extending to the right.

cc: Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Tate
Commissioner Robert McDowell
Daniel Gonzalez
Michelle Carey
Scott Deutchman
Scott Bergmann
Ian Dillner
John Hunter
Thomas Navin
Julie Veach
Samuel Feder

Sandralyn Bailey

From: Marilyn Peppin [marilyn.peppin@gmail.com]
Sent: Monday, January 01, 2007 5:15 PM
To: Robert McDowell
Subject: Internet Neutrality

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Federal Communications Commission
Office of the Secretary

Dear Commissioner Robert McDowell,

I beg you to allow the citizens of our country to have free access to the internet. Our newspapers and our media are controlled by huge business corporations; the only level playing field left is the internet. Please, please do all that you can to preserve access to an open Internet not just for 2 years (ATT's concession) but permanently. I believe it is vital to our democracy.

Thank you for considering this critically important issue and your responsibility not to big business but to every citizen in the United States.

Marilyn Peppin
900 E. Harrison Ave., Apt. A 24
Pomona, CA 91767

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SandraLyn Bailey

From: Terry [Thurber@www.fcc.gov]
Sent: Friday, December 29, 2006 3:10 PM
To: KJMWEB
Subject: Comments to the Chairman

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Federal Communications Commission
Office of the Secretary

Terry (Thurber) writes:

I don't think you've considered the damage the ATT elephant has already done. I don't think you've studied history. Even the shills and communication directors were on trial at Nuernberg. Our Nuernberg is fast approaching and you need to assure that you and the agency are out of the way when the tar and feather crews come to town.

You're young - that means you'll have a longer stay in jail. If you allow the merger we, the owners of America, will have to pay to break it up. And so will you. The merger won't stand - but your complicity in this crime will.

Happy New Year

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1 CD *[Handwritten Signature]*