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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

DOCKET FILE COPY DUPLICATE

In the Matter of	)	
	)	
Application of AT&T Corp. and Teleport Communications Group, Inc. for Transfer of Control	)	CC Docket No. 98-24

PETITION OF SPRINT FOR INVESTIGATION AND OTHER RELIEF

Sprint Communications Company L.P. ("Sprint"), pursuant to the Commission's Public Notice DA 98-369 (released February 25, 1998) and Public Notice DA 98-558 (released March 24, 1998) hereby respectfully requests that the above-captioned application of AT&T and Teleport Communications Group ("TGC") be subject to investigation or, in the alternative, approved only with conditions. In support thereof, Sprint states as follows.

The Commission's responsibility to determine whether a proposed merger is in the public interest includes the requirement that the Commission analyze the merger's likely effect "on Commission policies encouraging competition..." *Bell Atlantic/NYNEX Merger Order*, 12 FCC Rcd 19985, 20003 (¶32)(1997). If the Commission determines that a proposed merger is likely to lessen competition in violation of Section 7 of the Clayton Act, it has the authority under both the Communications Act and the Clayton Act to impose conditions on

the merger as are necessary for the public interest to cure such violation. *Id.* at 20001 (¶29 and fn. 57).

AT&T claims that its proposed acquisition of TCG will "clearly and demonstrably benefit the public interest by increasing competition..." (Application at 7). However, AT&T does not, as it must,[1] provide meaningful support for this assertion. AT&T's entire affirmative case consists of a single sentence claiming that its ability to provide "local services will be significantly enhanced if AT&T has alternative local infrastructure available to it within its control and management." (*Id.*)

Sprint agrees that AT&T and other carriers seeking to enter the local market through the use of BOC facilities have been frustrated by numerous difficulties and that the prospects for access and other local competition would be "significantly enhanced" by the availability of "alternative local infrastructure." It does not follow, however, that to realize the benefits of such alternative infrastructure, AT&T must acquire the exclusive "control and management of such facilities." Rather, such exclusivity may well harm the future

[1] *See, e.g., The Merger of MCI Communications Corporation and British Telecommunications plc*, 12 FCC Rcd 15321, 15355 (1997) (Applicants are required to "demonstrate that, on balance, the proposed merger will be pro-competitive and thus serve the public interest, convenience and necessity").

development of access and local competition, and may perhaps, in the long run, damage long distance competition as well.

The AT&T acquisition of TCG will tie the largest long distance carrier (by a substantial margin) to the largest and most ubiquitous CAP. The acquisition adds to the consolidation already contemplated by the unification of MCI and WorldCom with the second largest CAP, MFS, as well as with Brooks Fiber. AT&T, MCI and WorldCom together account for 71.9 percent of the long distance market.[2] All of these carriers will, if the proposed recent acquisitions are permitted, control, and therefore exclusively use to the maximum extent possible, their affiliated access providers. Moreover, the shrinking of the market for independent CAPs will be exacerbated if and when the RBOCs are allowed to provide in-region long distance service because the RBOCs would then exclusively use their own affiliated access provider.

Under these circumstances, the target market for new CAPs will become quite limited. Given the ties between major IXCs and CAPs -- and, in particular, the absorption of TCG into AT&T for which approval is sought here -- it is difficult to see what possibilities would remain for CAPs to continue to try to enter the local market. It may be that CAP competition would, in any

[2] Based on fourth quarter 1997 toll revenues, "FCC Long Distance Market Shares, Fourth Quarter 1997" (released March 1998), Table 3.4.

case, have developed through combined local-long distance operations and that long distance carriers would have sought to enter the access or local service markets entirely through self-provisioning. Sprint obviously does not suggest that the Commission prohibit such self-provisioning by integrated entities (subject, of course, to the requirements of Section 272). Rather, Sprint's point is simply that it may not be best for competition to hasten the consolidation process by allowing an acquisition which will have the effect of terminating what is, at present, by far the most substantial independent effort to provide access and local service.

As for long distance services, there is no immediate problem, but there may well be a very serious problem over the long run. At this time, the BOCs control virtually all of the access market, and AT&T's acquisition of TCG will not have any immediate impact upon this situation. Unfortunately, as TCG's local operations expand, it will provide AT&T with alternatives to BOC access services which AT&T may then deny its competitors. Thus, even if some limited access service alternative develops through AT&T's own infrastructure provider, AT&T may well decide to forego profit optimization from the sale of access in favor of raising the cost of such access to its long distance competitors. In other words, it may be economically reasonable for AT&T to decide to simply price at BOC levels (even if this

does not maximize profits for its access service) in order to leverage whatever power it gains in the access market to raise the costs to rivals in the larger long distance market.

To make matters worse, as AT&T shifts its own access traffic off the BOC network and onto its own (TCG) facilities, the BOCs will lose the revenues associated with that traffic and will, in all likelihood, seek to make up for such loss by raising prices to their remaining customers. The fact that price caps exist for LEC access services does not rule out such a possibility.[3] Over time, this will further increase the disparity in access cost between AT&T and its competitors.

For these reasons, Sprint respectfully requests that AT&T's application be subject to a full investigation to determine whether its acquisition of TCG will promote competition and will otherwise be consistent with the public interest. At a minimum, the Commission should approve the AT&T application only with the conditions that: (1) TCG is maintained as a separate entity, and

[3] To the extent price cap LECs have headroom (that is, their API is less than their PCI), they will be able to increase their rates without exceeding their PCI. Furthermore, as AT&T shifts its access demand to TCG from the LECs, the LECs' revenues will, all other things being equal, decline. The impact of fixed exogenous cost changes (e.g., USF contributions) will be even greater because they are applied over a smaller revenue base.

(2) TCG is subject to nondiscriminatory access requirements. Since AT&T proposes in its application to retain the separate status of TCG indefinitely, these conditions should not prove burdensome.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.

Leon M. Kestenbaum
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1850 M Street, N.W., 11th Floor
Washington, D.C. 20036
(202) 828-7438

Its Attorneys

April 1, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PETITION OF SPRINT FOR INVESTIGATION AND OTHER RELIEF** was sent by hand or by United States first-class mail, postage prepaid, on this the 1st day of April, 1998 to the below-listed parties:

Magalic Roman Salas (12) copies
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Federal Communications Commission
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Washington, D.C. 20554

International Transcription Service
1919 M Street, N.W., Room 246
Washington, D.C. 20554

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Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
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Christine Jackson

April 1, 1998

CODE OF FEDERAL REGULATIONS
TITLE 47--TELECOMMUNICATION
CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER B--COMMON CARRIER SERVICES
PART 54--UNIVERSAL SERVICE
SUBPART H--ADMINISTRATION
Current through May 12, 1998; 63 FR 26386

§ 54.703 Contributions.

(a) Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support programs. Interstate telecommunications include, but are not limited to:

(1) Cellular telephone and paging services;

(2) Mobile radio services;

(3) Operator services;

(4) Personal communications services (PCS);

(5) Access to interexchange service;

(6) Special access service;

(7) WATS;

(8) Toll-free service;

(9) 900 service;

(10) Message telephone service (MTS);

(11) Private line service;

(12) Telex;

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(13) Telegraph;

(14) Video services;

(15) Satellite service;

(16) Resale of interstate services; and

(17) Payphone services.

(b) Every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for eligible schools, libraries, and health care providers on the basis of its interstate, intrastate, and international end-user telecommunications revenues. Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute on the basis of revenues derived from the provision of interstate telecommunications: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters of video programming; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

(c) Every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for high cost, rural and insular areas, and low-income consumers on the basis of its interstate and international end-user telecommunications revenues. Entities providing OVS, cable leased access, or DBS services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute on the basis of revenues derived from the provision of interstate telecommunications: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters of video programming, systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

[63 FR 2132, Jan. 13, 1998]

<General Materials (GM) - References, Annotations, or Tables>

47 C. F. R. § 54.703

47 CFR § 54.703

END OF DOCUMENT

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END OF DOCUMENT

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Inner City Press
Community on the Move
&
Inner City Public Interest Law Project

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MAR 27 1998
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March 26, 1998

VIA FEDERAL EXPRESS

Federal Communications Commission
Attn: Magalie Roman Salas
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Attached Petition to Deny Applications of AT&T Corp. and Teleport Communications Group, Inc. to Transfer Control of Teleport to AT&T (CC Docket No. 98-24)

Dear Secretary Salas:

On behalf of Inner City Press/Community on the Move and its members and affiliates, including the Inner City Public Interest Law Project ("ICP"), attached please find a timely petition to deny the above-captioned Applications. For the reasons set forth in the attached, the Applications should be denied.

An original and twelve (12) copies of the petition to deny are enclosed for filing. Copies of the petition to deny have also been mailed as specified in the Commission's public notice of February 25, 1998. ICP is also providing a courtesy copy of this petition to deny to the AT&T staffer who sent a copy of the Application to ICP. Please date-stamp the enclosed extra copy of the petition to deny and return it in the self-addressed stamped envelope provided herein.

If you or any staff member of the Commission have any questions, please do not hesitate to telephone me at ICP's offices, at (718) 716-3540.

Very Truly Yours,

Matthew Lee
Executive Director

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1919 Washington Avenue, Bronx, New York 10457 TEL: (718) 716-3540; FAX: (718) 716-3161

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MAR 27 1998
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Applications of AT&T Corp. and Teleport Communications Group, Inc., to Transfer Control of Teleport to AT&T Corp.	)))	CC Docket No. 98-24

Petition to Deny

filed by

Inner City Press/Community on the Move

& Inner City Public Interest Law Project

March 26, 1998

Matthew R. Lee, Esq.
Executive Director
Inner City Press/Community on the Move
& Inner City Public Interest Law Project
1919 Washington Avenue
Bronx, NY 10457
Phone: 718 716-3540
Fax: 718 716-3161

On behalf of Inner City Press/Community on the Move and its members and affiliates, and the Inner City Public Interest Law Project (collectively, "ICP"), a consumers' organization headquartered in the Bronx, New York, with members in throughout New York and other states, this is a petition to deny the Applications of AT&T Corp. ("AT&T") and Teleport Communications Group, Inc. ("TCG" or "Teleport") for transfer of control of Teleport to AT&T.

The bases of this petition to deny are as follows: while AT&T claims that its entry into local markets via proposed purchase of Teleport is in the public interest, it is clear that Teleport targets its services to businesses and relatively affluent (and disproportionately non-minority) residential customers. The litmus test of this

can be found in New York City. Both AT&T's application to the Federal Communications Commission (the "FCC" or the "Commission"), and an AT&T March 5, 1998, Letter to ICP purporting to address the concerns ICP has expressed to AT&T argue that Teleport's criteria/targets for service are "business customers and... multiple dwelling units in the higher density markets." FCC App. at 8. But what cannot be missed is that "multiple dwelling units in high density markets" would, in New York City, include low income, predominantly minority communities like the South Bronx, Harlem, East New York and other parts of Brooklyn (each with some of the highest concentrations of high rise public housing in the nation). In fact, Bronx County, and especially the South Bronx, has the lowest rate of homeownership, and the highest rate of multifamily housing (and thus of "high density") in the New York area.

Teleport, however, is not serving the high density, predominantly multifamily communities. This pattern also exists, and should be inquired into by the FCC, for example in the New Jersey counties of Middlesex, Somerset, Mercer and Morris (*see infra*), in Miami, Florida, and in Connecticut counties of New Haven, New London, Fairfield, Litchfield and Hartford (given Teleport's claimed focus on "multifamily units in high density areas," its exclusion of such high minority counties as The Bronx, while running a fiber and other network in Litchfield County, Connecticut, is indicative of the pattern ICP is highlighting to the FCC). It is inescapable that Teleport's criteria has less to do with the density of population, or the percentage of buildings that are apartment buildings, than it does with the income of the residential customers targeted, which

fails any legitimate application of the (disparate) impacts test.[1]

A Congressional purpose of the Telecommunications Act of 1996 (the "1996 Act") was/is to provide the benefits of competition and better and more affordable service to ALL Americans, and not only to business owners (in relatively affluent communities) and to affluent, predominantly non-minority residential customers. For this reason, a major purported entry into local markets by a long-distance player like AT&T should not be approved unless it will foreseeably result in benefits to a fair cross section of the residents of the affected markets. Particularly where the target (and strategy) to be acquired blatantly excludes lower income, more predominantly minority communities, in contradiction to the proffered rationale ("multifamily units in higher density markets"), AT&T's and certain others' applications to enter local markets should not be unconditionally approved. (The FCC should note, for example, that SBC, Inc. and SNET, in their Application to the FCC at 9 and 31, n.36, use the AT&T - Teleport proposal as a rationale for their combination, stating [at 9] that "the SNET Telco is too small to be able to compete effectively with its principal competitors, which are growing even larger through recently announced mergers...[AT&T] announced on January 8, 1998, its plans to acquire [TCG]. Both of those companies are already competing in Connecticut's local market...").

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[1] Targeting and/or excluding on the explicit basis of income may run afoul of the "effects" or disparate impact test applicable to prevent seemingly permissible business practices from having unnecessary discriminatory effects in fact. The test has been successfully applied in the fields of employment, housing and consumer credit for years; it is applicable to the various telecommunications product markets at issue here.

The FCC should consider, as confirming ICP's assertions regarding the (negative) precedential nature of this AT&T-Teleport proposal, the following: Local Services Competition Isn't Hitting Home -- AT&T's Acquisition of Teleport Reinforces Shift Toward Corporate Customers, InternetWeek, February 2, 1998, at T13: "Hope for the rapid spread of competition in local residential telephone service continues to wane as the industry enters Year 3 of the Telecommunications Act... The shift toward business customers was underscored last month with AT&T Corp.'s $11.3 billion agreement to acquire [TCG]...".

Also to be addressed: AT&T despite its recent (and as yet unproven) steps against slamming, has been a major "slammer" in New York. *See, e.g.,* NY Regulators May Pursue Penalty Against AT&T, Reuters, Feb. 19, 1998: "In a statement released Wednesday, the [Public Service C]ommission said slamming complaints against AT&T declined only slights after the company filed a corrective plan in June 1997, but complaints have started to increase again. The commission... said it has received 371 slamming complaints against AT&T since June 1997..." This adverse managerial issue must be addressed in this proceeding, and, along with the other grounds set forth herein, militate for a hearing and for denial of the application.

Furthermore, despite AT&T's bare-bone filing with the FCC, there ARE competitive issues that must be considered in this proceeding. TCG was one of the first CLECs in New York or elsewhere; not only is it significant that TCG has YET to meaningfully serve/compete for residential customers, particularly in lower income, more predominantly minority communities -- it also must be noted that AT&T purported to be competing for local service in New York, and now

withdraws from competition by re-selling (which could, as the FCC has noted, more quickly bring competition to residential consumers), and buys one of the longest standing CLEC (with the record cited above). Under established FCC antitrust doctrines (including potential and other competition), these issues must be considered and addressed.

Strikingly, AT&T's application to the FCC, at least as provided to ICP, is informationally incomplete; its purported showing of public interest is entirely conclusory, occupying less than two pages, and, at noted above, mischaracterizing TCG's criteria for targeting of residential customers. Approval of this merger, as proposed, would not secure for, but would rather deny to "the public the broad aims of the Communications Act." Western Union Division, Commercial Telegraphers' Union, A.F. of L. v. United States, 87 F.Supp. 324, 335 (D.C.C.), *aff'd*, 338 U.S. 864 (1949). Expedited treatment of the applications would be inappropriate; the Applications should be amended or supplemented, and/or a hearing (which ICP is requesting) should be held on these issues. As currently proposed, this merger should be denied.

Procedural Posture/ICP's Request for Information from AT&T

On February 25, 1998, the Federal Communications Commission (the "FCC" or the "Commission") issued a public notice of AT&T's applications to acquire Teleport and its licensed and authorizations, and setting the deadline for the filing of petitions to deny and/or comments as March 27, 1998. This petition to deny, which is being sent to the Secretary of the FCC by Federal Express on March 26, 1998, is timely.[2] While the FCC's February 25, 1998, public

[2] ICP is also providing a courtesy copy of this petition to deny to the AT&T representative who sent a copy of the

notice did not specify a deadline for reply comments, ICP hereby informs the Commission of its intent and desire to file a reply to whatever opposition or response the Applicants may file, within two weeks of April 27, 1998.

Also note that ICP raised at least two of these issues (TCG's focus on businesses and affluent, predominantly non-minority residential customers, and AT&T's slamming) to AT&T in a letter dated March 2, 1998. AT&T responded by letter dated March 5, 1998, which letter simply repeated, verbatim, the scanty argument in the FCC application, and stated that AT&T "believe[s] that the applications demonstrate convincingly that this transaction is in the public interest and will benefit all consumers...". Compare this empty assurance to, *e.g.*, The Palm Beach (FL) Post of March 11, 1998: "AT&T downplays the significance of local residential service in its deal for Teleport, saying it's mainly interested in lucrative business customers" (further discussed infra). The Application does NOT demonstrate, much less "convincingly," that this acquisition would be in the public interest. Thus, ICP files this timely petition to deny / request to dismiss the Application or schedule a hearing thereon.

The Commission's Duties in this Proceeding

Pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (the "1934 Act"), the Commission can not approve the transfer of licenses and other authorizations that underlie the proposed merger unless the Commission finds, on substantial evidence, that the transaction is in the public interest, convenience and

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Application to ICP, and ICP is faxing a courtesy copy of this petition to deny to the FCC at fax number (202) 418-2345. This petition to deny is timely.

necessity. Under this public interest standard, Applicant must show *inter alia* that their proposed combination (1) would further the implementation of Congress' "pro-competitive, de-regulatory national policy framework" for telecommunications, and (2) would "preserv[e] and advanc[e]" universal service. *See, e.g.,* In Re Application of NYNEX Corp, Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries, *Memorandum Opinion and Order,* File No. NSD-L-96-10, FCC 97-286 (released August 14, 1997) (the "BA/NYNEX Order") at Para. 2 and notes 3 and 4 thereto. This standard is to be "so construed as to secure for the public the broad aims of the Communications Act." *See, e.g.,* Western Union Division, Commercial Telegraphers' Union, A.F. of L. v. United States, *supra.*

ARGUMENT

TCG HAS HAD 14 YEARS TO COMPETE FOR OR SERVE RESIDENTIAL CONSUMERS IN LOWER INCOME, PREDOMINANTLY MINORITY COMMUNITIES, AND HAS NOT DONE SO; ACQUISITION OF TCG BY AT&T, AND REWARD FOR TCG'S OWNERS, WOULD DO NOTHING TO FORWARD, AND WOULD CONTRADICT, THE GOALS OF THE 96 ACT

TCG was created in 1984, by AT&T "alumnus" Robert Annunziata. From the beginning, TCG targeted business customers -- but, as has become more and more prevalent among CLECs (particularly those hoping to sell out at a premium to AT&T, WorldCom, Sprint, and others), TCG always claimed that it would one day serve, and bring the benefits of competition to, a broad base of residential customers.

In the TCG context, "business" means big business: the New York Mercantile Exchange, European American Bank, Avis, etc.. While TCG began in New York City (in the least

predominantly minority, least urban of its boroughs, Staten Island),[3] TCG's attempts to serve moderate income New Yorkers has been negligible -- before offering any such service, TCG took its business show on the road to 65 other cities, and bought an internet company on the west coast, CerfNet.

In fact, TCG, which has yet to serve moderate income, predominantly minority communities in its home city of NYC, now claims to be planning residential service in more affluent areas in Florida. *See, e.g.*, J. Murawski, Teleport to Offer Local Telephone Service, Palm Beach (FL) Post, March 11, 1998: "Teleport, based in Staten Island, N.Y., says it will begin in Miami and expand to Fort Lauderdale and West Palm Beach." Compare the demographics of the outer boroughs of NYC, particularly the Bronx and East Brooklyn, to Fort Lauderdale and West Palm Beach -- or to, in New Jersey's Middlesex, Somerset, Mercer and Morris counties (*see* Asbury Park Press of August 12, 1998).

After more than a decade, TCG finally began offering residential service to some in New York. TCG claims to be providing local residential service to 3,000 customers in New York. *Id.* Further information about these customers, by geography, etc., needs to be submitted in this proceeding. TCG (and AT&T) claim that its target market for residential service is multi-family units in high density areas. App. at 8. But in ICP's and its members' experience, this is not the case. TCG competes for residential customers, if at all, in the most affluent

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[3] Based on Staten Island, TCG targets Manhattan and parts of Brooklyn (see, e.g., American City & County of March 1998), but excludes The Bronx, except for a once-a-year free calls for senior citizens (see, e.g, N.Y. Daily News of December 4, 1997). While certainly a nice, once a year program, this is NOT the benefits to all Americans that Congress had in mind with the 1996 Act. See infra.

areas, in new construction condominiums, for example.[4] It is not even entirely clear that TCG's targeting is justified by its wiring infrastructure (in fact, it does not appear to be so, based on ICP's and its members' review of the buildings to which TCG targets its services). This could (and should) be addressed/responded to by AT&T and TCG, in this proceeding; the FCC itself should conduct / allow ICP to conduct, at a hearing and pre-hearing discovery, such an inquiry.

The locations of TCG's fiber and cable, and the type of residential consumers it targets, should be inquired into in light of the following: "at a telecommunications conference last week, [AT&T's] chief financial officer said Teleport's fiber optic lines could be used easily to serve nearby residents." If the location of TCG's fiber optics lines disproportionately exclude or bypass minority communities (as is the case in NYC), this may well fail a disparate impact discrimination test. And that is even IF TCG's targeting corresponds solely and directly to the location of its fiber optic cables. In fact, ICP's and its members' experience is that TCG's targeting is even more disparate that the location of its fiber optic lines would lead one to expect / require.

ICP directs the Commission to, and asks the Commission to re-create, or direct AT&T or Teleport to re-create, the type of geographic analysis (including by race/national

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[4] Beyond ICP's and its members' experiences, consider also Crain's New York Business of January 19, 1998, Telcos Answer Landlords' Local Demands: "'High-speed Internet access and intercom service get negotiated pretty hard,' says John Reiser, vice president for residential services for Teleport. 'A lot of these building are targeting young professionals." For the record, ICP would like to depose, or for the FCC to depose, Messrs. Reiser, Somers, Atkinson, Annunziata -- and Armstrong -- on these issues, to develop the factual record, which is insufficient. *See infra*.

origin of census tract or zip code) recently submitted to the Commission in the WorldCom - MCI proceeding (as an Exhibit to the March 13, 1998, submission of a petitioner to deny therein).

That study, created by InContext,[5] 1615 L Street, Washington, D.C. 20036, plots applicants' competitive fiber lines and buildings onto a map showing racial demographics and distribution of businesses.

ICP staff have spoken with the principals of InContext, and have been informed how relatively straight-forward (yet still admittedly beyond ICP's resources) such a study is. Business data is available from Dun & Bradstreet, race / national origin information from the Census Bureau. Determining the precise location of TCG's fiber lines is not as straight forward for ICP (TCG should be required to disclose this information in this proceeding). InContext informs ICP that this information is obtainable by inquiries with municipalities, including their agencies which issue building/digging permits.

It appears that, in many markets, the supposedly competing CLECs simply following existing fiber rights-of-way of the ILECs and CLECs, and thus choose to compete for small percentages of markets already benefiting from competition, while leaving lower income, more predominantly minority communities devoid of any benefit of competition, service or of the intended benefits of the 1996 Act.

While this may be a nationwide, and not only urban, problem (ICP is informed that few to no CLECs have sprung up, entered, or chosen to compete in communities in such lower income states as Montana, Wyoming, New Mexico, etc.), that moderate income consumers even in a telecommunications

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[5] InContext prepared this study for an unnamed client (not the petitioner to deny); it has entered the public record.

capital like New York City are not receiving any increased service or competition -- raises deep questions about the efficacy of current implementation of the 1996 Act.

AT&T's proposed acquisition of TCG for more than $11 billion is a (negative) watershed -- if TCG's stock owners (including cable companies which themselves are excluding lower income, more predominantly minority communities) are allowed to profit so handsomely, after 14 years of redlining, this will only encourage (1) existing CLECs to ignore lower income, more predominantly minority communities, and (2) emerging CLECs to target only businesses and affluent, predominantly non-minority residential consumers, hoping to sell out quickly to larger players who, rather than competing on a broad basis, snap up redlining CLECs and then claim to be serving all or most residential markets. This will be argued to be an indicator of effective local competition, and the BOCs / ILECs will then get what they really want -- ability to enter long distance. Meanwhile, large segments of the population -- the urban poor and minorities, and rural communities -- will have seen no benefit at all from the 1996 Act, will be left further and further behind, festering in a polarized society legitimized by rubber stamp regulatory approval for all but the largest, most obviously anticompetitive mergers. Approval of this acquisition is not in the public interest.

THIS PROPOSED MERGER WOULD **NOT** "PRESERV[E] AND ENHANC[E] UNIVERSAL SERVICE"

Both for the reasons set forth immediately above (Teleport's disproportionate, and, in light of its claimed criteria, disingenuous, exclusion of lower income communities of color from service and competition), and

otherwise, this proposal does not pass one of the essential prongs of the FCC's current public interest test: that proposed transfers of licenses and mergers such as this "preserv[e] and enhanc[e] universal service." *See supra*.

As sketched above (ICP is under no duty to, and in fact cannot, plead with greater specificity, given the lack of detail of AT&T's application), this proposal would further a trend -- the (telecom / information) rich get richer; the (telcom / information) poor get poorer -- that runs afoul of, and is inconsistent with, a major focus of universal service.[6]

This proposed merger would not preserve much less enhance the principles of universal service. On this ground, either the Applications should be amended or supplemented, a hearing should be held, or the Applications should be denied.

"CONDITIONS" WOULD NOT BE SUFFICIENT

In approving the applications of Bell Atlantic / NYNEX and BT/MCI, the Commission conditioned its approvals on the imposition and acceptance of numerous "pro-competitive" and/or public interest conditions. The Commission stated that even after Bell Atlantic's July 19, 1997 series of commitments, that merger remained "a close case." BA/NYNEX

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[6] It is also noted that the FCC is "reducing contributions by AT&T Corp and MCI Communications Corp." by "ramping down the start-up of this [wiring schools and libraries for the internet] program" by one-third in the first half of 1998. Reuters newswire of Dec. 15, 1997, 19:11 EST. Concern has been raised about certain major carriers' non-public communications with the FCC leading up to the "ramping-down" of funding for the schools / libraries portion of universal service -- *see, e.g.*, CyberTimes, <http://nytimes/library/cyber/week/122397fcc.html>.