

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	DA 11-799
Application for Consent to Transfer of Control)	
Filed By AT&T Inc. and Deutsche Telekom AG)	WC Docket No. 11-65

**PETITION TO DENY, OR IN THE ALTERNATIVE, OPPOSITION UNLESS
CONDITIONS ARE APPLIED
OF LOGIX COMMUNICATIONS**

**LOGIX COMMUNICATIONS, L.P.
dba LOGIX COMMUNICATIONS**

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Logix Communications (“Logix”) is a competitive local exchange carrier (“CLEC”) that is directly affected by this merger. AT&T is the dominant ILEC in over 90% of Logix’s service territory. Any additional consolidation within the telecommunications market under AT&T will directly impact the openness and competitiveness of the marketplace in those AT&T ILEC areas. Logix has a vested interest in ensuring that the largest carriers cannot engage in anticompetitive conduct that would impair competitors’ ability to compete and/or artificially inflate the cost of network facilities purchased by competitors to finish the services they offer to customers.

Logix comes before the Federal Communications Commission (the Commission or FCC) today to submit comments on the Commission’s Notice relating to the proposed merger of AT&T and T-Mobile. Logix appreciates the Commission providing the opportunity to file this Petition in this proceeding.

INTRODUCTION AND SUMMARY

Logix files these comments in response to the *Notice* regarding the AT&T/T-Mobile

proposed merger. This merger comes on the heels of numerous previous acquisitions by the parent of then Southwestern Bell Telephone Company, including but not limited to: AT&T, AT&T Wireless, PacBell, Nevada Bell, Ameritech, SNET, and BellSouth. For the reasons discussed herein, Logix believes the most appropriate decision would be a denial of the merger as being in opposition to the public interest.

In reviewing the proposed merger, the Commission shall conduct the public interest analysis required by Sections 214(a) and 310(d) of the Communications Act, 47 U.S.C. §§ 214(a) and 310(d), to determine whether AT&T and T-Mobile have shown that approval of the acquisition would serve the public interest, convenience and necessity. These sections require the Commission to weigh the potential harms to the public interest that result from the proposed merger against the potential benefits to the public interest benefits. Moreover, AT&T and T-Mobile bear the burden of proof to show that the benefits outweigh the harms and serve the public interest. Logix is confident when the Commission evaluates the potential benefits and harms, that the Commission will determine that AT&T and T-Mobile do not meet their burden.

That said and in the alternative, a long list of conditions would be necessary to at least partially ameliorate the harm such consolidation will cause.

In this pleading, the Logix does three things. First, the pleading explains that the merger must be understood in the context of broader market concentration in addition to being viewed as further market consolidation within the wireless sector. Second, these comments discuss the rationale for the primary position that the public interest would be best served by denying the merger. Third, these comments discuss specific conditions from the wireline competitor perspective that would need to be adopted to partially offset the harm cause by such market concentration. Logix recognizes that additional conditions focused on wireless sector issues

alone would likely be necessary. However, Logix leaves those additional specific issues to wireless providers to discuss.

I. THE AFFECTS OF THIS MERGER IS BROADER THAN THE WIRELESS MARKET SEGMENT.

It needs to be clearly understood that the proposed merger has impacts over the entire industry, not just the wireless sector. This is not simply a merger between two wireless providers. AT&T is already a collection of AT&T long distance, the Regional Bell Operating Companies (“RBOCs”) BellSouth, Ameritech, Southwestern Bell, and PacBell, as well as Southern New England Telecommunications (“SNET”), and wireless companies Cingular Wireless, AT&T Wireless, and Dobson Wireless, etc.

The proposed merger would further add T-Mobile – the fourth largest wireless provider – resulting in AT&T being the largest wireless provider – in a market that would largely be dominated by two dominant wireless providers. By combining the resulting wireless company with the AT&T wireline/wireless conglomerate – i.e. the collection of RBOCs covering 22 states, the historically dominant long distance company-the original AT&T and the current AT&T wireless company – there will be extensive market power. Such substantial consolidation across multiple market sectors and the removal of yet another large competitor will have ramifications for all corners of the industry.

II. BASED ON THE RESULTING VERTICAL CONCENTRATION WITH THE WIRELINE MARKET AS WELL AS THE VERTICAL INTEGRATION WITHIN THE WIRELESS MARKET, THE MERGER IS NOT IN THE PUBLIC INTEREST.

If this collection of RBOCs, wireless providers, the AT&T long distance company, the AT&T CLEC, etc. is not enough, the fourth largest wireless provider in the United States would

be the next step toward duopolization of key sectors of the United States telecommunications industry. The days of the FCC touting the maintaining of multiple RBOCs as a check on best practices and reasonableness are effectively gone. Now, the same result is occurring in the wireless sector. Worse yet is the continued consolidation of the wireline and wireless sectors into in an ever shrinking number of hands that are building ever greater levels of market power.

The potential for market abuse cannot be overstated. With T-Mobile added to Cingular/AT&T which already absorbed AT&T Wireless, the potential for anticompetitive corporate policies and unilateral self-dealing increase exponentially as the wireless market falls increasingly in the hands of two dominant providers, which are also the two dominant ILECs.

The self-dealing opportunities are numerous. As an example, Logix points to unified messaging. With unified messaging, AT&T tells the customer that the customer can have one voicemail box for all of the customer's needs. So, voice messages from wireless calls will go to the same voice mailbox as voice messages from wireline calls. This product is beneficial to the consumer as a "one-stop-shop" to monitor voicemail. The question, however, is "What is happening from a technical and marketing perspective that allows AT&T to provide the product that is generally not offered by the competition?" The answer is that AT&T provides its own affiliates favored access to voicemail. The "wireless" AT&T is self-dealing with the "wireline" AT&T in an anticompetitive manner. Wireless carriers are generally reluctant to offer forwarding functionalities even for voice messages. This restrictive corporate policy by AT&T "wireless" blocks a customer from having its voicemail forwarded to a wireline competitor. So, AT&T "wireless" creates the "unified voicemail problem" by refusing to include a message forwarding service, and then "solves the problem" by providing the equivalent of voice message forwarding when a customer buys wireline service from AT&T "wireline".

This is one example of how AT&T can and does self-deal across the wireline and wireless market sectors to use its market power to engage in monopolization of both sectors. Such tying relationships can severely distort the wireline market. With the acquisition of T-Mobile, the ability of AT&T to manipulate wireline market by flexing the muscle it has built through the consolidation of the wireless sector grows substantially. In markets, like Texas, where AT&T is the dominant incumbent over most of the state's access lines, this merger is a further invitation to distort and dominate the market at the expense of consumers and the development of a competitive market.

III. IN THE ALTERNATIVE, IF THE COMMISSION IS INCLINED TO APPROVE THE MERGER WITH CONDITIONS, THERE ARE MULTIPLE MODIFICATIONS THAT WOULD BE NECESSARY TO AT LEAST PARTIALLY AMELIORATE THE HARM CAUSED BY INCREASED MARKET POWER.

As discussed in the prior section, the proposed merger of AT&T and T-Mobile should be denied. Noting, however, previous mergers that have been approved, most recently the merger of AT&T/BellSouth, Logix acknowledges that the Commission may unfortunately not agree with the primary position discussed herein. Therefore, and only as a lesser alternative to the rejection of the proposed merger, Logix proposes a number of conditions that, at a minimum, must be placed on the merger. These conditions are focused and tailored to partially offset the negative impacts that will result to the wireline market as a result of the proposed merger (i.e. vertical integration impacts). Logix anticipates that any final list of conditions will include further commitments more directly focused on the harm directly caused by the "wireless" concentration within the wireless market itself ("horizontal integration impacts").

In this proceeding, AT&T seeks to further consolidation under the AT&T banner. By absorbing the nation's fourth largest cellular provider in T-Mobile, AT&T will have effectively

created a duopoly with Verizon within the wireless industry. If this were the end of the story, there would already be good cause to reject the proposed merger. Unfortunately, AT&T is also the dominant ILEC in 22 states, which includes every state in which Logix does business. This telecommunications cross-ownership allows AT&T to use market power in the wireless industry to prop-up its competitive position in the wireline sector. It allows AT&T to use market power in the wireline industry to prop-up its competitive position in the wireless sector. The result will be less competitive choice for consumers.

As discussed in greater detail below, each of the proposed conditions are intended to lower barriers to effective competition in light of the increased market power that will be created due to the further consolidation of the telecommunications industry being in the hands of the combined AT&T/T-Mobile telecommunications conglomerate.

A. Tying Arrangements and Affiliate Nondiscrimination

As referenced in Section II of these comments, tying arrangements between the wireless affiliate and the AT&T ILECs are already harmful to the development of the wireline and wireless markets, respectively and collectively. The example of unified messaging discussed above shows how discriminatory arrangements can allow the AT&T ILECs to offer integrated products that competitors cannot provide because they do not have the affiliation between the AT&T ILECs and the wireless affiliate.

To address these circumstances, a condition should be added that states as follows;

“While the top two national wireless providers – as long as one of those providers is AT&T – have a combined market share in excess of 50%, AT&T and its wireless affiliates will not provide any offerings to its wireline affiliates that are not available to other wireline carriers

on the same terms and conditions. The wireless affiliate(s) further agree that it: (1) will make the same functionalities available to competitive wireline providers to enable unified messaging products by such competitive wireline providers at cost-based rates, and (2) will not incorporate any volume or other commitments in its contracts that would cause a disproportioned benefit to its wireline affiliates relative to a requesting competitive wireline carrier.”

On a broad note, Logix notes the conditional expiration of this merger condition. As the condition is based on the consolidation within the wireless sector and the ability for the resulting market power to impair the wireline sector due to AT&T’s cross-ownership, it is appropriate to base the expiration of that condition on the diminishment of the consolidation rather than the passage of time as measured on a calendar.

The condition accomplishes a key policy imperative; it makes a clear statement that AT&T will not use its further market power to distort competition in the wireline sector. Using unified messaging as an example, wireline competition is distorted and consumer choices are diminished if AT&T is the only wireline provider able to provide a unified messaging product solely by virtue that the AT&T wireless affiliate gives the AT&T wireline affiliate favorable access to the voicemails of AT&T wireless customers.

B. Interconnection Agreements

As we have seen addressed in prior merger proceedings, there is a very real cost – both in terms of dollars and time as well as in uncertainty – to the process of renewing a new round of interconnection agreements in each state. While that cost of doing business may not be directly caused by AT&T, it rises to a significant barrier to developing a company’s intermediate term business plan. Recognizing that the further combination of the AT&T telecommunications

conglomerate with T-Mobile will have real effects on competitive choice and the development of the telecommunications marketplace, Logix has proposed this condition as one attempt to offset those anticompetitive effects. A five (5) year¹ extension of all interconnection agreements – without regard as to whether that agreement is in its initial term, a renewal term, or operating pursuant to an evergreen clause, will provide additional time for competitors to focus on competition in the marketplace rather than the next regulatory proceeding.

C. Special Access Agreements

The special access-related conditions are tailored to address the ability to use the growing consolidation under the AT&T banner and the resulting cross-ownership between wireline and wireless sectors in a manner that distorts the market. Although not identical to the conditions put forward in the AT&T/BellSouth merger, for the convenience of the Commission, Logix addresses special access issues in the same order. Logix proposes as follows:

“For a period of five (5) years following the closing of the proposed merger unless a larger date is stated in the specific provision:

- “1. AT&T affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Act (“AT&T BOCs”) will implement, in the AT&T Service Areas, the Service Quality Measurement Plan for Interstate Special Access Services (“the Plan”), similar to

¹ Logix’s reference to a five (5) year commitment here as well as every other area in which a timed commitment is recommended is an acknowledgement that the FCC has accepted similarly short time periods in the past. From a true economic perspective, the time period needs to be one that is deemed long enough to allow all resulting market power to be worked out of the market. By way of example, the Wright Amendment that restricted significant air travel out of the Dallas Love Field airport was repealed after roughly thirty (30) years. Despite the fact that restrictive legislation was in place for so long, the Congress and President still required an eight (8) year phase-out period. That legislation recognized that markets cannot adjust to such monumental changes in a brief and artificial fashion. It takes time. Logix fundamentally believes a commitment of at least ten (10) years would be most appropriate, and ten (10) years is what Logix would recommend throughout but for the Commission’s recent history of accepting time commitments even shorter than five (5) years.

that set forth in the SBC/BellSouth Merger Conditions. The AT&T BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed therein. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T BOCs' monthly performance in delivering interstate special access services within each of the states in the AT&T Service Areas. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T and its affiliate(s), and (ii) non-affiliates. The AT&T BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The AT&T BOCs shall implement the Plan for the first full quarter following the Merger Closing Date. This condition shall terminate on the earlier of (i) thirty months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T files its 10th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.

- “2. No AT&T entity shall increase the rates paid by existing customers (as of the Merger Closing Date) of DS1, DS3, Ethernet, or other protocol type of local private line services that it provides in the AT&T in-region territory pursuant to, or referenced in, any AT&T entity tariff as of the Merger Closing Date.
- “3. AT&T will make special access services available to all carriers at prices no higher than those charged to its affiliates and will not impose volume commitments, waiver of existing UNE rights, waiver of self-certification rights or other restrictions on the availability of said prices.
- “4. To ensure that AT&T may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T provides a new or modified contract tariffed service under section 69.727(a) of the Commission's rules to its own affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline/wireless affiliates. AT&T also will not unreasonably discriminate in favor of its affiliates in establishing the terms and conditions for grooming special access facilities.
- “5. AT&T shall not increase the rates in its interstate tariffs, including contract tariffs, for special access services that it provides in the AT&T in-region territory and that are set forth in tariffs on file at the Commission on the Merger Closing Date. This provision requires, among other requirements, that AT&T will renew expiring contract tariffs upon the same terms, conditions, and rates as the expiring tariff if requested by the special access customer.”

The purpose for both the rate freeze and rate non-discrimination should be clear. As AT&T's further cross-ownership consolidation increases its market power as a retail provider, the Commission must assure that AT&T does not use that dominant position to also price

squeeze its competitors by either increasing its competitors' costs and/or providing favorable rates to its affiliate(s). Similarly, it is critical to assure that the quality of wholesale access is at least equal in quality to what AT&T provides itself and its affiliates.

D. IP Interconnection

As this merger further consolidates the market position of AT&T within the combined wireline/wireless telecommunications industry, it is imperative that AT&T does not use its acquired market power to diminish its competitors equal access to traffic and the functional abilities for making services available to their customers nor allow AT&T to artificially manipulate the cost structure of its competitors by imposing limitations on the interconnection of networks that are not necessary from a technical perspective.

An ever growing percentage of telecommunications traffic is created in an IP protocol. AT&T moves substantial percentages of its own traffic internally without having to convert it to Time Division Multiplexing ("TDM"). Yet, for interconnecting competitors, AT&T resists passing traffic in IP protocol with its competitors. The result is unnecessary conversions of traffic resulting in higher costs and lost service potential for consumers. To be sure, it is often the case that an AT&T and competitor customer could both be served pursuant to IP protocol yet the competitor is required to convert the traffic to TDM to hand it off to AT&T followed by AT&T converting the traffic back to IP protocol to complete it to the AT&T customer. There is no justification for traffic in this situation to not be handed to AT&T in the same manner that is created and received by the end users.

Of possibly greater importance, the requirement to convert IP traffic to TDM limits what new services can be created for the consumer. AT&T and T-Mobile discuss how they will be

able to expand their consumer offerings as a combined entity. Competitors also have creative ideas and service offerings they desire to provide to their customers. Unfortunately, AT&T's refusal to support the passing of traffic at an IP protocol unnecessarily prevents new service offerings from being developed thus impairing the competitive robustness of the marketplace.

As with the discussion regarding special access, Logix believes the commitment for IP interconnection should be in place for a period of no less than five (5) years. Allowing one (1) year for the implementation, the commitment would extend to six (6) years following the merger closing date.

E. Copper Retirement and UNE Forbearance

Following the discussions in the context of interconnection agreements and special access tariffs, it is imperative that the growing AT&T wireline/wireless provider conglomerate not be able to impair competitor's access to wholesale facilities. To that end, the AT&T ILECs should commit to forebear from both retiring copper facilities or seeking forbearance from their Section 251, and where applicable Section 271, obligations for a period of five (5) years from the closing date of the merger.

This condition – like a number of the ones above – is narrowly tailored to maintain the status quo for competitive access to facilities while the industry develops around the new market consolidation caused by the proposed merger. Such conditions could be drafted as follows:

For five (5) years from the Merger Closing Date, neither AT&T nor any of its affiliates will seek a ruling, including through a forbearance petition under section 10 of the Communications Act (the "Act") 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

For five (5) years from the Merger Closing Date, neither AT&T nor any of its affiliates will retire copper facilities.

F. Transit Service

AT&T should commit to not attempt to increase prices for transit service. This is critical as there is insufficient transit competition to adequately discipline pricing and because a substantial amount of transit traffic is between wireline and wireless providers. A transit rate that is not based on cost would create an implicit cost advantage to AT&T as it passes traffic between its wireline and wireless affiliates. To maintain a level playing field, the following language should be committed to by AT&T:

The AT&T incumbent LECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T incumbent LECs provide in the AT&T in-region territory for a period of five (5) years following the merger closing date.

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

AFFIDAVIT OF HOWARD SIEGEL
ON BEHALF OF LOGIX COMMUNICATIONS

Before me, the undersigned authority, on this 31st day of May 2011, personally appeared Howard Siegel, who, upon being duly sworn, states the following:

1. My name is Howard Siegel. I am over the age of 21, of sound mind, and am competent to testify as to the matters stated herein. I am the Vice President of External and Regulatory Affairs of Logix Communications. I have personal knowledge of the facts contained herein.

2. The facts contained in these comments and related attachments are accurate. Moreover, I have personal knowledge as to this information through the due course of my duties in my capacity as Logix Communication’s Vice President of External and Regulatory Affairs.

Further Affiant sayeth not.

_____/s/_____
Howard Siegel

Sworn to and subscribed to before me this 31st day of May 2011, to certify which witness my hand and seal.

_____/s/_____
Notary Public in and for the State of Texas
My Commission expires:_____