

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Joint Application of AT&T CORP.,
AT&T BROADBAND PHONE OF UTAH, LLC,
and AT&T COMCAST CORP. For Approval of a
Change in Control of AT&T BROADBAND PHONE
OF UTAH, LLC.

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DOCKET NO. 02-087-02
REPORT AND ORDER

ISSUED: August 7, 2002

By the Commission:

PROCEDURAL HISTORY

On March 6, 2002, AT&T Corporation, AT&T Broadband Phone of Utah, LLC. (AT&T Broadband-Utah), and AT&T Comcast filed a joint Application seeking Commission approval of transactions which will change the ultimate control of AT&T Broadband-Utah to AT&T Comcast. AT&T Broadband-Utah, a Utah certificated telecommunications carrier, is a limited liability company whose current member is AT&T Broadband Phone, LLC, a wholly owned subsidiary of AT&T Corporation. Through proposed transactions, described in the joint Application, AT&T Corporation and Comcast Corporation intend to have their broadband businesses controlled by AT&T Comcast. Through these transactions, AT&T Corporation's broadband assets, including AT&T Broadband-Utah, will be contributed to a new, wholly owned holding company, AT&T Broadband Corporation. AT&T Corporation will spin off AT&T Broadband Corporation to AT&T Corporation's shareholders. Immediately following the spin off, AT&T Broadband Corporation will merge with a wholly owned subsidiary of AT&T Comcast Corporation. Comcast Corporation will similarly transfer its broadband assets and activities to another, wholly owned subsidiary of AT&T Comcast Corporation. The result will be that AT&T Comcast Corporation will own and control, through two separate subsidiaries respectively, the broadband assets and operations of AT&T Corporation, (including AT&T Broadband-Utah) and Comcast Corporation.

The joint Application states that the current operations of AT&T Broadband-Utah will not be altered by the proposed transactions and customers of AT&T Broadband-Utah will experience no change in their rates, services or service provider. The joint Applicants state that the proposed transactions are in the public interest by providing AT&T Broadband-Utah access to the combined managerial resources, financial strength, technical expertise and network capabilities from the combination of AT&T Corporation's and Comcast Corporation's broadband operations. They represent that this combination will allow AT&T Broadband-Utah to compete more effectively and efficiently. They further represent that this will allow AT&T Broadband-Utah to have greater resources to invest in new facilities, customer service, and technological innovation in serving customers in Utah.

The joint Application requested a waiver from Rule 746-349-5, the Commission's rule concerning change in service providers, should the Commission determine that the rule has application in consummating the proposed transactions.

On July 22, 2002, the Division of Public Utilities (Division) submitted its memorandum recommending that the Commission grant the relief requested in the application and approve the proposed change in control of AT&T Broadband-Utah. The Division concludes that the merger will strengthen one of the few competitors providing public telecommunications services in the residential market in Utah. The Division concludes that the merger and change in control is in the public interest by giving the company access to better technical and operational expertise, greater back-office and customer care systems, and increased financial resources, all combining to improve the company's ability to compete. The Division reports that the proposed transactions can be implemented in Connecticut, Illinois, Indiana, Mississippi, Oregon, Washington, and New Hampshire without regulatory hearing. The proposed transactions have been examined and approved in Colorado, Minnesota, Florida, Texas, and West Virginia. The Division's memorandum

further notes that the proposed transactions are expected to be approved in Virginia, Pennsylvania, and California by August.

On June 18, 2002, Qwest Corporation (Qwest) sought to intervene in this docket. Qwest requested that the Commission condition approval of the proposed transactions on AT&T Broadband Corporation making its network open to competitors, parity in the pricing regulation of cable telephone service with the regulation imposed on Qwest, and that Comcast and AT&T Comcast undertake provider of last resort obligations. AT&T Corporation, AT&T Broadband-Utah, and AT&T Comcast filed responsive pleading opposing Qwest's intervention. All essentially argue that the issues and relief sought by Qwest have little, if any, relevance to the change in control sought in the joint application. The Division also concluded that the issues raised by Qwest are not appropriately addressed in these proceedings.

We agree with the arguments made by the parties opposing Qwest's intervention and the specific issues and relief sought by Qwest. The joint applicants state that AT&T Comcast will comply with federal and state law. Irrespective of the joint applicants' commitment to comply with the law, we are unaware of how any change in the control of AT&T Broadband-Utah, through the proposed transactions, would alter any federal or state law requirements. With respect to the Utah statutory obligation for telecommunications corporations to provide other telecommunications corporations with access to essential facilities (*see*, Utah Code Ann. §54-8b-2.2), the change in control would have no impact. The state law requirement is not conditioned upon who controls AT&T Broadband-Utah.

We agree with the contentions that the other conditions sought by Qwest are actually requests by Qwest for modifications of its own regulatory treatment and responsibilities, not appropriately conditions to be placed on the transfer of control of AT&T Broadband-Utah. AT&T Broadband-Utah's operations will not be altered as a result of the change in control. Its future operational prospects may improve from the change in control, but its current position in the Utah telecommunications market will not change. The pricing flexibility enjoyed by AT&T Broadband-Utah is conferred by Utah statute. The statute does not permit us to remove this statutory benefit. It is not dependant upon who controls AT&T Broadband-Utah. Qwest's access to pricing flexibility is also controlled by Utah statute. Qwest has sought and received pricing flexibility. Qwest may seek additional authority where and when it believes it qualifies under statutory provisions. Utah statutes provide the method by which Qwest is placed at what Qwest would characterize as regulatory parity with other telecommunications corporations operating in Utah. We believe we should apply the statutory scheme in Utah by using direct modification of Qwest's own operational opportunities and responsibilities, rather than an oblique, indirect mechanism of placing conditions on a requested change in control of other providers; even if we are permitted to impose such conditions. We conclude that the issues and proposed conditions raised in Qwest's Petition to Intervene are not relevant to the examination we are to make in relation to the joint Application seeking approval of the change in control of AT&T Broadband-Utah.

We conclude that we may grant the joint application and approve the change in control. The verified application identifies benefits that will be obtained through the merger of AT&T and Comcast and how the proposed transactions will redound to benefit AT&T Broadband-Utah's operations in Utah. The Division's examination confirms the joint applicants' representations and concludes that the change in control provides public interest benefits without opposing detriments which would preclude approval. As there will be no change in service provider, AT&T Broadband-Utah will continue to provide service to Utah customers, we also conclude that Rule 746-349-5 does not apply. The merger is intend to be completed in the Fourth Quarter of 2002, the applicants ask that their joint Application be approved by August 1, 2002. We conclude that the timing of the merger constitutes good cause and we may waive the 20-day tentative period provided for in informal proceedings under Rule 746-110.

ORDER

NOW, THEREFORE, IT IS HERBY ORDERER, that:

- The relief requested in the March 6, 2002 joint Application is granted. The proposed transactions are approved to obtain the change in control of AT&T Broadband-Utah.
- As these proceedings have been conducted informally under Rule 746-110, any person may file a protest hereto. The Commission waives the 20-day tentative period and our order herein automatically becomes effective without further action and constitutes final agency action. Any protest hereto will be treated as a request for

review/reconsideration pursuant to Utah Code Ann. §54-7-15 and the Utah Administrative Procedures Act, Utah Code §§63-46b-1 *et seq.*

Dated at Salt Lake City, Utah, this 7th day of August, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

GW #30396