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June 9, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S. W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication Regarding the SBC/Ameritech Merger Application, CC Docket No. 98-141; Bell Atlantic/GTE Merger Application, CC Docket No. 98-184.

Dear Ms. Salas:

Yesterday, on behalf of the Competitive Telecommunications Association ("CompTel"), the undersigned of Hogan and Hartson L.L.P., H. Russell Frisby, Jr., President, CompTel, and Carol Ann Bischoff, Executive Vice President and General Counsel, CompTel, met separately with Sarah Whitesell, Legal Advisor to Commissioner Gloria Tristani, and with Thomas Power, Senior Legal Advisor to Chairman William Kennard, regarding the pending merger application of Ameritech and SBC.

The purpose of the meeting was to discuss CompTel's position on the proposed merger between Ameritech and SBC. 1/ The points discussed are set forth in the attached handout, which was distributed at the meeting. We also provided a copy of the attached article from the Sarasota Herald-Tribune. 2/ Although the

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1/ During the course of the meeting, we noted that the same issues arose in connection with the Bell Atlantic/GTE merger application, and therefore we are including this ex parte notice in the docket for that proceeding as well.

2/ "GTE vs. GTE: Some Call Competition Bogus," Sarasota Herald-Tribune, May 27, 1999, http://www.newscoast.com/headlinesstory2.cfm?ID=13040.

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story discusses the "CLEC" affiliate of GTE, not Ameritech or SBC, it illustrates the anticompetitive consequences of permitting the resale of local exchange service by unregulated ILEC "CLEC" affiliates, as well as the adverse consequences of permitting the bundling of competitive and noncompetitive offerings by ILECs with a large incumbent "footprint."

In the meetings, CompTel also made the following points:

- When SBC/Ameritech competes as a "CLEC" in-region, it should have to compete as a real CLEC, and not as the alter-ego of the ILEC. For real CLECs, resale is generally unprofitable. Such CLECs must rely on ILEC network elements (alone or in combination with their own facilities) to provide competitive local exchange service. SBC/Ameritech's "CLEC" affiliate should have to do the same, and not be able to exploit its sole ability to use resale as a vehicle to provide local exchange service. As explained in the attached handout at page 3, resale does not have the same serious disadvantages when used by ILEC's CLEC affiliate that it does for other CLECs.

- When SBC/Ameritech competes as a CLEC out-of-region with other CLECs, it should have to compete on the same basis as those CLECs, and not be permitted to leverage its in-region market power into markets in which they are entrants.

- Although the competitive issues that led to the two proposed CompTel conditions are a problem with any ILEC, the size of the SBC/Ameritech post-merger incumbent footprint is so large that the anticompetitive consequences of the merger, without these conditions, would be enormous.

I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided). Please contact the undersigned if you have any questions.

Respectfully submitted,

Linda L. Oliver

Linda L. Oliver
Counsel for the Competitive
Telecommunications Association

Enclosures

cc: Sarah Whitesell
Thomas Power

Competitive Telecommunications Association (CompTel)
Ex Parte Presentation
June 1999
CC Docket No. 98-141

Proposed Conditions to Address Anti-Competitive Bundling by Post-Merger SBC/Ameritech

The Competitive Telecommunications Association (CompTel) supports many of the conditions that other parties have asked the Commission to impose on the proposed merger of Ameritech and SBC to address the competitive concerns raised by that merger.

CompTel here identifies what are, in its view, the most critical competitive problems presented by the merger, and offers proposed conditions that would address those competitive concerns. Those concerns arise from SBC/Ameritech's National/Local business strategy, and are addressed by the following conditions:

1. SBC/Ameritech should not be permitted to leverage its market power as an incumbent into other markets where it is an entrant, through its offering of national/local service packages.

2. SBC/Ameritech should not be allowed to create a CLEC affiliate unless that affiliate is required to use network elements, rather than service resale, to compete.

I. Competitive Concern: National/Local Offerings that Combine Monopoly and Competitive Services

SBC and Ameritech have announced that one of the reasons they intend to merge is so that they may offer "national local customers" a package that combines the customer's local service across a larger incumbent footprint. One element of the strategy will be for SBC/Ameritech to bundle a customer's local services where it retains its local monopoly with services it offers in those markets where SBC/Ameritech will compete as a legitimate entrant. By bundling monopoly and competitive services in a single package, SBC/Ameritech will be able to leverage its incumbent monopoly into other markets, including out-of-region markets where local competition is just beginning to emerge.

Proposed Condition:

SBC/Ameritech (or its affiliate) should be prohibited from packaging a service where the price, term, or condition of service is dependent upon, jointly marketed with, or in any other way linked to the purchase of any other SBC/Ameritech (or SBC/Ameritech affiliate) service offered in a state where SBC is an incumbent local exchange carrier.

2. Competitive Concern: Local Resale by a CLEC Affiliate

SBC/Ameritech will seek to "compete" against itself by forming a CLEC-affiliate. If the affiliate is able to offer local exchange service through reselling the local services of the SBC/Ameritech ILEC, it will circumvent the Act's market-opening provisions, allowing SBC/Ameritech to severely limit its competition and to avoid making UNE-based competition workable.

Proposed Condition

If SBC/Ameritech is allowed to offer CLEC services within the franchise territory of an affiliated SBC/Ameritech ILEC, it may not do so through the resale of ILEC retail services.

Service resale uniquely advantages the ILEC affiliate and is inherently discriminatory. Only an ILEC affiliate using service resale:

a) would profit from operating as an uncompensated marketing agent for the ILEC's access service.

b) would be unaffected by the inadequacy of the wholesale discount (because its payments for resold services are to an affiliate).

c) would benefit from the inability to differentiate its local services from those of the ILEC (because it *wants* to be perceived as the incumbent).

If SBC/Ameritech is allowed to have a CLEC affiliate within its region it should be limited to using the ILEC's network elements. UNE-based entry (rather than service resale) is acceptable because UNE-prices are required to be cost-based. As a result, the UNE price and the ILEC's actual cost should be one and the same, and the transfer price to the CLEC-affiliate would be established correctly. Further, if the ILEC's CLEC affiliate were required to use unbundled network elements, the ILEC would have an additional incentive to provide operational support for this important entry strategy. Finally, the ILEC would have the appropriate incentive to continue to upgrade the local network.

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GTE vs GTE: Some call competition bogus

posted 05/27/99

By Jennifer Merritt
STAFF WRITER

Maybe you've received a packet in the mail, or maybe you've seen the ads: unlimited local calling, 100 minutes of long-distance every month and various calling features, all for $36.95 per month.

Underneath the advertisement is the familiar white-on-blue GTE logo and a toll-free number.

Look a little closer.

The bundled local and long-distance services aren't actually being offered by GTE Corp., the Texas-based local phone service provider that dominates in Southwest Florida.

Rather, the one-flat-rate plan is being offered by GTE's sister company, GTE Communications Corp. Through a strange regulatory twist, the two companies -- whose profits end up in the same kitty, but remain separate entities -- are considered competitors.

It's an arrangement that concerns some consumer advocates, who believe that the setup creates merely an illusion of competition.

About 120 competitors have interconnection agreements with GTE to rent line space for their own services. GTE Communications is one of the 70 competitors using GTE's lines, offering everything from local service and long-distance calling to Internet access.

The agreements have all taken shape since the passage of the Telecommunications Act of 1996. The act is designed to foster competition, and ultimately, according to the Federal Communications Commission, leave more money in the pockets of consumers.

GTE Communications' offering is different from bundled packages touted in ads for AT&T's Personal Network and other long-distance giants. The GTE Communications plan also includes local service, something no other company is including. Customers can pay to add minutes to their calling plans, and add Internet, paging and wireless telephone service.

"It's a single point-of-sale for the services," said Pam Jacobson, president of general markets for GTE Communications. "That's the real attraction of bundling."

GTE Communications offers its bundled products in Florida, California and Seattle. Next month, the company is launching service in Indiana, and has

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been licensed to sell its services in several other states as well.

GTE Communications' deal with GTE -- though written under the same terms as all other interconnection agreements -- may fall into one of the competition loopholes left by Florida deregulation laws passed in 1995 and in the federal act of 1996.

GTE Communications customers are effectively kept in the GTE network, and although GTE officials say they want to foster competition, retaining customers also is a top priority for the $25 billion company.

"Certainly GTE is a strong advocate of introducing competition into the marketplace," said Cristina Coffin, a GTE spokeswoman. "But it's much better for (GTE) Communications Corp. to win over a customer than for another provider to come in and take that customer . . . (we're) effectively keeping those customers in our family."

It's that idea that has some consumer advocates up in arms.

"In my opinion, this is a total circumvention of the law that was passed," said Ernie Bach, executive director of the Florida Action Coalition Team. "Big companies through legal efforts have protected themselves to allow them to become the competition.

"These subsidiaries and sister companies are just another avenue for money to flow back in to the big company, and GTE Communications Corp. is a prime example of that."

Bach believes that loopholes in the Florida law and in federal regulations have stifled competition and have made it easier for incumbent carriers like GTE to become "megalopolies," Bach said.

The FCC, which is responsible for regulating and monitoring phone, cable and radio companies, is looking into the way subsidiary-type companies are regulated. According to FCC officials, concerns about these types of companies have arisen in several states, with many questioning whether sister and subsidiary companies are truly competitors.

Patricia Kemp, executive director of the Florida Consumer Action Network, is also concerned about the implications of competition from subsidiaries and sister companies.

"It's not truly providing competition to the consumer," Kemp said. "There's just an illusion of competition out there."

Kemp and her group are concerned that other companies will avoid Florida because there's no room for true competition. Kemp also said consumers are often deceived by companies that set up separate entities under different monikers and offer lower prices, but provide revenue for the larger company.

"There's no point in them setting up a company to compete with themselves unless they're trying to create a monopoly," Kemp said. "We believe laws should be in place to make sure other companies have a market to set up in, and that's not happening.

"The only new companies coming in now are related to the monopolies."

Still, GTE and GTE Communications officials argue that any type of competition is good for the consumer. GTE Communications is a separate corporation, with its own sales team and product platforms, said Jacobson.

Jacobson said GTE Communications, which has about 110,000 customers in its three markets, has built its service platform and systems outside of its GTE relationship.

Despite the skepticism and the possible competitive conflict, GTE Communications' bundled offering is the first of its kind among phone service providers, something company officials say puts them ahead of the pack.

"Now that we're coming into the marketplace and offering bundles, other companies are going to be stepping up to the plate," said Lois Kinman, a spokeswoman with GTE Communications. "I think it will indeed induce competition in the long run."

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