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Judge to Review Phone-Merger Pacts

Scrutiny of Antitrust Terms May Impede Future Tie-Ups; A Test of Strengthened Law

By **DIONNE SEARCEY** and **MARK H. ANDERSON**

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In a hearing that may raise questions about **AT&T** Inc.'s planned takeover of **BellSouth** Corp., a federal judge said he would extensively review the antitrust agreements in two recent megamergers of Bell phone companies and long-distance companies.

U.S. District Judge Emmet Sullivan is reviewing **Verizon Communications** Inc.'s acquisition of **MCI** Inc. as well as the former **SBC Communications** Inc.'s takeover of **AT&T** Corp. (SBC adopted AT&T's moniker to become AT&T Inc.)

The judge could decide whether to impose new conditions on the deals by Verizon and AT&T. He said that on July 25 he may announce whether he will require additional hearings and call in expert witnesses and government officials who initially scrutinized the deals.

Both mergers closed months ago, and the new companies are fully operational. It isn't likely the judge has legal authority to outright undo the deals, say attorneys. But his actions could impede future mergers, including AT&T's planned takeover of BellSouth.

Analysts have expressed concern about questions the judge has raised about the mergers. A.G. Edwards Tuesday downgraded BellSouth to "sell" from "neutral," saying the merger with AT&T "may face greater

than expected regulatory scrutiny," said analyst Kent Custer.

Courts have more authority to review antitrust agreements under Congress's 2004 bolstering of the Tunney Act, a response to criticism that many judicial reviews were largely perfunctory. Yesterday's hearing marked one of the most significant tests of the strengthened law.

The hearing was limited to a review of the consent decree between the telecom companies and the Justice Department. Justice officials approved the deals on the condition that AT&T and Verizon opened up their fiber lines to new competitors in some of their buildings.

The judge said he had doubts whether the antitrust agreements fully addressed public-interest concerns about the mergers, though he said he may find the government's actions to be satisfactory.

Lawyers for the Justice Department and the phone companies said they didn't believe changes in the law require the judge to do an expansive review of the government's merger decisions.

Two groups representing Bell competitors as well as New York Attorney General Eliot Spitzer have challenged the mergers, arguing that the conditions imposed by the Justice Department failed to boost competition. "These are bad deals," said Gary Reback, an attorney representing groups of competitors who in the mid-1990s persuaded the Justice Department to investigate Microsoft Corp. for antitrust violations.

AT&T and Verizon could appeal a ruling not to their satisfaction, a process that could take months.

AT&T has said it expects to close its BellSouth deal by the end of the year and that the merger would be on track regardless of the judge's decision. Legal analysts, however, said it could be delayed as federal agencies await a definitive outcome of the hearings or more carefully review the merger.

"What the judge writes will be a good road map for future consent decrees," John Thorne, deputy general counsel for Verizon, said after the hearing.

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