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April 29, 1998

By Hand

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, DC 20554

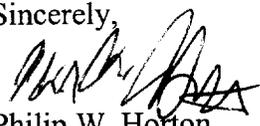
Re: SBC/SNET Merger; CC Docket No. 98-25

Dear Ms. Salas:

Enclosed for filing in connection with the referenced matter, please find an original and twelve copies, as well as three microfiche copies, of the Joint Opposition of SBC Communications Inc. and Southern New England Telecommunications Corporation to Petitions to Deny and Reply to Comments.

Thank you for assistance.

Sincerely,



Philip W. Horton

Q12

SUMMARY

The pending transfer Applications, together with the material contained in this Joint Opposition, demonstrate that the proposed transaction fully satisfies all elements of the Commission's public interest test. Accordingly, the Commission should promptly grant its unconditional consent to the transfer of control of the licenses and authorizations that are the subject of these Applications.

Five parties have submitted comments or petitions in response to the transfer of control applications filed by SBC and SNET on February 20, 1998 (the "Applications"). Nothing in these pleadings creates any issue that might justify disapproving or conditioning the merger. These parties' claims -- most of which seek to raise issues that are properly the subject of other proceedings -- are without merit or relevance to this proceeding.

First, it is beyond dispute that the merger will produce benefits in several markets. No commenter or petitioner has seriously questioned the public interest benefits described in detail in the Public Interest Statement included in the Applications.

Second, the merger will not lessen competition in any market -- a conclusion bolstered by the fact that the Justice Department declined even to issue a second request seeking further information under the Hart-Scott-Rodino Act. While MCI and Omnipoint assert a loss of potential competition, their principal claims -- that SBC was likely to enter the local exchange business in Connecticut absent the merger, that there are no other equivalent likely entrants, and that the combined company will subject the major IXCs to a "price squeeze" -- are either factually insupportable or basically identical to claims that MCI made and the Commission rejected just last year in considering the merger of SBC and Pacific Telesis Group and that of Bell Atlantic and NYNEX.

Third, there is no basis for imposing conditions, as MCI requests, with respect to the opening of local markets. The matters as to which MCI wants conditions imposed are already the subject of numerous other proceedings before state commissions and this Commission, and – in any event – MCI’s claims regarding the market opening activities of SBC and SNET are wrong.

Fourth, there is no basis for using this transfer of control proceeding to address completely unrelated issues – such as Omnipoint’s request for support of Calling Party Pays service and collocation of its PCS antennas on SBC’s cellular towers, or the claims of Metrocall and PCIA regarding a dispute over LEC charges to paging companies. It is well established that these sorts of issues do not belong in transfer of control proceedings, but rather should be – and are – the subject of rulemaking and other proceedings.

Finally, SBC’s qualifications to control SNET are beyond any reasonable question, and Omnipoint’s attempt to relitigate an alleged character issue that the Commission already considered and disposed of in the SBC/Telesis merger proceeding should be rejected.

The small number of comments and petitions, together with the fact that many of the commenters and petitioners are primarily complaining about matters unrelated to the merger that are the subject of other proceedings, demonstrates that there is no colorable basis for opposing the merger. The fact is that this merger will not harm competition in any way, and the benefits of the merger are clear. Accordingly, the Commission should grant the Applications expeditiously and unconditionally.

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	2
II. THE STANDARD OF REVIEW APPLICABLE TO A TRANSFER OF CONTROL.....	3
III. THE PROPOSED MERGER WILL SERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY	6
A. The Merger Will Produce A Number Of Benefits.....	6
1. CMRS Service	7
2. Local Exchange And Exchange Access.....	7
3. Long Distance Service	8
B. The Challenges To These Benefits Are Hollow	8
IV. THE PROPOSED MERGER WILL NOT LESSEN COMPETITION.....	9
A. There Will Be No Loss Of Actual Or Potential Competition.....	9
1. SBC Was Not A Potential Entrant In Connecticut	10
2. Numerous Other Firms Are Potential Competitors In Connecticut	13
B. There Will Be No Adverse Effect On Competition Due To A "Price Squeeze"	17
C. There is No Reason To Impose Conditions With Respect To The Opening Of Local Markets	19
1. MCI's Proposed Conditions Must Be Addressed In Other Proceedings.....	20
(a) SNET America Should Not Be Divested.....	21
(b) Access Charge Reductions Should Not Be Ordered.....	22
2. Inner City Press's Attempt To Rely On The Selwyn Report Is Misplaced.....	23
3. SBC Has Taken Strong Steps To Open Its Local Markets To Competition	25

4.	The Merger Will Not Reduce The Number Of Local Carriers Available For Benchmarking.....	26
V.	DISPUTES THAT COMMENTERS HAVE WITH SBC OR SNET ON MATTERS UNRELATED TO THE MERGER ARE PROPERLY THE SUBJECT OF OTHER PROCEEDINGS AND SHOULD BE DISREGARDED	28
A.	Omnipoint	28
1.	Calling Party Pays.....	28
2.	Tower Collocation	33
B.	PCIA/Metrocall.....	34
VI.	SBC IS FULLY QUALIFIED TO CONTROL SNET'S WIRELESS LICENSES AND SECTION 214 AUTHORIZATIONS	37
A.	SBC's Qualifications Are Well Established	37
B.	The Great Western Case Does Not Provide A Basis For Challenging SBC's Qualifications.....	39
C.	The Commission Has Previously Found No Evidence That SBC Exports Allegedly Anticompetive Conduct.....	41
VII.	CONCLUSION.....	42

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

_____)	
In the Matter of Applications)	
for Consent to the Transfer)	
of Control of Licenses and)	
Section 214 Authorizations from)	
_____)	
Southern New England Telecommunications)	CC Docket No. 98-25
Corporation,)	
Transferor)	
_____)	
To)	
_____)	
SBC Communications Inc.,)	
Transferee)	
_____)	

**JOINT OPPOSITION OF SBC COMMUNICATIONS INC.
AND SOUTHERN NEW ENGLAND TELECOMMUNICATIONS
CORPORATION TO PETITIONS TO DENY AND REPLY TO COMMENTS**

Pursuant to the Public Notice issued on February 27, 1998, SBC Communications Inc. ("SBC") and Southern New England Telecommunications Corporation ("SNET") (jointly, the "Applicants") hereby submit this joint opposition to the five comments or petitions to deny that have been filed in this proceeding.¹

¹ These five submissions consist of: Comments of MCI Telecommunications Corporation (Mar. 30, 1998) ("MCI Comments"); Petition to Deny of Omnipoint Communications, Inc. (Mar. 30, 1998) ("Omnipoint Petition"); Petition to Deny of Metrocall, Inc. (Mar. 30, 1998) ("Metrocall Petition"); Petition of The Personal Communications Industry Association to Deny or to Defer Action (Mar. 30, 1998) ("PCIA Petition"); Petition to Deny filed by Inner City Press/Community on the Move & Inner City Public Interest Law Project (Mar. 27, 1998) ("Inner City Press Petition").

I. INTRODUCTION

Five parties have submitted comments or petitions in response to the Applications. Nothing in these pleadings creates any issue that might justify disapproving or conditioning the merger. These parties' claims – most of which seek to raise issues that are properly the subject of other proceedings – are without merit or relevance to this proceeding, and the Commission should dismiss the petitions and promptly grant the Applications.

First, it is beyond dispute that the merger will produce benefits in several markets. No commenter or petitioner has seriously questioned the public interest benefits described in detail in the Public Interest Statement included in the Applications.

Second, the merger will not lessen competition in any market – a conclusion bolstered by the fact that the Justice Department declined even to issue a second request seeking further information under the Hart-Scott-Rodino Act. While MCI and Omnipoint assert a loss of potential competition, their principal claims – that SBC was likely to enter the local exchange business in Connecticut absent the merger, that there are no other equivalent likely entrants, and that the combined company will subject the major IXCs to a “price squeeze” – are either factually insupportable or basically identical to claims that MCI made and the Commission rejected just last year in considering the mergers of SBC and Pacific Telesis Group and of Bell Atlantic and NYNEX.

Third, there is no basis for imposing conditions, as MCI requests, with respect to the opening of local markets. The matters as to which MCI wants conditions imposed are already the subject of numerous other proceedings before state commissions and this Commission, and – in any event – MCI's claims regarding the market opening activities of SBC and SNET are wrong.

Fourth, there is no basis for using this transfer of control proceeding to address completely unrelated issues – such as Omnipoint’s request for support of Calling Party Pays service and collocation of its PCS antennas on SBC’s cellular towers, or the claims of Metrocall and PCIA regarding a dispute over LEC charges to paging companies. It is well established that these sorts of issues do not belong in transfer of control proceedings, but rather should be – and are – the subject of rulemaking and other proceedings.

Finally, SBC’s qualifications to control SNET are beyond any reasonable question, and Omnipoint’s attempt to relitigate an alleged character issue that the Commission already considered and disposed of in the SBC/Telesis merger proceeding should be rejected.

The small number of comments and petitions, together with the fact that many of the commenters and petitioners are primarily complaining about matters unrelated to the merger that are the subject of other proceedings, demonstrates that there is no colorable basis for opposing the merger. The fact is that the merger will not harm competition in any way, and the benefits of the merger are clear. Accordingly, the Commission should grant the Applications expeditiously and unconditionally.

II. THE STANDARD OF REVIEW APPLICABLE TO A TRANSFER OF CONTROL

The proposed SBC/SNET merger is similar to other mergers which the Commission has approved in recent years.² In such cases, the Commission found that the mergers presented no,

² See, e.g., In re Applications of Pacific Telesis Group and SBC Communications, Inc., Memorandum Opinion and Order, 12 FCC Rcd. 2624 (1997) (“SBC/Telesis Order”); In re Applications of Centel Corp. and Sprint Corp., Memorandum Opinion and Order, 8 FCC Rcd. 1829, aff’d, Memorandum Opinion and Order, 8 FCC Rcd. 6162 (1993); In re Applications of Centel Corp. and GTE Corp., Memorandum Opinion and Order, 6 FCC Rcd. 1003 (1991).

or minimal, adverse effects on competition and would likely bring procompetitive, public interest benefits. The same analytical framework used in those decisions should apply here.

MCI, however, asserts that the Commission should apply the special analytical framework used in In re Applications of NYNEX Corp. and Bell Atlantic Corp., Memorandum Opinion and Order, 12 FCC Rcd. 19,985 (1997) (“Bell Atlantic/NYNEX Order”).³ MCI’s reliance on the Bell Atlantic/NYNEX Order is misplaced. In fact, MCI offers no justification why that method of analysis should be applied here. MCI simply presents this proposition as a self-evident conclusion.

That methodology applies “[w]ith respect to mergers that may present horizontal market power concerns.”⁴ As the Commission noted throughout the Bell Atlantic/NYNEX Order, there was ample evidence in the record – primarily from Bell Atlantic’s own files – that Bell Atlantic had been planning to compete with NYNEX in LATA 132 (New York City).⁵ To the contrary – as set forth in the SBC/SNET Applications, as discussed in Section IV below, and as attested to in the Affidavits of James S. Kahan and Anne U. MacClintock attached hereto as Exhibits 1 and 2 – SBC and SNET do not compete and had no plans to compete in each other’s territories.

³ MCI Comments, pp. 1-2.

⁴ Bell Atlantic/NYNEX Order, ¶ 37. Others have observed that the Bell Atlantic/NYNEX Order methodology should apply only to mergers between competitors or actual potential competitors. See Pet. to Deny of GTE Service Corp. in In re Applications of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp., CC Dkt No. 97-211, p. 5 (Jan. 5, 1998) (arguing that the Commission’s Bell Atlantic/NYNEX Order standards govern all mergers that may present horizontal market power concerns); Mot. to Dismiss of GTE Service Corp. in In re Applications of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp., CC Dkt No. 97-211, p. 3 (Jan. 5, 1998) (“These standards are universal requirements and they apply to all horizontal mergers.”).

⁵ See, e.g., Bell Atlantic/NYNEX Order, ¶¶ 8, 73, 75, 76, 240-43.

Despite the speculation by MCI and Omnipoint,⁶ they do not and cannot offer any evidence to contradict these facts.

Since the merger of Bell Atlantic and NYNEX involved a merger of two LECs which had plans to compete in each other's territory, a more rigorous analysis of competitive benefits was deemed to be required. The Commission itself contrasted that situation with its earlier approval of the SBC/Telesis merger, where it noted that "there was no realistic suggestion that either one had ever considered entering the other's markets for local exchange service."⁷

Moreover, MCI misreads Bell Atlantic/NYNEX. The order in that case does not require an affirmative showing that all mergers will enhance competition in order to obtain Commission approval. What it says is that if the proposed merger will result in harm to competition, then the parties must show that the competition-enhancing effects of the proposed merger outweigh that harm. If there is no harm to competition, however, there is no requirement to show that competition is enhanced. While the Commission has applied the Bell Atlantic/NYNEX standard to other mergers, in each case there was some competitive overlap. No such circumstance exists in this matter.

⁶ See MCI Comments, pp. 5-6; Omnipoint Petition, pp. 11-14.

⁷ Bell Atlantic/NYNEX Order, ¶ 69. Similarly, the Wireless Bureau recently stated: "In the BA-NYNEX Order, the Commission fully articulated its general approach to merger analysis in a case concerning the competitive effects of a merger between adjacent incumbent LECs." In re Applications of PacifiCorp Holdings, Inc. and Century Tel. Enters., Inc., Memorandum Opinion and Order, Rpt. No. LB-97-49, 1997 WL 640871, ¶ 13 (Oct. 17, 1997) (approving applicants with nine contiguous LEC territories). The Commission recently applied the Bell Atlantic/NYNEX standard in the merger of two mobile service providers, which had certain overlapping service areas. See In re Applications of Pittencrieff Communications, Inc., and Nextel Communications, Inc., Memorandum Opinion and Order, CWD No. 97-22, 1997 WL 661865 (Oct. 24, 1997). Here, there is no overlap between the Applicants' service areas.

Nevertheless, for the reasons discussed below and in the Applications, SBC is well qualified to control SNET's authorizations, there is no harm to competition in any relevant market, and the merger will in fact result in pro-competitive public interest benefits.

Accordingly, even if the Commission were to utilize the special Bell Atlantic/NYNEX method of analysis here, this merger should be approved.⁸

III. THE PROPOSED MERGER WILL SERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

A. The Merger Will Produce A Number Of Benefits

The Applications detail the range of public benefits which the merger will produce in markets for CMRS service, local exchange and exchange access service, and long distance service. Those benefits are summarized below. The commenters and petitioners have put forward a number of unsupportable arguments which, they assert, refute the Applicants' position regarding the benefits this merger will produce. Most of their arguments, frankly, either have nothing to do with this merger or they represent stale claims regarding past practices of SBC which this Commission has already reviewed and found to be no obstacle to the SBC/Telesis merger.

⁸ Others have recognized this as well. See Mot. to Dismiss of Bell South Corp., In re Application of AT&T Corp. and Teleport Communications Group, Inc. for Transfer of Control, CC Dkt No. 98-24, p. 7 (Mar. 18, 1998) ("SBC's recent application concerning its proposed acquisition of SNET provides a serious and substantive discussion of the public interest. That application involves two carriers that have no horizontal overlaps, whose principal markets are separated by thousands of miles, and who have no vertical relationships. Yet, the application's public interest discussion is long and detailed, and includes facts concerning the markets and competitors involved.").

1. CMRS Service

The merged company will be able to offer both enhanced one-stop shopping and a much broader local calling scope to compete with the large calling scopes already being offered in New England by such major competitors as Bell Atlantic, Sprint, Nextel and Omnipoint⁹ – a benefit that the Commission has previously recognized in approving transactions creating larger regional CMRS systems.¹⁰ Moreover, SNET's current customers will benefit from the ability of its cellular operations to take advantage of both SBC's recognized expertise in operating advanced cellular networks and its superior purchasing power for network equipment and CPE.

2. Local Exchange And Exchange Access

The merger will enhance SNET's ability to fulfill its obligations under Connecticut law and the Telecommunications Act of 1996 ("1996 Act") to open up local markets to competition and to compete effectively in those markets. As discussed in the Applications, SNET has

⁹ Since Omnipoint – like MCI – is a competitor that will face more effective competition when the merger is completed, its opposition is not surprising. The Commission needs to exercise extra care in evaluating the comments of a competitor, whose self interests may not coincide with the public interest. See, e.g., Alberta Gas Chems. Ltd. v. E.I. Du Pont de Nemours and Co., 826 F.2d 1235, 1239 (3d Cir. 1987) ("Courts have carefully scrutinized [antitrust] enforcement efforts by competitors because their interests are not necessarily congruent with the consumer's stake in competition. . . . Conduct that harms competitors may benefit consumers – a result the antitrust laws were not intended to penalize."); see also A.A. Poultry Farms, Inc. v. Rose Acre Farms, Inc., 881 F.2d 1396, 1403-04 (7th Cir. 1989) ("[C]ourts should treat with great skepticism complaints by competitors who are injured by the low prices that customers adore, when the customers are content.").

¹⁰ See, e.g., In re Bell Atlantic Mobile Sys., Inc. and NYNEX Mobile Communications Co., Order, 10 FCC Rcd. 13,368, ¶¶ 45-46 (1995) ("Bell Atlantic/NYNEX Mobile Order") (citing In re Application of Corpus Christi Cellular Tel. Co., 3 FCC Rcd. 1889 (1988) ("Corpus Christi"); Corpus Christi, ¶ 19 ("In addition to McCaw's public interest statement to the effect that regional systems . . . are in the public interest, such conclusion had previously been confirmed by the Commission, by the experience of large wireline operators and by McCaw's own experience in other regional clusters nationwide."); see also In re Application of Madison Cellular Tel. Co., 2 FCC Rcd. 5397, ¶ 4 (1987).

already taken substantial steps to facilitate competition in Connecticut, and major players – like AT&T/Teleport and MCI/WorldCom/MFS/Brooks Fiber – have entered the market. The need to compete with such large providers was one of the principal factors that convinced SNET that it should affiliate with a larger company that has the resources required to compete in this new environment. By gaining access to SBC's financial resources, research and product development capabilities, purchasing power, and marketing expertise, SNET will be able to maintain itself as an effective and innovative competitor.

3. Long Distance Service

The merger will create public interest benefits for the long distance customers of both SNET and SBC. SNET's long distance affiliate, SNET America, Inc. ("SNET America"), has enjoyed success, but its share of long distance minutes of use is significantly below its share of long distance customers. SNET will benefit from the increased financial resources available to the merged company and from being able to take advantage of SBC's superior purchasing power for the long distance service that SNET resells. Moreover, SBC's own out-of-region long distance operations will benefit from SNET's expertise in long distance.

B. The Challenges To These Benefits Are Hollow

Perhaps the best indication that these benefits will be realized is that none of the comments or petitions seriously questions the likely benefits of the merger. Instead, most of the commenters and petitioners primarily seek to use the merger as a forum for resolving disputes with SBC and SNET that have nothing to do with the merger and to pursue agendas which are properly the subjects of other proceedings. They do not question such benefits as larger calling scopes for the Applicants' CMRS customers, access to SBC's purchasing power, or access to

each other's strengths in areas such as research and development as well as the provision and marketing of long distance service.

The reason for this silence is simple: the benefits of the merger are clear. Given these benefits, and the fact that the merger will have no adverse effect on competition, the Commission should approve it expeditiously.

IV. THE PROPOSED MERGER WILL NOT LESSEN COMPETITION

A. There Will Be No Loss Of Actual Or Potential Competition

None of the commenters and petitioners has argued – or could argue – that the merger would eliminate or reduce any actual competition. SBC and SNET do not compete and had no plans to do so. Nevertheless, MCI and Omnipoint contend that the merger will eliminate potential competition in Connecticut. This contention must be rejected for two indisputable reasons:

- There is no evidence that, absent the merger, SBC would have entered SNET's region as a local exchange or long distance carrier – in fact, all the evidence is to the contrary; and
- Where, as here, there are numerous other firms that have actually entered the local exchange and other businesses in SNET's region, and there are many other likely entrants with advantages that SBC lacks, there is no objective reason to believe that the loss of one putative potential entrant would have any effect on future competition.

Moreover, the legal status of the potential competition theory is uncertain. While some courts have considered antitrust challenges to mergers that do not eliminate existing competition on the ground that they may reduce actual potential (i.e., future) competition, the Supreme Court

has declined to adopt the doctrine.¹¹ At a minimum, however, where this theory is recognized it requires proof of five elements:

- (1) the target market is highly concentrated;
- (2) few other potential entrants are "equivalent" to the acquiring firm;
- (3) the acquiring firm would have entered the market independently but for the merger;
- (4) it was feasible for the acquiring firm to enter the market; and
- (5) entry by the acquiring firm would ultimately deconcentrate the target market or produce procompetitive effects.¹²

MCI and Omnipoint assert that the second and third elements have been met here. They are wrong.

1. SBC Was Not A Potential Entrant In Connecticut

A firm is not considered an actual potential competitor unless there is a showing that the acquiring firm "would, but for the acquisition, have entered the market as a competitor in the near future." United States v. Siemens Corp., 621 F.2d 499, 505 (2d Cir. 1980). The standard of proof of likely entry is a rigorous one. As the Fourth Circuit stated in FTC v. Atlantic Richfield Co., 549 F.2d 289, 294-95 (4th Cir. 1977), there must be "clear proof" that one merging firm would have entered the other's market. Accord In re B.A.T. Indus., Ltd., 104 F.T.C. 852, 926

¹¹ The Supreme Court has recognized the "perceived potential competition" theory, under which a merger may be challenged if it eliminates a firm perceived by others in the market as likely to enter that market and whose presence "in the wings" actually constrained the current behavior of incumbent firms, assuming other conditions for application of the doctrine are present. See United States v. Marine Bancorporation Inc., 418 U.S. 602, 639-40 (1974) ("Marine Bancorporation"); United States v. Falstaff Brewing Corp., 410 U.S. 526, 533-34 n.13 (1973) ("Falstaff"). None of the opponents contends (nor could they) that either SBC or SNET has had such an effect on the other. Rather, MCI and Omnipoint urge application of the "actual potential competition" doctrine, on which the Supreme Court has reserved judgement. See Marine Bancorporation, 418 U.S. at 625, 639; Falstaff, 410 U.S. at 537-38.

¹² See Bell Atlantic/NYNEX Order, ¶ 138; SBC/Telesis Order, ¶ 18.

(1984); see also Siemens Corp., 621 F.2d at 506-07 (there must be "at least a 'reasonable probability' . . . and preferably clear proof that entry would occur").

Applying these principles here leads inescapably to the conclusion that this merger poses no threat to potential competition because SBC was not planning to offer any services to SNET's customers. As discussed in the Applications, there is no overlap between the local exchange and exchange access operations of SBC and SNET, and there is no basis for assuming that either would naturally have expanded into the other's territory. To the contrary, neither company had plans to provide either local exchange or exchange access service in the other's territory.¹³

Nor will there be any loss of potential competition in other markets. While the Applicants operate adjacent cellular systems in New England, they cannot build cellular systems in each other's markets, and the mere fact of adjacency would not facilitate their entry into each other's markets. Far from harming competition, the ability to offer expanded calling scopes and to operate integrated systems as a result of the merger will actually benefit consumers. In addition, the Applicants market their long distance services in separate markets, and neither had any plans to market long distance service in the other's area.¹⁴

In view of this lack of any actual or potential competitive overlap between the operations of SBC and SNET, there is no basis for challenging the merger on grounds of anticompetitive effects. Tellingly, the Antitrust Division of the Justice Department has already reached the same

¹³ See Affidavits of James S. Kahan and Anne U. MacClintock attached as Exhibits 1 and 2 hereto.

¹⁴ As described at pages 38-39 of the Public Interest Statement attached to the Applications, SNET's long distance affiliate does provide a limited amount of long distance service in SBC's region since some of its Connecticut-based customers have branch offices in those seven states or use SNET calling cards when traveling there. This service is so limited that it cannot possibly have any material competitive implications.

conclusion; it declined, following its Hart-Scott-Rodino review, to investigate further or challenge the merger. The same result is appropriate here.

Notwithstanding the absence of any actual overlaps or even adjacent LEC operations, MCI and Omnipoint contend that SBC and SNET should nevertheless be regarded as potential competitors in Connecticut. MCI, for example, contends that SBC's decisions to merge with Pacific Telesis and SNET demonstrate that it is likely to enter new geographic markets in general and to enter Connecticut in particular.¹⁵ This claim, however, is completely circular. As the Commission has recognized, the doctrine of actual potential competition considers whether either of the parties to a proposed merger was likely to have entered the other's territory but for the proposed merger.¹⁶ A company's intention to enter a market by merger, standing alone, cannot constitute evidence that it would have entered by other means. Since the actual potential competition doctrine was developed to analyze proposed mergers, this test would always be satisfied if a decision to merge established that a company would also have entered the market absent the merger. Accordingly, MCI's claim that SBC would have entered the Connecticut local exchange and exchange access markets must be rejected.

Omnipoint makes a slightly different though equally erroneous claim. It contends that, since SBC has cellular operations that are "adjacent"¹⁷ to Connecticut, the Commission should

¹⁵ MCI Comments, pp. 5-6.

¹⁶ SBC/Telesis Order, ¶18.

¹⁷ Omnipoint's definition of "adjacent" might be charitably described as flexible; it includes not only SBC's cellular operations in Worcester, Massachusetts – the operation that actually borders on Connecticut – and other operations in Massachusetts, but also markets as far away as Washington, D.C.; Baltimore, Maryland; Rochester, New York; and several markets in Virginia and West Virginia.

assume that it would enter the local exchange, exchange access, and long distance markets in Connecticut absent the merger.¹⁸ This claim is baseless. As the Commission recognized in SBC/Telesis, SBC's policy is to enter out-of-region markets, other than through acquisitions, only where it already has facilities, an existing customer base, and name brand recognition.¹⁹ It is undisputed that none of these three factors exists here, and the fact that such conditions exist in other markets – only one of which even borders on Connecticut and many of which are hundreds of miles away – provides no evidence that SBC would have entered Connecticut but for the merger. To the contrary, SBC operates cellular systems in a number of out-of-region markets, but it has not entered the local exchange market in areas that are arguably nearby – but not within – the areas served by its cellular systems. Instead, SBC has consistently adhered to its policy of entering new markets only where it already has customers, facilities, and name recognition. Since none of those factors is present in Connecticut, there is no basis for concluding that SBC would have entered that market.

2. Numerous Other Firms Are Potential Competitors
In Connecticut

Both MCI and Omnipoint also contend that the merger presents problems under the doctrine of actual potential competition because there are few other likely entrants that are “equivalent” to SBC.²⁰ This claim is difficult to take seriously. Both MCI and Omnipoint ignore the fact that Bell Atlantic, following its merger with NYNEX, now serves a portion of, and the

¹⁸ Omnipoint Petition, pp. 11-14.

¹⁹ SBC/Telesis Order, ¶ 27.

²⁰ MCI Comments, p. 6; Omnipoint Petition, pp. 15-16. As noted above, whether there are “few other potential entrants [that] are ‘equivalent’ to the company that proposes to enter the target market by merger” is one of the five factors to be considered under the actual potential competition doctrine. Bell Atlantic/NYNEX Order, ¶ 138; SBC/Telesis Order, ¶ 18.

area completely surrounding, Connecticut and it obviously has ample resources, expertise, and incentive to expand within the Connecticut market.²¹ Moreover, as the Commission recognized in both SBC/Telesis and Bell Atlantic/NYNEX – and as MCI effectively concedes – AT&T, MCI, and Sprint have large customer bases, extensive facilities, and widespread name recognition in Connecticut and thus all qualify as “equivalent” potential entrants.²² The other RBOCs and GTE also clearly have the ability to enter on an equivalent basis with SBC, and the Commission has also recognized that the major cable “multiple system operators” (“MSOs”) are significant potential entrants.²³

In fact, a number of companies have the resources to compete in the Connecticut local exchange market and are presently doing so. MFS and Brooks Fiber have constructed fiber networks in Connecticut over which they are currently providing service.²⁴ WorldCom has acquired both of these CAPs, and they will have even greater resources at their disposal if MCI’s merger with WorldCom is approved. TCG – which AT&T plans to acquire – also operates facilities in Connecticut.²⁵ Cable operators TCI and Cablevision have invested significantly to

²¹ MCI does not even mention Bell Atlantic in the list of potential competitors, an omission that is disingenuous at best. Omnipoint argues that the merger of Bell Atlantic and NYNEX removed NYNEX as a potential entrant, Omnipoint Petition, p. 15, but this misses the point that that merger left Connecticut as a prominent hole – and a hole filled with profitable customers – in the middle of the merged companies’ service area that would therefore be a natural target for entry.

²² See Bell Atlantic/NYNEX Order, ¶ 82; SBC Telesis Order, ¶ 24.

²³ See Bell Atlantic/NYNEX Order, ¶¶ 83, 85; SBC/Telesis Order, ¶ 24.

²⁴ Brooks Fiber has a Hartford network that spans eight route miles (651 fiber miles) and serves 35 buildings. In addition, Brooks Fiber has a switch in Hartford and a network in Stamford. MFS has operated a network in Hartford since 1994 and has a switch in New Jersey.

²⁵ TCG has operated a local fiber network in Hartford since 1994. Its network serves 81 buildings over 520 route miles (17,886 fiber miles) and includes New London, New Haven, Fairfield, Litchfield, and Hartford Counties. The TCG network is served by a switch that is

Footnote continued on next page

upgrade their cable networks in Connecticut so that they can provide local telephone services.²⁶ TCI is currently providing telephone services using a switch leased from TCG, and Cablevision is currently installing a switch in Norwalk. A third cable operator, Cox Communications, has installed a switch in Manchester and currently offers telephone service in Connecticut. Other competitors that have deployed competitive local facilities in Connecticut include FiveCom and WinStar.²⁷

AT&T's recently-announced plans to acquire TCG, which has significant assets in Connecticut, proves beyond a doubt that AT&T believes in local competition in Connecticut and elsewhere. And, though MCI now grumbles about its lack of success in Connecticut, the company operates 14 offices across Connecticut from which it sells local exchange service to business customers.²⁸ MCI began providing local service to a number of Connecticut businesses

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interconnected to two SNET offices. New Paradigm Resources Group, 1998 Annual Report on Local Telecommunications Competition (9th ed. 1998).

²⁶ TCI plans to spend \$300 million upgrading its Hartford network to offer advanced telephone, cable modem, and digital video services. See Bill Keveney, TCI Service to Expand Next Month, Hartford Courant, Dec. 20, 1995, at A3, 1995 WL 13378177. Cablevision has recently installed a 5ESS switch in Norwalk and will spend "several hundred millions dollars" to upgrade its Connecticut network. See SNET Says HFC Launch Will Not Be Slowed by Safety Concerns, Fiber Optics News, Jan. 20, 1997, 1997 WL 7877993. Cablevision plans to serve Bridgeport, Danbury, Stamford, New Haven, New London, and Torrington.

²⁷ FiveCom is a new competitive local exchange carrier currently building fiber networks in Hartford, Danbury, New London, Stamford and Waterbury. See New Paradigm Resources Group, supra. WinStar serves Stamford with its 5ESS switch located in New York. See id. In addition, the Connecticut Telephone Company has been offering competitive basic residential service in Connecticut since 1996. See Dan Haar, Making The Right Call: No Longer a Niche Player, Connecticut Telephone Now Full Service and Battling Industry Giants, Hartford Courant Business Weekly, p. 10, Apr. 14, 1997, 1997 WL 2994141.

²⁸ See MCI Challenges SNET to Open Telephone Market: Asks Connecticut Department of Public Utility Control to Arbitrate Interconnection Agreement, PR Newswire, Sept. 16, 1996, WESTLAW, PRWIRE File.

in 1996, and it has expanded its operations ever since. Many Connecticut companies have selected MCI as the provider of all their communications services, including local service.²⁹

In view of the existence of such other significant actual and potential entrants, there is no basis for the claim that the merger will have an adverse effect on potential competition. The courts, the Department of Justice, leading scholars, and this Commission agree that there is no reason for concern about a merger's effect on potential competition unless there are no, or very few, other potential entrants into the market. The Department of Justice's Merger Guidelines provide that if, after an acquisition, there remain three or more potential competitors, there is no antitrust concern.³⁰ Professors Areeda and Turner have concluded that "three similarly well-qualified potential entrants should be presumptively sufficient to obviate concern," and "six entrants remove any plausible basis for attacking a merger eliminating a potential entrant."³¹ The case law is in accord.³² Likewise, this Commission has held that the concern about

²⁹ For example, MCI initially deployed a switch in Hartford and then expanded throughout the area, a radius of twenty to twenty-five miles. See Karen Donnelly, MCI Celebrates the Anniversary of Connecticut Local Telecommunications, Bus. Times-New Haven, May 1997, LEXIS, News Library, CURNWS File.

³⁰ See Antitrust Div., U.S. Dep't of Justice, Merger Guidelines § 4.133 (1984). With respect to non-horizontal mergers, such as this one, the 1984 Merger Guidelines remain a current statement of the Department's enforcement policy.

³¹ 5 Philip Areeda & Donald F. Turner, Antitrust Law ¶ 1123, at 123-24 (1980).

³² See, e.g., Mercantile Tex. Corp. v. Board of Governors of the Fed. Reserve Sys., 638 F. 2d 1255, 1267 (5th Cir. 1981) ("[i]f there are numerous potential competitors," the elimination of one "would not be significant"); Atlantic Richfield, 549 F.2d at 300 (entry by seven firms over ten years and presence of numerous other potential entrants make it unlikely that merger of potential entrants would substantially lessen competition); United States v. Hughes Tool Co., 415 F. Supp. 637, 646 (C.D. Cal. 1976) (rejected potential competition allegations, in part, because there were "at least six" potential entrants possessing "all the basic capabilities for entrance"); In re B.A.T Indus. Ltd., 104 F.T.C. at 924 ("the acquiring firm must be one of only a few equally likely actual potential entrants, since eliminating one of many potential entrants could not be expected to eliminate substantial future competition"); In re Heublein, Inc., 96 F.T.C. 385, 588 (1980) (Pitofsky, Commissioner) ("the elimination of a potential entrant or

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elimination of potential competition through a merger arises solely where the acquiring firm “is the only, or practically the only, likely entrant.”³³

Here, the commenters/petitioners do not contend, nor is there any basis to believe, that SBC is “the only, or practically the only” likely entrant in SNET’s region. To the contrary, the major IXCs, the other RBOCs, and GTE comprise eight other “equivalent” potential entrants, even without considering CAPs or major cable MSOs. There is no basis for asserting a lack of other potential entrants.

B. There Will Be No Adverse Effect On Competition
Due To A “Price Squeeze”

MCI asserts that the merger would harm competition in the long distance market by creating the opportunity for a “price squeeze.” Specifically, it contends that, with respect to calls originating in Connecticut and terminating in the other states where SBC is an ILEC, SBC will be able to charge “high” access rates and “low” retail long distance rates. As a result, according to MCI, other IXCs may be forced to operate at a loss since the “low” long distance rates they will have to charge to compete with SNET’s long distance affiliate in Connecticut will not be sufficient to recover the “high” access rates charged by SBC.³⁴

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expander leads to a substantial anticompetitive effect only when there is a limited number of other firms reasonably likely to enter”).

³³ In re Application of GTE Corp. and Southern Pac. Co. for Consent to Transfer Control of Southern Pac. Communications Co. and Southern Pac. Satellite Co., Memorandum Opinion and Order, 94 F.C.C. 2d 234, ¶ 46 (1983). See also Bell Atlantic/NYNEX Mobile, ¶ 38.

³⁴ MCI Comments, pp. 6-8.

MCI raised the same claim in both SBC/Telesis and Bell Atlantic/NYNEX, and the Commission rejected it each time – for multiple reasons.³⁵ First, there is no reason to believe that the merger will create any additional incentives for either SBC or SNET to raise their access charges beyond whatever incentives already exist.³⁶ Since the merger will not change anything, there is no basis to consider MCI’s claim here. Access charges are subject to price controls, and the appropriate level of those charges is the subject of other proceedings.

In addition to the rules controlling the levels of access charges, there are a number of other statutory and regulatory barriers to a “price squeeze” or other discriminatory conduct in the long distance market. In sections 251, 252, 271, and 272 of the 1996 Act, Congress opened the BOC networks to competition, comprehensively regulated the entry of the BOCs into the in-region long-distance market, and set forth an array of specialized rules and safeguards to prevent such abuses.³⁷ The separation requirements that the Commission’s rules impose on the provision of interstate services by incumbent LECs such as SNET also guard against the possibility of discriminatory conduct.³⁸ MCI’s concerns should be addressed in proceedings concerning the

³⁵ See Bell Atlantic/NYNEX Order, ¶¶ 115-18; SBC/Telesis Order, ¶¶ 51-54.

³⁶ In the SBC/Telesis Order, ¶ 52, for example, the Commission observed that “[t]he proposed transfer itself will not alter the access charges of either applicant. Nor will it alter the applicants’ incentives regarding access services.”

³⁷ Congress did not think the issue that MCI raises was a problem. Even without the merger, many long-distance calls will originate and terminate within the same region, but sections 271 and 272 do not treat long-distance calls that originate and terminate in a single region differently from those calls that cross region boundaries. Moreover, section 271(b)(4) currently allows BOCs to terminate in-region calls – necessarily reflecting Congress’s judgment that the terminating side of a long-distance call cannot be used to engage in meaningful discrimination.

³⁸ See In re Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area, Second Report and Order, 12 FCC Rcd. 15,756 (1997).

safeguards that govern all ILECs' provision of long-distance service, not in this transfer of control proceeding.³⁹

Finally, even if the combined companies attempted to implement a price squeeze, MCI's cursory discussion of this issue fails – as it failed in SBC/Telesis – to show that there would be any significant effect on competition in the long distance market. As the Commission held there: “MCI has not shown, for example, that if a price squeeze occurred, it would force one of the long distance carriers and its assets to withdraw from the market.”⁴⁰ MCI has not even attempted to make such a showing here. In fact, this merger cannot have a significant effect on any alleged ability of SBC to engage in price discrimination at both ends of a long distance call.⁴¹ In view of that indisputable fact, and since MCI has advanced nothing new in support of this shopworn argument, it should be rejected.⁴²

C. There is No Reason To Impose Conditions With Respect To The Opening Of Local Markets

MCI and Inner City Press raise a confusing jumble of arguments attacking SNET, SBC and the proposed merger. Most of these arguments focus on the status of local exchange competition in Connecticut (and, to a lesser extent, in SBC's markets) and on MCI's alleged

³⁹ See In re Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, First Report and Order, 11 FCC Rcd. 21,905 (1996).

⁴⁰ SBC/Telesis Order, ¶ 54.

⁴¹ See, e.g., SBC/Telesis Order, ¶¶ 46, 50, 54, 57.

⁴² MCI also contends in two sentences, that the combined company would be able to engage in non-price discrimination. MCI Comments, p. 8. MCI does not bother to explain what sort of discrimination it has in mind, what costs it would impose, how such discrimination is feasible, or how it could go on undetected (by sophisticated IXCs who regularly test the quality of exchange access services), much less how the merger will increase the likelihood of discrimination. Such misplaced and conclusory speculation should be rejected. Indeed, that is precisely what the Commission did in SBC/Telesis. See SBC/Telesis Order, ¶¶ 55-57. It should do so again.