

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

In the Matter of)	
)	
)	
AT&T Inc. and BellSouth Corporation)	WC Docket No. 06-74
Application for Transfer of Control)	

ORDER ON RECONSIDERATION

Adopted: March 26, 2007

Released: March 26, 2007

By the Commission: Commissioner McDowell not participating.

I. INTRODUCTION

1. In this *sua sponte* Order on Reconsideration, we revise one of the voluntary conditions we adopted when we approved the merger between AT&T Inc. (AT&T) and BellSouth Corporation (BellSouth) subject to conditions.¹ Specifically, as set forth in more detail below, we revise Special Access Condition 6 in two salient respects. First, we require AT&T post-merger to comply with the pricing obligations of Special Access Condition 6 regardless of the pricing decisions of other incumbent local exchange carriers (LECs). Second, we reduce the duration of Special Access Condition 6 from 48 months to 39 months.

II. BACKGROUND

2. On March 31, 2006, BellSouth and AT&T jointly filed a series of applications seeking Commission approval of the transfer of control to AT&T of licenses and authorizations held directly and indirectly by BellSouth, as well as the transfer of control to AT&T of Cingular and its various subsidiaries and affiliates.² On April 19, 2006, the Wireline Competition Bureau released a Public Notice seeking public comment on the proposed transaction.³ More than 25 parties filed petitions to deny or formal

¹ See *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189 (rel. Mar. 26, 2007) (*AT&T/BellSouth Merger Order*) (Commissioner McDowell not participating).

² See *id.* at para. 17 n.54 (describing the applications filed by AT&T and BellSouth in more detail); see also *AT&T/BellSouth Merger Order* Appendix B (listing licenses and authorizations subject to transfer of control).

³ See *Commission Seeks Comment on Application For Consent to Transfer of Control Filed By AT&T Inc. and BellSouth Corp.*, Public Notice, WC Docket No. 06-74, DA 06-904 (WCB rel. Apr. 19, 2006) (*Public Notice*).

comments supporting or opposing grant of the applications.⁴ On October 13, 2006, the Commission released a public notice seeking comment on certain proposals made by AT&T in a supplemental filing.⁵ More than 41 parties filed comments in response to this public notice. On December 28, 2006, AT&T made an *ex parte* filing, which contained a series of voluntary commitments.⁶ Finally, on December 29, 2006, the Commission voted to approve the merger subject to the conditions set forth in Appendix F of the *AT&T/BellSouth Merger Order*.⁷

III. DISCUSSION

3. Pursuant to section 1.108 of the Commission's rules,⁸ we reconsider on our own motion one of the merger conditions we adopted in the *AT&T/BellSouth Merger Order*. In particular, we reconsider Special Access Condition 6, which sets a cap for the prices, terms and conditions at which AT&T may offer DS1 and DS3 channel termination services, DS1 and DS3 mileage services, and Ethernet services.⁹ Under this

⁴ See *AT&T BellSouth Merger Order*, Appendix A (listing the parties that filed formal pleadings). In addition to those formal pleadings, the Commission received thousands of informal comments and *ex parte* submissions. In addition, on June 23, 2006, the Wireline Competition Bureau and International Bureau requested additional information from the Applicants. See Letter from Thomas J. Navin, Chief, Wireline Competition Bureau, FCC, to Wayne Watts, Senior Vice President and Associate General Counsel, AT&T, Inc., and James G. Harralson, Vice President and Associate General Counsel, BellSouth Corporation, WC Docket No. 06-74 (June 23, 2006) (Information Request). The Applicants' responses to the Information Request, along with their responses to additional Commission requests, are included in the record. All pleadings and comments are available on the Commission's Electronic Comment Filing System (ECFS) website at www.fcc.gov/cgb/ecfs/.

⁵ See *Commission Seeks Comment on Proposals Submitted By AT&T Inc. and BellSouth Corp.*, Public Notice, WC Docket No. 06-74, 21 FCC Rcd 11490 (2006), as amended by *Commission Seeks Comment on Proposals Submitted By AT&T Inc. and BellSouth Corp.*, Public Notice, WC Docket No. 06-74, Erratum (rel. Oct. 16, 2006) (*Voluntary Conditions Public Notice*).

⁶ On December 28, 2006, AT&T filed a letter describing its voluntary commitments. See Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Dec. 28, 2006). On January 4, 2007, AT&T filed an erratum to make two minor corrections to the commitment language and to correct certain building identification codes set forth in the attachment to the Dec. 28, 2006 letter. See Letter from Joan Marsh, Executive Director – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Jan. 4, 2007) (*AT&T Jan. 4, 2007 Ex Parte Letter*).

⁷ See *AT&T/BellSouth Merger Order*, Appendix F.

⁸ 47 C.F.R. § 1.108 (“The Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b) of these rules.”); see also *Sprint Corp. v. FCC*, 315 F.3d 369, 373 (D.C. Cir. 2003) (stating that notice and comment is not required before an agency may take action on reconsideration in certain contexts, such as informal adjudications and policy statements).

⁹ In relevant part, Special Access Condition 6 provides:

“In areas within the AT&T/BellSouth in-region territory where an AT&T/BellSouth ILEC has obtained Phase II pricing flexibility for price cap services (“Phase II areas”), such ILEC will offer DS1 and DS3 channel termination services, DS1 and DS3 mileage services, and Ethernet services, that currently are offered pursuant to the Phase II

(continued....)

condition as initially adopted, the cap would not apply to AT&T's provision of such services to other price cap incumbent LECs or their affiliates that had obtained Phase II pricing flexibility for price cap services unless the other incumbent LEC offered comparable discounts for its own DS1, DS3 and price cap Ethernet services in Metropolitan Statistical Areas where it has received Phase II pricing flexibility and reciprocal discounts for Ethernet services offered outside of price cap regulation (Reciprocity Limitation).¹⁰

4. After the Commission adopted the *AT&T/BellSouth Merger Order*, Verizon and Qwest raised questions about the legality of the Reciprocity Limitation.¹¹ On March 26, 2007, AT&T filed a letter asking the Commission to amend Special Access Condition 6, in relevant part by removing the Reciprocity Limitation that is the subject of the legal questions raised by Verizon and Qwest and by reducing the period of the commitment.¹²

5. On reconsideration, we conclude that AT&T's proposed revision to Special Access Condition 6 addresses the questions raised about the legality of the Reciprocity Limitation and reduces the legal uncertainty associated with the AT&T tariff filing required to effectuate the initial Special Access Condition 6. In addition, by eliminating the Reciprocity Limitation, AT&T will be required to extend the discount set forth in Special Access Condition 6 to all of its customers of DS1 and DS3 channel

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Pricing Flexibility Provisions of its special access tariffs, at rates that are no higher than, and on the same terms and conditions as, its tariffed rates, terms, and conditions as of the Merger Closing Date for such services in areas within its in-region territory where it has not obtained Phase II pricing flexibility. In Phase II areas, AT&T/BellSouth also will reduce by 15% the rates in its interstate tariffs as of the Merger Closing Date for Ethernet services that are not at that time subject to price cap regulation.”

AT&T/BellSouth Merger Order, Appendix F, Special Access Condition 6.

¹⁰ In relevant part, Special Access Condition 6 provides:

“The foregoing commitments shall not apply to DS1, DS3, or Ethernet services provided by an AT&T/BellSouth ILEC to any other price cap ILEC, including any affiliate of such other price cap ILEC, unless such other price cap ILEC offers DS1 and DS3 channel termination and mileage services, and price cap Ethernet services in all areas in which it has obtained Phase II pricing flexibility relief for such services (hereinafter “Reciprocal Price Cap Services”) at rates, and on the terms and conditions, applicable to such services in areas in which it has not obtained Phase II pricing flexibility for such services, nor shall AT&T/BellSouth provide the aforementioned 15% discount to such price cap ILEC or affiliate thereof unless such ILEC makes generally available a reciprocal discount for any Ethernet service it offers outside of price cap regulation (hereinafter “Reciprocal Non-Price Cap Services”). ”

AT&T/BellSouth Merger Order, Appendix F, Special Access Condition 6.

¹¹ See Letter from Michael E. Glover, Senior Vice President and Deputy General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 29, 2007) (arguing that Special Access Condition 6, if implemented, would violate section 202(a) and would exceed the Commission's authority in a merger proceeding); Letter from Robert Connelly, Vice President – Deputy General Counsel, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Jan. 4, 2007) (same); *In re Qwest Commc'ns Int'l Inc.*, Petition for Writ of Mandamus to Compel Action by the Federal Communications Commission, Docket No. 07-1043 (D.C. Cir. filed Feb. 12, 2007); *Verizon v. FCC*, Petition for Review, Docket No. 07-1009 (D.C. Cir. filed Jan. 16, 2007).

¹² See Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Mar. 26, 2007).

termination services, DS1 and DS3 mileage services, and Ethernet services, which should result in lower prices for many more end users. In light of the expanded application of Special Access Condition 6, we believe it is appropriate to shorten the time period under which Special Access Condition 6 applies to 39 months. We therefore revise Special Access Condition 6 as set forth in full in the Appendix.

IV. ORDERING CLAUSES

6. For the reasons stated above, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and Executive Order No. 10530, and Section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, AT&T shall comply with the condition set forth in the Appendix of this Order on Reconsideration and is not obligated to comply with Special Access Condition 6 as set forth in Appendix F of the *AT&T/BellSouth Merger Order*.

7. IT IS FURTHER ORDERED that a copy of this Order shall be sent by Certified Mail/Return Receipt Requested to Robert W. Quinn, Jr.; Senior Vice President – Federal Regulatory, AT&T Services, Inc.; 1120 20th Street, N.W., Suite 1000; Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

For the reasons set forth in this Order on Reconsideration, Special Access Condition 6 that was voluntarily offered by AT&T and adopted by the Commission as a condition of the Commission's approval of the merger between AT&T and BellSouth is supplanted with the following condition, set forth in full below. The Special Access Conditions are revised to read as follows:

Special Access

With the exception of Special Access Commitment 6, each of the following special access commitments shall remain in effect until 48 months from the Merger Closing Date.

* * *

6. In areas within the AT&T/BellSouth in-region territory where an AT&T/BellSouth incumbent LEC has obtained Phase II pricing flexibility for price cap services ("Phase II areas"), such incumbent LEC will offer DS1 and DS3 channel termination services, DS1 and DS3 mileage services, and Ethernet services,¹³ that currently are offered pursuant to the Phase II Pricing Flexibility Provisions of its special access tariffs,¹⁴ at rates that are no higher than, and on the same terms and conditions as, its tariffed rates, terms, and conditions as of the Merger Closing Date for such services in areas within its in-region territory where it has not obtained Phase II pricing flexibility. In Phase II areas, AT&T/BellSouth also will reduce by 15% the rates in its interstate tariffs as of the Merger Closing Date for Ethernet services that are not at that time subject to price cap regulation. The AT&T/BellSouth incumbent LECs will file all tariff revisions necessary to effectuate this commitment within 90 days from the Merger Closing Date. This Commitment shall remain in effect until 39 months after the day the AT&T/BellSouth incumbent LECs file with the Commission the final tariff revisions necessary to effectuate this commitment.

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¹³ The Ethernet services subject to this commitment are AT&T's interstate OPT-E-MAN, GigaMAN and DecaMAN services and BellSouth's interstate Metro Ethernet Service.

¹⁴ The Phase II Pricing Flexibility Provisions for DS1 and DS3 services are those set forth in Ameritech Tariff FCC No. 2, Section 21; Pacific Bell Tariff FCC No. 1, Section 31; Nevada Bell Tariff FCC No. 1, Section 22; Southwestern Bell Telephone Company Tariff FCC No. 73, Section 39; Southern New England Telephone Tariff FCC No. 39, Section 24; and BellSouth Telecommunications Tariff FCC No. 1, Section 23.