

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Joint Application of SBC Communications Inc. and AT&T Corp. for Approval, to the Extent Necessary, of Agreement and Plan of Merger

ISSUE DATE: August 1, 2005

DOCKET NO. PT-6432, PT-6433/PA-05-349

ORDER APPROVING MERGER,
REQUIRING POST-MERGER FILING, AND
REQUIRING AT&T COMMUNICATIONS
OF THE MIDWEST, INC. AND TCG
MINNESOTA TO CONTINUE OPERATING
UNDER THEIR EXISTING CERTIFICATES
OF AUTHORITY

PROCEDURAL HISTORY

On March 1, 2005, SBC Communications Inc. (SBC) and AT&T Corp. (AT&T) filed a joint application for approval, to the extent necessary, of their Agreement and Plan of Merger (Merger Agreement), entered into on January 30, 2005.

On March 31 and May 10, 2005, the Minnesota Department of Commerce (the Department) filed comments, ultimately recommending approval. Several other persons made initial filings indicating their intention to participate in the case but later formally withdrew¹ or did not participate beyond the initial filing.²

On July 14, 2005, the case came before the Commission. At hearing two competitive local exchange carriers, Eschelon Telecom, Inc. and Jaguar Communications, Inc., appeared and urged the Commission to either deny the application or to condition merger approval on AT&T's compliance with the conditions of a stipulation relating to access charges, signed by other interexchange carriers, but rejected by AT&T, in an earlier complaint proceeding brought by the Department. They claimed that AT&T's refusal to sign the stipulation was in fact a refusal to comply with Minnesota law regarding access charges.

¹ The Residential and Small Business Division of the Office of the Attorney General, Covad Communications Company, and Eschelon Telecom, Inc.

² The Communications Workers of America.

FINDINGS AND CONCLUSIONS

I. The Companies

SBC is a voice, data, and Internet services provider for residential, business, and government customers. It is headquartered in San Antonio, Texas and primarily serves a 13-state region that does not include Minnesota. Through its subsidiaries, SBC serves 52.4 million access lines and has 5.1 million Digital Subscriber Lines in service. It holds a 60% economic and 50% voting interest in Cingular Wireless, which serves 49.1 million wireless customers. SBC is making a \$4 billion investment to bring next-generation Internet-Protocol-based services to 18 million households within three years.

SBC is a holding company parent of three operating subsidiaries authorized to provide telecommunications services in Minnesota. SBC Long Distance has long distance and conditional facilities-based local authority to provide telecommunications services. SBC Telecom has facilities-based local and interexchange authority. SNET LD has long distance and directory assistance authority.

AT&T provides domestic intrastate and interstate, and international, voice and data communications services to residential, business, and government customers. Its global communications networks are supported by the research and development of AT&T Labs. AT&T is a holding company parent of two operating subsidiaries authorized to provide telecommunications services in Minnesota, AT&T Communications of the Midwest, Inc. and TCG Minnesota. Both companies have certificates of authority to provide local and interexchange telecommunications services.

II. The Transaction

On January 30, 2005, SBC and AT&T entered into an Agreement and Plan of Merger whereby SBC will acquire 100% of the ownership and control of AT&T, and AT&T will be merged into a wholly owned subsidiary of SBC. The SBC subsidiary is a newly formed entity, created for the specific purpose of this transaction, named Tau Merger Sub Corporation (Tau).

AT&T will be the surviving entity of the merger with Tau, and the combined entity will retain the name AT&T. AT&T shareholders will receive .77942 shares of SBC stock for each share of AT&T stock they own, as well as a one-time cash dividend from AT&T of \$1.30 per AT&T share. SBC shareholders will continue to own SBC stock and will not otherwise be affected by the transaction.

Upon completion of the transaction, former AT&T shareholders will hold approximately 16% of SBC's outstanding shares. The Minnesota operating subsidiaries of SBC and AT&T will not be affected by the proposed transaction.

III. The Legal Standard

There are two statutes governing this transaction, Minn. Stat. § 237.23 and Minn. Stat. § 237.74, subd. 12. The first is the original telecommunications merger statute, applicable to

competitive local exchange carriers under Commission rules and enabling legislation.³ The second dates from 1993 and applies to all competitive carriers, whether they offer local service, long distance service, or both.

The first statute requires Commission consent before any merger or acquisition is consummated; the second requires a determination that the present or future public convenience and necessity requires the merger or acquisition.

Finally, state law requires the Commission to consider eight goals in executing its regulatory duties in regard to telecommunications services:

- (1) supporting universal service;
- (2) maintaining just and reasonable rates;
- (3) encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;
- (4) encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
- (5) maintaining or improving quality of service;
- (6) promoting customer choice;
- (7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service; and
- (8) encouraging voluntary resolution of issues between and among competing providers and discouraging litigation.

Minn. Stat. § 237.011.

IV. Positions of the Parties

The applicants contend that the present and future public convenience and necessity require the merger because the merger will enhance competition, improve service quality and reliability, accelerate technological innovation, and broaden the range of telecommunications services and options available to Minnesota consumers.

The Department of Commerce concurred with the applicants that the merger was in the public interest.

Eschelon Telecom, Inc. and Jaguar Communications, Inc. claimed that AT&T, acting as an interexchange carrier, had demonstrated an unwillingness to comply with Minnesota law on access charges and an unwillingness to deal in a good faith, commercially reasonable manner with the access charge claims of these two carriers. They urged the Commission to condition approval of the merger on AT&T's compliance with the conditions of a stipulation which it had refused to sign, but which all other major interexchange carriers had signed, resolving a complaint proceeding⁴ in which the Department had alleged industry-wide disregard of Minnesota's access charge laws.

³ Minn. Rules 7812.2210; Minn. Stat. § 237.035; Minn. Stat. § 237.16, subd. 13.

⁴ *In the Matter of a Complaint Regarding Negotiated Contracts for Switched Access Services*, Docket No. P-442, 5798, 5340, 5826, 5025, 5643, 443, 5323, 5668, 4661/C-04-235.

V. Commission Action

The Commission finds that the proposed merger meets the public interest standard of Minn. Stat. §§ 237.23 and 237.74. The record shows no reasonable likelihood of public harm, and it shows significant potential for public benefit, including the advancement of public policy goals set forth in Minn. Stat. § 237.011.

The financial strength and stability brought by the merger should free up resources for more effective use of AT&T's historic research facilities and its extensive network, spurring technological innovation and speeding its deployment. These outcomes would both advance the public interest and the infrastructure, service quality, and customer choice goals set by the Legislature in Minn. Stat. § 237.011.

Greater financial strength should also permit AT&T to compete more effectively in the geographic, demographic, and technological markets it targets, to the ultimate benefit of consumers. And since those markets intersect little with the markets targeted by SBC, it can do these things without reducing consumer choice or the number of competitors in the field. These outcomes, too, would advance the public interest and the pro-competitive goals of Minn. Stat. § 237.011.

Finally, under the terms of the merger, the two AT&T entities subject to Commission jurisdiction would continue to operate under their current certificates of authority and under current regulatory constraints, advancing the public interest and the universal service, reasonable rate, and consumer protection goals set by Minn. Stat. § 237.011. In short, the potential benefits of this merger outweigh potential harms, requiring a finding that the merger is supported by the public interest and necessity.

The only potential harm identified in this case – failing to hold AT&T accountable for alleged violations of Minnesota access-charge law and to ensure AT&T's future compliance – has not been factually developed in this case, cannot be appropriately addressed here, and can be fully and effectively addressed in another docket. The Commission therefore declines to defer action on the proposed merger pending development and resolution of Eschelon's and Jaguar's access charge claims.

While the Commission takes seriously the allegations raised by Eschelon and Jaguar, these allegations are contested, are the subject of another open docket,⁵ and may be the subject of future complaints by Eschelon or Jaguar. The Commission has a duty not to prejudge the issues that will be developed in other dockets, current or future.

Nor is there compelling reason to import these issues into this docket and resolve them now. AT&T will continue to be subject to Commission jurisdiction after the merger. The Commission will continue to discharge its duty to protect the public interest and ensure compliance with Minnesota law. And the proper vehicle for discharging that duty in regard to the claims raised by Eschelon and Jaguar is a separate proceeding in which those claims are fully developed.

⁵ *In the Matter of a Complaint Regarding Negotiated Contracts for Switched Access Services*, Docket No. P-442, 5798, 5340, 5826, 5025, 5643, 443, 5323, 5668, 4661/C-04-235.

For all these reasons, the Commission will approve the proposed merger. It will also require prompt notification when the merger has been consummated and will clarify that the AT&T entities acquired by SBC will continue to operate under their current certificates of authority, subject to the same regulatory requirements and proceedings as before the merger.

The Commission will so order.

ORDER

1. The Commission hereby approves the merger of SBC Communications, Inc. and AT&T Corp., including the indirect transfer of control of AT&T Communications of the Midwest, Inc. and TCG Minnesota, Inc. from AT&T Corp. to SBC Communications, Inc.
2. Within 20 days of the confirmation of the Merger Agreement SBC Communications shall file notice of consummation of the merger.
3. AT&T Communications of the Midwest, Inc. and TCG Minnesota, Inc. shall continue to operate under their current authorities conferred by the Commission and shall meet all obligations arising from pre-existing dockets.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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