

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
SBC Request for Interpretation,)
Waiver, or Modification of the)
SBC/Ameritech Merger Conditions)

CC Docket No. 98-141
ASD File No. 99-49

To: The Commission

REPLY COMMENTS OF
GLOBAL TELECOMPETITION CONSULTANTS, INC. ("GTC")
GLOBAL ALLIANCE FOR TELECOMMUNICATIONS ("GAT")

Global Telecompetition Consultants, Inc. ("GTC"), a management consulting firm offering experienced consulting services and advice to the telecommunications industry and its affiliated organization, the Global Alliance for Telecommunications or "GAT," herewith submit their reply comments in the captioned proceeding.

In their initial comments GTC/GAT cited their direct experience of present-day anti-competitive "gaming" of the DSL marketplace by the incumbent RBOCs, including, and most especially, Ameritech, as a merged entity of SBC; Pacific Bell as a merged entity of SBC; and SBC itself. GTC/GAT's initial comments briefly described how clients have been stifled in their efforts to enter the rapidly emerging market for Internet access via DSL technology by the use of tactics reminiscent of the early bottleneck tactics of the Bell Operating Companies prior to Divestiture.

In making its initial comments, GTC expressed less concern about the technical merits of the SBC waiver request, than for the potential lack of legal merit to SBC's qualifications to seek what is, in essence, the equity powers of the Commission. In addition, GTC wanted to call attention to

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the palpable unevenness in the use of Commission resources in relation to its announced intent and commitment to bring the benefits of advanced telecommunications services to the public.

The comments submitted by the non-ILEC participants¹ demonstrate that GTC's concerns were well founded on both counts. First, SBC's waiver request is shown to be a transparent attempt to further game the FCC's policies supporting the competitive provisioning of advanced telecommunications services by using technology to cordon off equal access to the public to provide these services.² Secondly, SBC's waiver attempt once again imposes burdens on the FCC's resources to consider a meritless waiver based on anti-competitive intent, thus detracting from the FCC's ability to expend its limited resources on actually ensuring the effective implementation of its pro-competition policies for advanced telecommunications services.

GTC's initial comments highlighted how, despite the clear and unequivocal directives of the Commission in its decisions in this area, and its imposition of specific conditions on its approval of the SBC/Ameritech merger in particular, SBC and its merger partners are consciously ignoring their obligations. GTC similarly pointed out that this is a pattern of conduct by the RBOCs, citing the failure of Bell Atlantic to live up to its merger conditions or its obligations associated with its obtaining its 271 authority for New York. Since its initial comments, the FCC has had to address such "gaming" practices by Bell Atlantic.³ Hence, GTC's comments that SBC and other RBOCs,

¹ See comments of AT&T Corp., MCI WorldCom, Inc., Prism Communications Services, Inc., MGC Communications, d/b/a MPOWER Communications Corp., the Association for Local Telecommunications Services, and the DSL Access Telecommunications Alliance.

² See comments of the parties listed in n. 1, supra.

³ See *The Washington Post*, March 10,2000, p. E3 "Bell Atlantic to Pay \$13 Million in
(continued...)

once having obtained their merger or 271 entry approvals, will continue to manipulate the regulatory process are proven true by directly relevant evidence.

Once again, despite the FCC-imposed “pro-competitive” or “anti-abuse” conditions on its grants to the RBOCs for mergers or competitive entry, despite the FCC’s establishment of special staffs to police the post-approval actions of the RBOCs, and despite its announced new “enforcement ethic,” the FCC appears to remain a regulatory paper tiger.⁴ All too typically, therefore, the FCC only issued a monetary fine against Bell Atlantic for failing to live up to its 271 commitments when the only effective remedy would have been to suspend, if not revoke Bell Atlantic’s 271 authority.⁵

GTC also cited the significant threat to the realization of the FCC’s competitive policies for advanced services by commenting that while the RBOCs are stifling competition in the advanced services marketplace, they are marketing intensely their own advanced services and, by the combination of stonewalling and marketing, are capturing market share, presence and name recognition which will close the competitive opportunities for others. Now, SBC seeks to further

³(...continued)
Fines.”

⁴ The well documented history captured in *The Unauthorized Bio of the Baby Bells & Info-Scandal*, Kushnick (1998-99), stands as an indictment of the past failures of regulation to control the excesses of the monopoly power, political influence and financial power of the RBOCs. This Commission has an opportunity to establish the rule of law in telecommunications given the Congressional affirmation of the Commission’s favor of pro-competition policies. Such an opportunity presents itself here.

⁵ At least one Commissioner believed that suspension or revocation was the appropriate remedy. See the dissenting statement of Commissioner Gloria Tristani as reported in the *Washington Post* article cited in n. 3, supra.

those anti-competitive practices by building a technological barricade to effective competition with the instant waiver request.

GTC also commented on SBC's representations of its discussions with CLECs. SBC represented these decisions produced positive reactions from these competitors. GTC, however, pointed out that when SBC actually identified some CLECs, Northpoint and COVAD, the only reactions SBC was able to describe was that one CLEC had not yet taken a position and the other would directly inform the Commission on its position. GTC concluded that, in fact, despite SBC's self-serving representations of positive receptions to its waiver by its competitors, it would not be known what position these two CLECs would take until they filed comments. It would appear that the actual views of these two CLECS and others differ sharply from SBC's representations.⁶

An equally important point was made by GTC, that even if support is garnered from competitive CLECs, that support would be based in part on the trustworthiness of SBC's implementation of its professed commitments. But SBC's waiver garnered no support from its competitors. Rather, the only support came from other RBOCs, a typical result, the self-serving aspects of which are obvious. GTC also pointed out that despite its obligations under the merger conditions, Ameritech has failed to even begin compliance with a "pre-merger condition." Comments by AT&T demonstrate that similar refusals to provide needed access to provide competitive services have been adopted by SBC.⁷

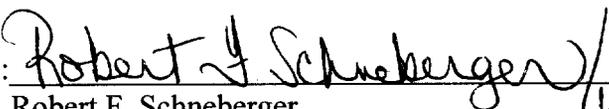
⁶ See comments of the DSL Access Telecommunications Alliances.

⁷ Note particularly the Declaration of Gary A. Rall filed as part of the comments of AT&T and the "Appendix DSL" attached to Mr. Rall's Declaration.

The circumstances cited by GTC in its initial comments were sufficient to undercut SBC's representation that a grant of its request "is in the public interest, is non-discriminatory, promotes the efficient mass-market deployment of advanced services . . ." (*Id.*) With the benefit of the comments submitted, it is unquestionable that SBC's waiver is anti-competitive and contrary to the public interest. But a denial of the waiver, being fully justified and required, cannot be the end of the story. The Commission must consider and address SBC's expressed intent to continue to frustrate the policies of the Commission, namely, the threat to the industry and the Commission of an "indefinite extension" of SBC's obligation to comply with Paragraphs 3d and 4n(5) and to impose delay on bringing advanced services to customers on a wide-spread basis. Such threats of regulatory defiance should not be tolerated.

Respectfully submitted,

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By: 
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Dated: March 10, 2000

CERTIFICATE OF SERVICE

I, Robert F. Schneberger, Executive Vice President of Global Telecompetition Consultants, do hereby state and affirm that copies of the foregoing "Reply Comments of Global Telecompetition Consultants, Inc. ("GTC") and Global Alliance for Telecommunications ("GAT"), in CC Docket No. 98-141, ASD File No. 99-49, were delivered in the manner indicated, upon the following, this 10th day of March, 2000.

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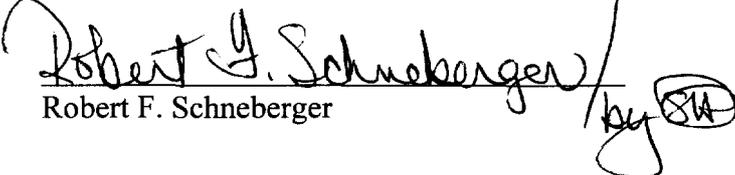
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