

Before the
Federal Communications Commission
Washington, DC

In the Matter of)	
)	
SBC Communications Inc. and AT&T Corp.)	WC Docket No. 05-65
Applications for Consent to)	
Transfer of Control)	

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. (“Cox”), by its attorneys, hereby submits its reply comments in the above-referenced proceeding.¹ Cox files these brief reply comments to address two specific issues. First, it is plain from review of the other parties’ filings that the concerns described in Cox’s initial comments are significant, and must be addressed. Second, the Commission should ensure that any remedies it adopts specifically address the concerns described by Cox – the largest facilities-based competitor participating in this proceeding – because many of the other proposed remedies would be inadequate to do so.

Initially, it is evident that many of the other commenters recognized the concerns that were addressed in the Cox filing. For instance, several commenters demonstrated that the merger poses substantial risks to the continuing development of local competition. In particular, the Consumer Federation of America and others noted that AT&T has been a substantial force in residential competition, and that AT&T’s CallVantage service demonstrated an ongoing commitment to that market.² The loss of AT&T as a competitor has effects on residential consumers, but it also removes one of the strongest voices in interconnection negotiations and

¹ See *Public Notice*, “Commission Seeks Comment on Application for Consent to Transfer of Control Filed by SBC Communications Inc. and A&T Corp.,” DA 05-656 (released Mar. 11, 2005).

² See Comments of Consumer Federation of America, et al. at 10-11; Comments of National Association of State Utility Consumer Advocates at 15-16.

arbitrations, thereby reducing the likelihood that reasonable terms will be available to other CLECs.³ As CompTel/ALTS explained:

[T]he merger effectively represents SBC's acquisition of its most effective regulator of wholesale services. The pro-competitive provisions of the Telecommunications Act were never expected to implement themselves. Congress deliberately adopted a structure whereby the creative tensions between the RBOCs and their largest expected customers – AT&T included – would engage in bilateral arbitrations to establish reasonable wholesale offerings. . . . The proposed mergers, however, will produce a resource imbalance between entrants and incumbents that is so severe that the effectiveness of this regime is destined to fail.⁴

Indeed, the effect of losing AT&T as a participant is difficult to overstate.

Other commenters also recognized the impact of the merger on the Internet backbone transmission marketplace. For instance, CompTel and ALTS noted that, following the merger, SBC will have less incentive to peer with other non-Tier 1 providers because it will have gained access to Tier 1 peering.⁵ As Cox's comments explained, this change is particularly significant (and potentially costly to non-Tier 1 competitors) because today they can peer with SBC, while after the merger it is likely they will be unable to do so.⁶ Moreover, as Vonage suggests, SBC already has taken actions that suggest it will try to discriminate against non-affiliated information service providers in the future, and the merger will make it easier for SBC to engage in discriminatory behavior.⁷

While these comments confirm the importance of the issues raised by Cox, most of the other commenters are not facilities-based competitors and, as a consequence, their proposed

³ Comments of Cox ("Cox Comments") at 9, 12-3; *see also* Comments of CompTel and ALTS ("CompTel/ALTS Comments") at 9, 41-47.

⁴ CompTel/ALTS Comments at 9.

⁵ CompTel/ALTS Comments at 32-36; *see also* Comments of Earthlink at 3-7.

⁶ Cox Comments at 14.

⁷ Comments of Vonage Holdings at 14 (discussing SBC TIPTOP tariff).

remedies do not address the needs of Cox and other facilities-based providers. While the remedies proposed by the other commenters may have merit, they do not address the fundamental requirements for facilities-based competition, notably economically efficient interconnection and traffic exchange.⁸ If the merger is approved without appropriate interconnection conditions, it likely will become significantly more difficult for facilities-based providers to compete with SBC.

Similarly, most of the other commenters do not suggest remedies that would address the potential damage to competition in Internet traffic exchange and transport. Proposals for separate subsidiaries or build-out requirements will not prevent SBC from imposing supra-competitive transit rates on unaffiliated IP service providers or from denying access to transport services. Rather, any remedy must focus on these potential harms, such as the Cox proposals for a continuation of settlement-free Internet peering during a reasonable transition period and maintenance of the availability of transport facilities on fair terms and conditions.⁹

⁸ Cox Comments at 13.

⁹ Cox Comments at 15, 16; *see also* Comments of ACN et al. at 73-74 (maintenance of peering relationships).

For all these reasons and the reasons described in Cox's comments in this proceeding, the proposed merger should be found to harm the public interest unless the Commission adopts the conditions described herein.

Respectfully submitted,

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May 10, 2005

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, of Dow, Lohnes & Albertson, PLLC do hereby certify that on this 10th day of May 2005, copies of the foregoing Reply Comments of Cox Communications, Inc. were served via hand delivery and electronic mail or first-class mail postage prepaid (denoted by *), upon the following:

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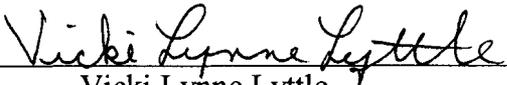
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