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May 19, 2000

By Hand

Magalie Roman Salas
Secretary
Federal Communications Commission
Room CY-A257
445 Twelfth Street, SW
Washington, D.C. 20554

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MAY 19 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Oral Ex Parte*

In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee, CC Docket No. 98-141

Dear Ms. Salas:

On May 18, 2000, Richard Metzger and Ruth Milkman, Lawler, Metzger and Milkman, counsel to NorthPoint, met with Sarah Whitesell, Legal Advisor to Commissioner Tristani. In this meeting, NorthPoint discussed the material in the enclosed presentation. In addition, NorthPoint provided a copy of the enclosed presentation to Kyle Dixon, Legal Advisor to Commissioner Powell.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. §1.1206(b)(1), an original and one copy of this letter and enclosure are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,



Ruth Milkman

cc: Sarah Whitesell
Kyle Dixon

Enclosure

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Project Pronto & Facilities-Based Advanced Services Competition



NorthPoint

Today, DSL is limited by distance, Digital Loop Carriers and fiber, and those limits are borne equally by ILECs and DLECs in their DSL deployment.

Pronto will mitigate the *distance* limitations of DSL by deploying *more fiber* and *more DLCs* (according to SBC, more than 20,000 of these).

After Pronto, however, the burden of the DSL limits will not be borne equally. Rather, due to the "externalities" of the project architecture, all of the benefits will accrue to the ILECs' services (deployed in the RT), and none of those to the facilities of the DLEC in the central office (who will be denied, according to SBC, any realistic opportunity to collocate at RTs). So while Pronto rebalances the limits of DSL – adding fiber and DLC obstacles, reducing distance limitations – in doing so it creates an inherently discriminatory landscape that damages competition.

Pronto should not be halted, but should be deployed in a manner that maintains a robust, facilities-based competitive market.

Collocation at the RT is a right of the DSL CLEC, and collocation there should be afforded to DLECs "on the same terms and conditions that apply to [the ILECs'] own DSLAM." (UNE Remand at ¶ 313, 221.) If SBC is going to flout this rule by deploying "out of line," (see, e.g., *Merger Conditions* ¶ 363 and n.674 ["affiliate will 'wait in line for collocation, petition to open closed offices, and otherwise deal with the same collocation and OSS implementation problems experienced by CLECs."]), then it must take measures to assure that competitive providers can deploy in RTs wherever technically feasible. In this regard, new remote terminals (well over 60% of the Pronto build-out) must be designed to accommodate competitive facilities. The current "shrink wrap" casing -- which by design fits one and only one integrated device -- flout the collocation rules by design.

Because collocation at RTs is not always technically feasible and – absent monopoly scope and scale – will not always prove economic, the ILEC must make available the RT-based, DSL unbundled service to CLECs on the same terms and conditions it does to its affiliate, but may not "hobble" the functionality of the devices merely because it does not, itself, seek to offer that functionality to *its* customers. For example, higher-speeds, QoS ATM functions, and multi-PVCs are all capabilities of the Alcatel and UMC boxes denied by SBC but that DSL CLECs need to support their innovative, exciting new services like streaming and interactive multimedia and VoDSL.

Finally, to ensure that the ILEC – which now is a bottleneck for the facilities in the RT – does not serve to stifle innovation, the suppliers must be permitted to respond to market forces from all service providers, the users of the DSLAMs. Either the CLEC can purchase directly and require the ILEC to install new upgrades and improvements, or the ILEC must be made to respond to CLEC requirements and foster a reasonable upgrade process using industry standard forums like OBF or NRIC on a timely and readily functional basis.

Maintain copper plant. Fiber growth is good only if it supplements, but does not supplant, the existing and increasingly valuable copper infrastructure. DSL CLECs have invested hundreds of millions of dollars to address the market served on copper. If ILECs are permitted to "retire" that asset in the face of increasing demand (wholesale and retain), they are doing so as monopolists, not as wholesale market participants, and they will scuttle this high-technology investment. Copper must be maintained, supported, and unbundled for continued service to the majority of subscribers regardless of, and as a pre-condition to, the ILEC fiber build plans.