

Questions for Chairman Martin and Commissioner Tate

1. In your Joint Statement accompanying the Commission's News Release announcing approval of the AT&T-BellSouth merger, you stated as follows: "[t]here are certain conditions, however, that are not self-effectuating or cannot be accomplished by AT&T alone. To the extent Commission action is required to effectuate these conditions as a policy forward, we specifically do not support those aspects of the conditions and will oppose such policies going forward."

A. When you stated that you "do not support" some of the merger conditions, did you mean that you voted against those conditions? If so, which condition or conditions did you not support or vote against?

Answer: Chairman Martin and I voted to approve the merger of AT&T and BellSouth, including the voluntarily commitments made by AT&T. In our separate statement, Chairman Martin and I stated specific concerns with two of the voluntary conditions: the need for an enforceable net neutrality commitment and AT&T's commitment regarding special access.

B. If both of you did not support the same subset of merger conditions as implied in your Joint Statement, how is it that the AT&T-BellSouth merger is legally deemed approved?

Answer: Chairman Martin and I voted to approve the merger of AT&T and BellSouth, including the voluntary commitments by AT&T. Commissioners Cops and Adelstein concurred in the decision; thus, the merger was approved by all participating commissioners.

C. What is your authority to vote to approve an order and then refuse to implement it? Please identify and describe the provisions of the Communications Act, sections of the FCC's rules and other legal authority, if any, supporting your answer.

Answer: Chairman Martin and I voted to approve the merger of AT&T and BellSouth, including the voluntary commitments by AT&T. Unlike other voluntary business commitments, special access condition number six will require future Commission approval. I expect the Commission's review of any tariff filed by AT&T to fully adhere to established law and precedent. *See* 47 U.S.C. § 202.

D. You further stipulate in your Joint Statement that "a minority of Commissioners cannot alter Commission precedent or bind future Commission decisions, policies, actions, or rules." What is the "minority of Commissioners" to which you referred? On what basis did you

determine that a “minority” existed for purposes of interpreting precedent or any future agency action?

Answer: An industry-wide policy of the Commission must be approved by a majority of the commissioners. While I voted to support the merger, including the voluntarily-agreed to conditions, it is important the conditions not represent the policy of the Commission with regard to the broader industry.

Questions for All Federal Communications Commission Members

1. Broadband Policy

- A. What is your assessment of broadband deployment, access, and affordability in the United States? What steps would you support the Commission taking to make broadband services (a) more accessible; (b) more affordable and (c) more robust? Are there other actions you would recommend be taken to promote further broadband deployment?

Answer: Our most recent data show that consumers continue to take broadband in increasing numbers. High speed lines have increased by over 50 percent in the last 12-month period with nearly 65 million broadband connections. Prices continue to drop while speeds continue to rise. Better data collection, however, will likely improve our ability to assess the state of broadband deployment, and may even increase competitive pressures to serve all areas throughout the country. Fostering an environment that encourages new competitive entry and broadband-capable networks may constrain prices while the quality, speed, and variety of broadband offerings expand.

I also support making additional spectrum available, giving the market additional tools to deliver competitive advanced services to consumers, consistent with the mandates of section 706 of the Telecommunications Act of 1996 (1996 Act). Further, I continue to support efforts through the Universal Service Fund, such as the E-rate and rural health programs, to ensure that citizens around the nation have access to the opportunities enabled by broadband.

- B. What is your assessment of the definitions and methodology the Commission uses to gauge broadband deployment, access, and affordability in the United States? Are there other actions you would recommend be taken to improve such definitions or methodologies?

Answer: The FCC collects data on services having the capability to support upstream and downstream speeds in excess of 200 Kbps in the last mile. The term broadband generally is used to signify “advanced telecommunications capability and advanced services.” The Commission has recognized that broadband providers are offering increasingly faster services, and that the speed defining “broadband” will evolve over time. This is particularly important because a transmission services that meet the current standards may not be capable of supporting bandwidth intensive services, like IP-video.

I was pleased to see that in November 2004, the Commission modified its data collection efforts to gather more refined information on broadband

connection speeds and deployment patterns. While these relatively recent refinements help generate a more accurate and useful assessment of the state of competition in the broadband market, we must also explore ways to better assess broadband deployment. For example, I note that the current geographic deployment measurement we rely upon is limited to five-digit zip code boundaries and I continue to support Commission proposals to seek a more precise measurement.

2. *Wireless and Spectrum Policy*

- A. Do you believe the commercial mobile service market is more or less competitive than it was five years ago? Do you believe that consumers in the commercial mobile service market would benefit from additional competitors?

Answer: Congress requires the Federal Communications Commission to report annually on the state of competition in Commercial Mobile Radio Services (CMRS), and I believe that our most recent report, released on September 29, 2006, shows a healthy and competitive wireless industry. Wireless technology has become a vital part of the world economy. As our report indicates, as of December 2005, there were approximately 213 million mobile telephone subscribers, which translate into a nationwide penetration rate of approximately 71 percent. Moreover, based on the Commission's most recent five-year data period (*i.e.*, 2000-2005), the number of counties in the United States with four or more wireless providers increased from 84% to 94%.

Yes. I believe that additional competition in the commercial mobile service market could benefit consumers. Congress made clear in the preamble to the 1996 Act that it expected the Commission to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." In fact, we are starting to see this as cable providers enter the wireless market. I am committed to working with my FCC colleagues and Members of this Committee to take steps to encourage the deployment of new and innovative services and to foster competition.

- B. What actions, if any, do you believe the Commission should take consistent with the Communications Act, to avoid "excessive concentration of licenses" and to disseminate licenses "among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women"?

Answer: As Commissioner, I will carry out the Congressional directive to promote the involvement of designated entities – *i.e.*, small businesses, rural telephone companies, and businesses owned by women and minorities – in

the provision of spectrum-based services. Moreover, the Commission should continue to facilitate the participation of small rural or regional providers in bidding for spectrum licenses. For example, in the AWS auction, spectrum was made available in smaller geographic service areas to provide greater opportunities for small providers to obtain access to this spectrum at auction. And, in August 2006, the Commission released a *Notice of Proposed Rulemaking* seeking comment on, among other things, the use of small license areas in those portions of the 700 MHz Band that have yet to be auctioned.

- C. What actions, if any, do you believe the Commission should take with regard to spectrum management?

Answer: I believe the FCC should continue to authorize the use of spectrum for commercial and public safety (state and local) communications services for the benefit of all Americans. The Commission should also continue to take steps to encourage the deployment of wireless services in rural areas and foster the deployment of wireless broadband service offerings to all Americans.

3. Digital Television Transition

- A. What general steps can the Commission take to enhance the level of preparedness of our nation for the upcoming digital television transition (DTV) in February of 2009?

Answer: The Commission has taken a number of steps in preparation for the approaching end of the digital television (DTV) transition. These include requiring all over-the-air television receivers and interface devices manufactured or shipped in the United States to have digital tuners by March 1, 2007; proposing a final DTV Table of Allotments to provide all eligible television stations with a channel for post-transition operations; and educating the public about the DTV transition through its website and other outreach efforts. As the transition progresses, I believe that the Commission should adopt a final DTV Table of Allotments in an expeditious manner, establish any additional, necessary rules and procedures to allow stations to complete construction of their final DTV facilities, and continue to coordinate with Canada and Mexico to resolve any disputes near the borders.

- B. What specific actions do you support the Commission taking with respect to the broadcasting, cable, programming content, manufacturing, or retail sector to enhance consumer education about the DTV transition?

Answer: As I noted above, the Commission has sought to educate consumers about the DTV transition through its website, www.dtv.gov, which contains a significant amount of useful information, and other outreach efforts. In addition, the Commission has requested an additional \$1.5 million for

consumer outreach in its FY 2008 budget. I believe that the Commission should use any funds appropriated to continue these efforts, by preparing publications, airing public service announcements, and partnering with those industry organizations that have a stake in a successful transition. Such partnership could include consultation with NTIA as it administers the national coupon program for over-the-air digital-to-analog converter boxes.

4. Overall Commission Policies

- A. In each of the major areas of the Commission's authority (e.g., wireline, wireless, universal service, broadcast radio and television, cable services, satellite, public safety, international), what actions, if any, do you believe the Commission should take?

Answer: Disruptive technologies and the continued convergence of industries will require the Commission to consider changes to existing policies. In all of the areas below, the Commission must continue to enforce the Act and our rules to ensure that all the people of the United States have available to them rapid and efficient communications services at reasonable charges, and that we promote the national defense and the safety of life and property.

Wireline: The Commission should continue to evaluate competitive conditions in our nation's markets and provide relief from regulations if competitive conditions make such regulations unnecessary.

Wireless: The Commission should continue to authorize the use of spectrum for commercial and public safety (state and local) communications services for the benefit of all Americans. The Commission should also continue to take steps to encourage the deployment of wireless services in rural areas and foster the deployment of wireless broadband service offerings to all Americans.

Universal Service: The universal service fund is now approaching nearly \$7 billion in annual outlays. As the converging communications landscape changes, the Commission must recognize how technological changes are putting strains on the mechanics of our contribution and distribution systems which must be addressed by technology-neutral policies. Therefore, the Commission should consider potential reforms on both the contribution and the distribution side of the fund. Currently, the Federal-State Joint Board is considering proposals designed to improve the distribution of high cost support to eligible providers and we plan to hold an en banc hearing later this month to hear from experts on these matters. It is essential that we utilize technology neutral, fair and understandable systems to sustain and stabilize the fund.

Broadcast Radio and Television: The Commission should complete its localism and media ownership proceedings in a timely manner. Moreover, the Commission should complete and issue its report to Congress on violent programming. In addition, the Commission should continue to enforce congressional restrictions on the broadcast of obscene, indecent, and profane programming.

Cable Services: The Commission should continue to encourage the industry to provide more choices for consumers, including children's and family friendly programming and innovative program package offerings. Also, the Commission should continue to encourage robust competition in the video marketplace.

Satellite: The Commission should continue to ensure that sufficient satellite communications capacity is available in times of national emergency. Hurricanes Katrina, Rita, and Wilma taught us the critical importance of satellite communications for emergency first responders. Moreover, the Commission should continue to promote broadband and other innovative services via satellite.

Public Safety: The Commission and, in particular, the newly established Public Safety and Homeland Security Bureau must take all necessary measures and steps to facilitate effective communications during and after a disaster. Also, we must take measures to promote interoperable communications and take advantage of new developments across platforms

International: The FCC must continue to connect the globe for the good of consumers through prompt authorizations, training, innovative spectrum management, and responsible global leadership. This includes working closely with the U.S. State Department and NTIA to coordinate and represent U.S. positions at the World Radio Conference -07 and other international meetings. As all these industries increasingly operate in a global marketplace, the Commission must continue to work cooperatively with the International Telecommunications Union, foreign ministries, and other global organizations. For instance, successfully completing the 800 MHz rebanding process and complying with the February 2009 DTV transition deadline will require close coordination with Canada and Mexico.

5. Commission Process and Functioning

- A. What steps, if any, can the Commission take to enhance the depth and accuracy of its collection of data and analysis of affected industries?

Answer: The Commission collects valuable information to assist its decision-making in a variety of areas. One area of the Commission's data collection that is of particular interest to me regards broadband deployment. The FCC

collects data regarding broadband deployment based on connections within a five-digit zip code. Some, including the GAO, have identified limitations in our data collection and I support efforts to evaluate how to collect data on a more granular geographic basis. I also support efforts to collect data by other entities such as NTIA, as well as state (*e.g.*, Connect Kentucky) and local governments.

- B. What steps, if any, can the Commission take to better prevent waste, fraud, or abuse in programs it administers?

Answer: It is critical that we ensure the integrity of the programs the Commission administers. One of the largest programs the Commission administers is the universal service program. The Commission already has undertaken a number of steps to improve its oversight of this program, including increased auditing, aggressive enforcement, and a pending proceeding regarding the management, administration, and oversight of universal service. Recent Commission enforcement efforts have resulted in the recovery of substantial underpayments to the fund, millions of dollars in consent decrees and fines, and several debarments.

- C. What steps, if any, can the Commission take to enhance communications with the public in rulemaking and adjudication proceedings before the Commission?

Answer: In my capacity as a state official and as an FCC Commissioner, I have been a proponent of ongoing public outreach initiatives. Transparency in government decision making is important, as is public input, and forms the basis of our nation's administrative procedure laws. I will continue to support steps to ensure that the FCC's rule making process is open and that the public and all interested stakeholders have the opportunity to participate in that process.