Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. ("Qwest") submits its reply comments in connection with the application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for approval of their proposed merger (the "Merger Application") 1/

This reply is necessarily brief. For the reasons set forth below, the Commission should re-start its informal 180-day clock, and give parties 45 days to file new comments based on the information provided by SBC and AT&T yesterday in response to the Commission's letter of April 18, 2005. 2/ These dates should run from the day that the Commission issues a public notice finding that the parties have provided a materially complete response to the data request in

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1/ *See Public Notice, Commission Seeks Comment on Application for Consent to Transfer of Control Filed By SBC Communications Inc. and AT&T Corp.*, DA 05-656 (rel. March 11, 2005).

2/ *See* FCC Letter and Attachment to Patrick Grant, counsel for SBC, and David Lawson, counsel for AT&T (Apr. 18, 2005) ("April 18 Letter").

the April 18 Letter. Any other procedural course would reward SBC and AT&T for failing to file a complete application in the first place.

Qwest is well-aware that a decision to stop the 180-day clock is discretionary, and therefore we are not filing a motion to that effect. However, this is a clear case where the Commission should exercise that discretion to reflect the reality that interested parties, through no fault of their own, have been hamstrung by the applicants. It has taken a detailed Commission letter to make SBC and AT&T essentially amend their application by providing crucial information that should have been included in the first place. Failure to recognize this problem formally would cause major public interest harm in at least three respects: (1) it would severely prejudice the ability of other parties to participate in this uniquely complex and important proceeding; (2) it would send a misleading signal to other regulatory bodies conducting their own review of the SBC-AT&T merger; and (3) it would also set a terrible precedent for how merger parties approach the Commission in major transactions to come.

COMMENTS

Of all the transactions that ever may come before the Commission, the proposed merger of SBC and AT&T, and the parallel merger of Verizon and MCI, are by far the most important, and therefore the ones that should be least subject to gamesmanship by the parties. We are not talking here about one company buying a few radio stations. We are not talking about the merger of two CLECs. These mergers are far more significant than the pending merger of Sprint and Nextel (as important as that transaction is in the wireless industry). The proposed SBC-

AT&T and Verizon-MCI mergers are truly unique. If allowed, they would entirely reshape the telecommunications future of this country. 3/

Yet until just yesterday SBC and AT&T had not provided the Commission with even the most fundamental information regarding overlapping AT&T facilities and services in the SBC region. As these comments are being written, Qwest has no way of knowing whether the parties will adequately respond to the Commission's April 18 Letter. And without that data, neither the Commission nor other parties can evaluate whether additional information may be required to complete an adequate review of this extraordinary merger under the Merger Guidelines and Commission precedent.

Qwest has previously demonstrated why the Commission should reject this merger in its current form. 4/ SBC is proposing to foreclose current competition by acquiring its largest competitor in both the wholesale and retail markets. Through this re-concentration of the telecom market in its region, SBC is increasing barriers to competition now, including competition from other providers who depend on AT&T as an important source of alternative network facilities and resold special access. SBC also is building walls for the future. It is acting now to ensure that AT&T and its valuable assets cannot later be used to create new competition in the SBC region, probably in partnership with other developing service providers.

3/ The nation's two largest local exchange carriers, who already control the nation's two largest wireless companies, now propose to acquire their two largest competitors in the wireline local and interexchange markets. If the mergers are allowed, these two giants would control 80% of the nation's wireline business market, more than 63% of all ILEC lines, and more than half of all wireless subscribers nationwide. They would eliminate the two primary independent wholesale local networks in the country. *See FCC Statistics of Communications Common Carriers, 2003/2004 Edition,* released Oct. 12, 2004, Table 2.1 (Total Access Lines); UBS Wireline Telecom Play Book, January 14, 2004, and company SEC filings; Deutsche Bank Data Book, Volume 8, March 2005 at 2.

4/ *Petition to Deny of Qwest Communications International Inc.*, WC Docket No. 05-65 (filed Apr. 25, 2005) ("*Qwest SBC-AT&T Petition*").

If this were a game of bridge, SBC would be making the ultimate "take-out" bid. If allowed, no one else will have a chance to play the hand.

Qwest also has filed a petition to deny the parallel, if not coordinated, merger of Verizon and MCI. 5/ Indeed, the anticompetitive effects of each individual proposed transaction are multiplied by the way they intersect. First, and most obviously, SBC and Verizon are helping each other by eliminating the two companies that have presented the most significant competition to them both – including competition in wholesale services used by other smaller firms.

And second, SBC and Verizon have a demonstrated history of limiting their entry into each other's regions. If these mergers are approved, there is every reason to conclude that this mutual forbearance would continue. Post-merger, SBC and Verizon may compete for the largest national retail accounts and in certain selected markets. They presumably would not simply dump all out-of-region customers they initially inherit from AT&T and MCI. 6/ But neither RBOC can be expected to compete with the other as actively and aggressively as AT&T and MCI do today, especially with respect to customers primarily located in the other giant's service territory. Verizon and SBC have not done so before, even when it would have been easy to cross the border into each other's territory in Connecticut, or New York, or Southern California, or

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5/ *Petition to Deny of Qwest Communications International Inc.*, WC Docket No. 05-75 (filed May 9, 2005) ("*Qwest Verizon-MCI Petition*").

6/ Indeed, their initial response may be to raise prices to consumers in each other's regions. AT&T and MCI have stated that this is the approach they have taken to consumer local and long distance as a means of reducing their presence in this market. *See* SBC Application, *Public Interest Statement* at 52-53; Verizon Application, *Declaration of Wayne Huyard* at ¶ 18. The Commission presumably will examine the extent to which AT&T and MCI actually are exiting these markets, and whether they are doing so primarily to clear the path to the mergers here. Of course, the larger question is why SBC and Verizon should not have to win these customers in the market rather than simply buying them up from their main rivals.

Texas, or many other parts of the country. They have declined to compete even when this Commission ordered them to do so as a condition to prior mergers. 7/

Why would the de facto détente of SBC and Verizon suddenly end now? And in particular in key wholesale markets, why would they aggressively overbuild each other's local networks, check each other's wholesale pricing, and provide alternative supply to third party competitors? The answer, of course, is that they will not do so.

In these circumstances, perhaps it is not surprising that both SBC and Verizon have rushed to file applications that are wholly lacking in the information regulators need to do their job. They have launched their applications, blown into the sails with rhetorical winds of "inevitability," and counted on regulators not to look below deck at the paucity of data in the cargo bay.

Here at the FCC SBC and Verizon appear to be trying to run out the informal 180-day clock. They are playing a variation of old-fashioned "four-corners" basketball, where teams held the ball for long periods far from the hoop so opponents would not get as many chances to shoot. Of course, that kind of "keep away" led the NCAA to institute a shot clock in 1985, thereby penalizing teams that did not play ball.

The Commission should not reward SBC and AT&T here for their own game of "keep away" – filing an incomplete application and then letting time tick away. Qwest and multiple other parties have discussed the serious problems presented by this merger, and why it should be

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7/ *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 215 Authorizations from Ameritech Corp., Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-141, FCC 99-279, *Memorandum Opinion and Order* (October 6, 1999); *In re Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations*, CC Docket No. 98-184, FCC 00-221, *Memorandum Opinion and Order* (June 16, 2000).

denied or heavily conditioned in its current form. 8/ However, these parties also have highlighted how SBC and AT&T have frustrated more detailed analysis required under the Merger Guidelines by failing to provide granular data on overlapping markets and services. For example, one group of CLECs commented that "[b]oth local market share and local facilities deployment are readily quantifiable with information in Applicants' possession, yet they choose not to include a scintilla of such critical data in their application." 9/ These CLECs noted that SBC and AT&T filed an application that "is largely devoid of any real evidence." 10/

These parties are absolutely correct. Even now, it is not clear whether the data filed yesterday by SBC and AT&T is sufficient. The Commission has a responsibility to conduct this historic proceeding on the basis of a complete factual record. This merger, and the Verizon-MCI merger, threaten to impact the lives of all Americans. They will go a long way towards determining the scope of telecommunications competition in this country over the next two

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8/ *Qwest SBC-AT&T Petition. See also Opposition filed by Vonage Holdings Corp.*, WC Docket No. 05-65 (filed April 25, 2005); *Petition to Deny of Cbeyond Communications, Conversent Communications, Eschelon Telecom, Nuvox Communications, TDS Metrocom, XO Communications, and Xspedius Communications*, WC Docket No. 05-65 (filed April 25, 2005) (*"Cbeyond, Conversent, Eschelon, Nuvox, TDS, XO, and Xspedius Petition"*); *Opposition of Broadwing Communications, LLC and SAVVIS Communications Corp.*, WC Docket No. 05-65 (filed April 25, 2005); *Comments filed by ACN Communications Services, Inc., ATX Communications, Inc., Bullseye Telecom, Inc., Cavalier Telephone Mid-Atlantic, LLC, CIMCO Communications, Inc., CTC Communications, Inc., Gillette Global Network, Inc. d/b/a Eureka Networks, Granite Telecommunications, LLC, Lightship Communications, LLC, Lightyear Network Solutions, LLC, PAC-West Telecomm, Inc., RCN Telecom Services, Inc., USLEC Corp., U.S. Telepacific Corp. d/b/a Telepacific Communications*, WC Docket No. 05-65 (filed April 25, 2005); *Petition to Deny of American Public Communications Council*, WC Docket No. 05-65 (filed April 25, 2005); *Petition to Deny of CompTel/ALTS*, WC Docket No. 05-65 (filed April 25, 2005).

9/ *Cbeyond, Conversent, Eschelon, Nuvox, TDS, XO, and Xspedius Petition* at 5.

10/ *Id.* at 6. *See also Comments of WilTel Communications, LLC*, WC Docket No. 05-65 (filed April 25, 2005) ("[t]o date our ability to participate here has been limited by the fact that SBC and AT&T alone posses the most relevant data regarding their respective facilities, services, and business plans, particularly within the 13 state SBC local exchange territory, and have made little of that data available for review by interested parties") at 2.

decades, including the price consumers and businesses pay for telecom services, and the ability of other parties to bring to market new innovations.

The Commission has always made clear that its merger review schedule depends on the good faith of the parties, that it will take more time when it needs additional information, and that it will not allow informal scheduling goals to substitute for doing its job right. 11/ This is just such a time. SBC and AT&T have created this impossible situation, and it is the Commission's responsibility to fix it. If this sounds like a penalty for a shot clock violation, it is well-deserved; it is SBC and AT&T who have frozen the ball.

This is not simply an FCC process issue. State PUCs and other regulators are conducting their own analysis of this merger. They need access to the SBC and AT&T data filed yesterday. And they are watching how this Commission schedules and runs its review process as they manage their own.

Furthermore, this matter has implications beyond the SBC-AT&T merger docket. If these parties are allowed to game a transaction of this magnitude, they will set a terrible precedent for the future. The message will be loud and clear: the more complex and controversial the deal, the more parties should withhold key information for as long as possible.

CONCLUSION

For the foregoing reasons, the Commission should examine the responses of SBC and AT&T to its April 18 Letter. If those responses are incomplete, the parties should be given a new deadline to complete their submission. Once the Commission finds the response complete,

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11/ *See* http://www.fcc.gov/transaction/timeline.html.

it should re-start its informal 180-day clock, and issue a public notice giving interested parties 45 days to comment on the full record.

Respectfully submitted,

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