

FCC Accepts AT&T Voluntary Conditions, Approves Merger of AT&T Inc. and BellSouth Corporation

On December 29, 2006, the Federal Communications Commission (the “FCC” or Commission”) approved the merger of AT&T Inc. (“AT&T”) and BellSouth Corporation (“BellSouth”), effective on that date.¹

With the approval, AT&T closed its \$67 billion acquisition of the largest incumbent LEC in the Southeastern United States. The combined AT&T/BellSouth unifies four of the original seven RBOCs and creates an entity with 70 million access lines in 22 states. The News Release issued by the Commission concludes that significant public interest benefits likely will result from the transaction, including the following benefits to telecommunications consumers: (1) deployment of broadband throughout the entire AT&T-BellSouth in-region territory in 2007; (2) increased competition in the market for advanced pay television services; (3) improved wireless products, services and reliability; (4) enhanced national security, disaster recovery

and government services; and (5) greater disaster response and preparation capabilities of the merged company.² The complete Memorandum Opinion and Order, analyzing the public interest benefits and detriments of the parties’ joint Application, under the Communications Act and the Cable Landing License Act, is forthcoming.³

Importantly, the Commission adopted, as conditions to its approval of the transaction, a series of voluntary and enforceable merger commitments submitted to the Commission by AT&T.⁴ The conditions approved by the Commission, and summarized below, will become a part of its final Memorandum Opinion and Order.⁵

Merger Conditions

In all, SBC agreed to 11 pages of commitments relating to a variety of topics. The full set of commitments are summarized in the next section. AT&T’s commitments in four areas are particularly noteworthy for competitors in the communications industry.

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¹ News Release, FCC Approves Merger of AT&T Inc. and BellSouth Corporation: Significant Public Interest Benefits Likely to Result (WC Docket 06-74 Dec. 29, 2006) (“News Release”).

² *Id.*

³ *Id.* at 3.

⁴ Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory, AT&T Services, Inc. to Ms. Marlene Dortch, Secretary, Federal Communications Commission (transmitting Merger Commitments proposed by AT&T) (appended to News Release) (“Quinn Letter”).

⁵ News Release at 2-3.

First, on net neutrality, AT&T agreed to a commitment to adhere to the FCC's four principles in its September 23, 2005 Policy Statement (FCC 05-151). In addition, AT&T agreed to "maintain a neutral network and neutral routing in its wireline broadband Internet access service."⁶ AT&T's commitment does not apply to its Internet backbone network, nor does it apply to AT&T's IPTV service or its enterprise managed IP service. AT&T's commitment will expire two years after the merger or upon the effective date of generally applicable legislation if Congress adopts net neutrality obligations.

Second, AT&T agreed to a variety of commitments regarding its special access services. Notably, however, the Commission did not establish an arbitration process for special access services, as many carrier customers and large users had advocated. Instead, AT&T agreed only that it would not oppose a request by a special access customer for mediation of a dispute under the FCC's mediation procedures.

AT&T agreed to reduce DS1, DS3, and Ethernet service rates in areas where it has obtained Phase II pricing flexibility under the Commission's rules. In Phase II areas, AT&T will reduce DS1, DS3, and Ethernet service subject to price caps to rates no higher than its rates in non-Phase II areas (and, in the case of Ethernet services not subject to price caps, by 15%). In a provision that sparked opposition by Chairman Martin in his statement, and one

which is sure to create legal uncertainty, AT&T may not apply these discounts to services purchased by other price cap LECs (i.e. Qwest and Verizon) unless the price cap LEC also reduces its DS1, DS3, and Ethernet rates in the same manner.⁷ Chairman Martin questioned whether this provision is consistent with Section 202 of the Communications Act. Verizon and Qwest have already filed an appeal of this provision. AT&T is to file tariffs implementing the rate reductions within 60 days, which could provide another opportunity for parties to object to this provision.

Third, AT&T agreed to what essentially amounts to a standstill on UNEs and interconnection agreements. Specifically, AT&T agreed not to seek any increase in state-approved UNE or collocation rates in effect as of the merger date.⁸ It also agreed not to seek or give effect to any forbearance ruling altering the status of any facility offered as a loop or transport UNE.⁹ With respect to the "Triennial Review" related rules, AT&T agreed (1) to recalculate its list of fiber based collocators to exclude AT&T and any collocator that merely cross connects to another carrier's fiber, and (2) to cease all pending or threatened EEL eligibility compliance audits under the rules. Finally, in a provision added after AT&T's October 2006 offer, AT&T agreed to make interconnection agreements portable throughout its region, reviving a condition last imposed in the SBC-Ameritech merger commitments.¹⁰

⁶ Quinn Letter at 8.

⁷ Quinn Letter at 5.

⁸ Quinn Letter at 2.

⁹ Quinn Letter at 10.

¹⁰ Quinn Letter at 3.

Fourth, with regard to wireless broadband services, AT&T agreed to divest BellSouth's holdings in the 2.5 GHz spectrum, as had been suggested by Clearwire in its comments.¹¹ Clearwire and Sprint, the two largest holders of 2.5 GHz spectrum are expected to bid for the BellSouth licenses. Finally, AT&T agreed to increase its build-out commitment of 2.3 GHz spectrum. By 2010, AT&T must offer service in the 2.3GHz bid to 25% of the population in its wireless service territories.¹²

AT&T/BellSouth Merger Commitments

AT&T/BellSouth agreed to the following specific commitments. Unless otherwise noted these commitments will apply for a period of 42 months from the Merger Closing Date (i.e. until June 30, 2010).

► **Repatriation of Jobs to the U.S.:** AT&T will repatriate jobs to the United States that currently are outsourced by BellSouth.

► **Promoting Accessibility of Broadband Services:** AT&T will make widely available residential broadband Internet access (i.e., Internet access service at speeds in excess of 200 kilobits per second in at least one direction), through alternative technologies and operating arrangements, as necessary, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T also committed to offer promotions to certain of its retail customers, including deeply discounted monthly rates.

► **Statement of Video Roll-Out Intentions:** AT&T will provide, and will invest substantial resources to provide

advanced video programming services in the AT&T in-region territory.

► **Public Safety and Disaster Recovery:** AT&T will complete the steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory, in the event of an extended service outage caused by a hurricane or other disaster. AT&T also will make a fixed contribution to promote public safety.

► **Service to Customers with Disabilities:** AT&T will file with the Commission a report describing its efforts to provide high quality services to customers with disabilities.

► **UNEs:** AT&T and BellSouth will continue to offer, and will not seek any increase to the state-approved rates for UNEs or collocation, effective on the date of closing of the merger. The merged company will recalculate its business lines and fiber-based collocators in each relevant wire center, for purposes of evaluating its ongoing obligations to provide loop and dedicated transport UNEs. AT&T also committed to cease all ongoing or threatened EEL audits, and to forego any future EEL audits.

► **Reducing Transaction Costs Associated with Interconnection Agreements:** AT&T will make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that AT&T or BellSouth entered into, in any state in AT&T's

¹¹ Quinn Letter at 10.

¹² Quinn Letter at 10.

22-state ILEC operating territory, subject to state-specific pricing, performance plans, and technical feasibility. AT&T also will take the steps necessary to facilitate interconnection agreement adoptions and negotiations.

► **Special Access:** AT&T committed to offer its special access services, for a period of forty-eight (48) months following the date of closing of the merger, subject to certain nondiscrimination provisions, performance measurements and pricing limitations. In particular, AT&T committed not to increase its existing rates and charges for DS1 and DS3 capacity private line services, tariffed interstate special access services, and certain services subject to Phase II pricing flexibility, including DS1 and DS3 capacity channel termination services and Ethernet services. AT&T also will implement term/volume discounts applicable to the aforementioned services subject to Phase II pricing flexibility.

► **Transit Service:** AT&T will not increase the rates paid by existing customers, for existing tandem transit service arrangements that AT&T and BellSouth provide in their respective in-region territories.

► **ADSL Service:** AT&T will deploy and offer, within its in-region territory, ADSL service capable of speeds up to 768 kilobits per second, to ADSL-capable customers, without requiring that such customers also purchase circuit switched voice grade telephone service.

► **ADSL Transmission Service:** AT&T will offer to Internet service providers, for the provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service that is functionally the same as the service currently offered by AT&T within its in-region territory, at a price that is not greater than the retail price

in a state for ADSL service that is separately purchased by customers who also subscribe to AT&T's local telephone service.

► **Net Neutrality:** AT&T will comply with the Policy Statement of the Commission on net neutrality, dated September 23, 2005, and will maintain a neutral network, and neutral routing in its wireline broadband Internet access service. AT&T will not provide, or to sell to Internet content, application or service providers, including those affiliated with AT&T, any service that privileges, degrades or prioritizes any packet transmitted over AT&T's wireline broadband Internet access services, based on its source, ownership or destination.

► **Internet Backbone:** AT&T will maintain its existing number of discrete, settlement-free peering arrangements for Internet backbone services with domestic operating entities within the United States, subject to potential downward adjustments that account for mergers, acquisitions, bankruptcies by existing peering entities, or voluntary elections by a peering entities to discontinue such arrangements. AT&T also will post its peering policy on a publicly accessible website

► **Forbearance:** AT&T will not seek, nor give effect to, a forbearance ruling by the Commission, under Section 10 of the 1996 Act, that would alter the status of any loop or dedicated transport UNE, and will not request forbearance relief that would alter any of its voluntary merger commitments.

► **Wireless:** AT&T committed to assign and/or transfer to an unaffiliated third party all of the 2.5 GHz spectrum (broadband radio service (BRS)/educational broadband service (EBS)) currently licensed to or leased by BellSouth.

► **Divestiture of Facilities:** Within twelve (12) months of the date of closing of the merger, AT&T must sell to an unaffiliated third party certain IRUs to fiber strands.

► **Tunney Act:** In the event that a final and non-appealable order determines that the Consent Decree executed by AT&T in the merger of AT&T and SBC is not adequate to address the competitive concerns raised by the Department of Justice with regard to that transaction, AT&T shall make the appropriate modifications to its merger commitments here.

► **Certification:** AT&T will file with the Commission, annually, a declaration by a corporate officer, attesting that AT&T has substantially complied with its merger commitments.