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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



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September 18, 2000

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW - Room TWB-204
Washington, DC 20554

Re: *Ex Parte* - CC Docket Nos. 96-61 and 98-183
1998 Biennial Regulatory Review -
Review of Customer Premises Equipment and Enhanced Services Unbundling
Rules in the Interexchange, Exchange Access, and Local Exchange Markets

Dear Ms. Salas:

In an *ex parte* communications filed on August 14, 2000, (see letter of Susan E. Goodson, Executive Director - Federal Regulatory), SBC Communications presented its response to the affidavit testimony of Dr. Janusz A. Andover and Dr. Robert Willig in this proceeding. (See *ex parte* letter of AT&T Government Affairs Director, Charles E. Griffin, dated June 21, 2000.) SBC supported AT&T's relief from the bundling restrictions. In addition, SBC offered comments on AT&T's competitive motivations for opposing bundling relief for dominant carriers and falsely characterized the market conditions that currently exist for both the ILECs and the cable TV industry. Herein, AT&T posits that SBC's reply to this affidavit, while complementary in part, also included seriously misleading and self-advantaging misinterpretations designed to mitigate the compelling public interest contributions of the professors' declaration. Further, SBC offered a grossly inaccurate representation of the prevailing competitive conditions, especially in the cable TV marketplace.

In their affidavit, Professors Ordovery and Willig established that the decision on whether to allow bundling of basic services with CPE and/or enhanced services should focus on the market power of the seller as well as on the overall competitive conditions in the relevant markets. They provided definitive justification for bundling relief for non-dominant carriers. The professors also provided an equally compelling justification for denying bundling relief to dominant service providers, declaring that because the markets for basic local exchange and access services have yet to become competitive, allowing the dominant incumbent local exchange carriers to bundle could pose an

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unacceptable risk to competition. Contrary to SBC's position, this risk is not mitigated by state tariffing provisions or Parts 32 and 64 of the Rules and Regulations requiring the classification of accounts between regulated and unregulated services. This was been recognized, in part, by this Commission when it implemented the separate subsidiary requirement.

AT&T submits that SBC's claim that state regulations can protect consumers from a dominant carrier's abuse of bundling is without merit. This is because tariffing precludes unreasonable cross-subsidization only when a carrier's services are offered at discrete prices and on an unbundled, nondiscriminatory basis. It is no theoretical matter that even if a dominant carrier is regulated in its core markets, bundling -- which entails the offer of two or more goods and services at a single price, typically less than the sum of the separate prices -- can serve as a vehicle to improperly leverage a dominant carrier's monopoly power into adjacent markets. As Professors Ordoover and Willig stated in their declaration: "... bundling potentially 'covers up' discrimination since the bundling ILEC can claim that the lower price of the package allegedly stems from efficiencies made possible by close integration of the package."¹

Interestingly, SBC neglected to explicitly address enhanced services bundling in its *ex parte*. We will not speculate as to the reasons for this omission. Nonetheless, AT&T saw nothing in SBC's *ex parte* -- or elsewhere on the record in this proceeding -- that justifies bundling relief for dominant carriers. Thus, contrary to SBC's assertions, denying dominant carriers both CPE and enhanced services bundling relief will not harm consumers or injure competition. In fact, retaining these rules for dominant carriers is in the public interest and will foster competition.

Even more interesting, SBC states in its *ex parte* that AT&T is the monopoly cable TV provider in many major markets. This assertion is groundless, and SBC offered no documentation to support its claim. (Indeed, if SBC's local telephony markets were as competitive as the cable services markets today, it would likely have received 271 relief in all of its states rather than only in Texas.) Apparently SBC believes that it can achieve CPE bundling relief by arguing that regulatory parity between dominant and non-dominant carriers is sound public policy and should apply in this case, too. But as been explained by AT&T and others in this proceeding, bundling can serve as a mechanism for anti-competitive conduct by non-competitive dominant carriers. Therefore, the Commission should retain the anti-bundling prohibition for all ILECs until the markets for local exchange and access services become sufficiently competitive. The costs of releasing the ILECs from these requirements are likely to exceed the benefits to consumers by a wide margin.

¹ See *ex parte* letter of AT&T Government Affairs Director, Charles E. Griffin, dated June 21, 2000.

In accordance with Section 1.1206(a)(2) of the Commission's rules, two copies of this Notice are being submitted to the Secretary of the Commission for inclusion in the public record for the above-captioned proceeding.

Sincerely,

A handwritten signature in black ink that reads "Charles E. Griffin". The signature is written in a cursive style with a large, stylized initial "C".

cc: J. Jennings
J. Donovan May