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Innovative thinking and new jobs in merger

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The Federal Communications Commission's last minute, year-end approval of the merger between AT&T and Bell South provided an optimistic end to 2006 from the perspective of the telecommunications consumer.

The process and outcome reflect an instance in which a combination of politics and circumstance yielded a result that, if enforced, could benefit the public in a way few thought was possible after the mega-merger was announced last March.

By means of background, here is my version of the events leading up to the approval of the \$85.8 billion acquisition.

On March 5, 2006, AT&T and Bell South announced the merger, which would take a giant leap toward resurrecting the Bell System of old by creating a single entity that currently generates \$29.3 billion in revenue, has 58.7 wireless subscribers, 67.5 million access lines, and customers representing all members of the Fortune 100. (These statistics are provided by AT&T and are based upon third quarter 2006 numbers for AT&T, Bell South and Cingular, as well as the most recent SEC filing.)

All necessary filings were prepared and, in July of 2006, stockholders of both companies approved the merger. Shortly thereafter in October 2006, the Department of Justice gave its blessing, leaving the last regulatory hurdle of FCC approval.

Picture what the Road Runner is able to do when he arrives at a cliff, which is what happened next. The FCC, which as of June 1, 2006 was fully staffed (five commissioners — three Republicans and two Democrats), was one commissioner short for this purpose, as the newest commissioner, Robert McDowell, had come to the commission from Comptel, a lobbying organization that vigorously lobbied against the merger. As such, the newest commissioner recused himself from participating in the decision, and the commission found itself deadlocked. The two remaining Republican commissioners, including Chairman Kevin Martin who supported approval without imposing any conditions, and Deborah Taylor Tate, both favored the merger, while the two Democrats on the commission, Michael

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Copps and Jonathan Adelstein, opposed the merger for many reasons. The Democrats demanded concessions from AT&T before either could vote in favor of the merger.

In October, AT&T made what it said would be its final offer of concessions to consumers. In an effort to secure some resolution before the year's end, Chairman Martin asked the FCC's general counsel to consider allowing Commissioner McDowell to vote so the tie could be broken. Commissioner McDowell, an attorney licensed to practice in Virginia, contacted the state's ethics board regarding the appropriate conflict of interest rules. Ultimately, and after a good deal of public teeth gnashing, Commissioner McDowell abstained from voting, leaving the FCC deadlocked and the merger unapproved.

The merger was placed on, and subsequently was removed from, the agenda of the FCC Commissioners' last meeting of the year, held on Dec. 20, 2006. It became clear the FCC couldn't vote without some movement from AT&T. In an last ditch effort to secure approval before the year ended, AT&T returned to the table with an offer acceptable to all four voting commissioners. The merger was approved on Dec. 28, 2006.

Modifications ultimately proposed by AT&T are, by themselves, very interesting. Aside from conditions affecting network neutrality, some other interesting concessions include:

- ♦ AT&T will offer standalone DSL to customers in its service area at a monthly rate of \$19.95, for a period of 30 months.
- ♦ Rates for special access customers, including CLECs and large business customers, will be capped for 48 months.
- ♦ AT&T will divest itself of all of the 2.5 GHz spectrum currently licensed to Bell South within one year of the merger's closing date.

Perhaps the most interesting of all, is: Three thousand jobs, which Bell South had outsourced overseas, will be returned to the United States no later than Dec. 31, 2008, with a minimum of 200 of those jobs heading to New Orleans.

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Finally, with respect to net neutrality, AT&T has agreed to "maintain a neutral network and neutral routing in wireline and broadband Internet access service(s) for a period of two years."

It also agreed not to sell services to content providers establishing priorities among wireline broadband services, with the sole exception being its own IP television service.

In my opinion, the most interesting of these concessions is the one regarding the repatriation of jobs. It marks a brilliant maneuver on several fronts. First of all, foreign outsourcing is unpopular virtually everywhere (with the possible exception of shareholders' living rooms and corporate board rooms). To bring jobs back to American soil makes everyone feel good, as though maybe someone finally recognizes that whatever the cost savings might be, moving customer service jobs overseas is a bad idea and often counters the quality of that service. To require at least some of those jobs be in New Orleans is yet another feel good, if not practical, move. No one with even a

vague understanding of politics and the importance of public opinion would consider this to be a bad idea.

While Chairman Martin and Commissioner Tate made some rather loud grumbles about whether they, and presumably the Republican majority at the FCC, will stand behind the settlement and enforce it, this at least reflects a willingness by some parties to creatively resolve a logjam.

While I don't believe the process that concluded this way is any different than crafting legislation or making sausage (neither process is attractive), I applaud the innovative thinking and actions. Let's just keep a bright light on the repatriation of these jobs so this innovative idea doesn't get buried with the many other good, but never implemented, ideas.

Martha Buyer is an attorney concentrating in the practice of telecommunications law. Her clients range from Fortune 500 companies to small family-owned businesses for which she has provided a range of telecommunications consulting and legal services, primarily geared to support corporate end-users working with carriers and equipment providers. Buyer can be contacted at martha@marthabuyer.com.