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EX PARTE

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May 18, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: WC Docket No. 05-65 In the Matter of SBC/AT&T Applications for Approval of Transfer of Control; WC Docket No. 05-75 In the Matter of Verizon/MCI Applications for Approval of Transfer of Control

Dear Ms. Dortch:

On May 17, 2005, representatives of Qwest (*Melissa Newman, Blair Rosenthal, Wendy Moser and Dan Willis, all of Qwest, Peter Rohrbach and Janet McDavid of Hogan & Hartson, and Seth Sacher of Bates White*) met with members of the FCC staff (*Ben Childers, Craig Stroup, Rodger Woock, Pam Megna, Gail Cohen, C. Anthony Bush, Kent Nilsson, Michele Ellison, Jim Bird, Mark Uretsky, Kate Collins, Jon Minkoff, Marcus Maher, Davis Krech, William Dever, Paul Zimmerman and Chuck Needy*) to discuss the above-named dockets.

The attached document was used as the basis of the discussion.

Sincerely,

/s/ Melissa E. Newman

Attachment

Copy (*via e-mail*) to:

Ben Childers	Kate Collins	Wendy Moser
Craig Stroup	Jon Minkoff	Blair Rosenthal
Rodger Woock	Marcus Maher	Dan Willis
Pam Megna	David Krech	
Gail Cohen	William Dever	
C. Anthony Bush	Paul Zimmerman	
Kent Nilsson	Chuck Needy	
Michele Ellison	Peter Rohrbach	
Jim Bird	Janet McDavid	
Mark Uretsky	Seth Sacher	

Qwest *Ex Parte*

WC Docket No. 05-65

**In the Matter of SBC/AT&T Applications for
Approval of Transfer of Control
and**

WC Docket No. 05-75

**In the Matter of Verizon/MCI Applications for
Approval of Transfer of Control**

May 17, 2005

The Competitive Impact of the Mergers of SBC/AT&T and Verizon/MCI

- **Re-concentration in the telecommunications industry drives major concerns**
- **FCC Public Interest Standard**
 - SBC/AT&T and Verizon/MCI cannot gain approval of their mergers unless they carry their public interest burden of demonstrating that the merger will “enhance competition”
- ***Merger Guidelines 1.5***
 - Mergers of competing firms with substantial combined market shares in highly concentrated markets are presumed to create or enhance market power or facilitate its exercise in violation of Section 7 of the Clayton Act
- **The FCC should look at the SBC/AT&T merger in conjunction with the Verizon/MCI merger**

Competitive Impact is The Concern

- **SBC/AT&T and Verizon/MCI will control:**
 - 80% of the nation's wireline business market
 - 65% of all ILEC access lines
 - More than half of all wireless subscribers
- **SBC/AT&T and Verizon/MCI deals will foreclose competition**
 - Combined entities can:
 - Impede competition
 - Thwart deployment of new technology and competitive alternatives
 - Mutually forbear
 - Engage in discriminatory pricing/price squeeze conduct

Qwest as RBOC

- **Qwest has taken the lead in removing obstacles to competition in the 14 state region**
 - Stand-alone DSL
 - Offering a PRI solution for VOIP providers
 - Offering a 911 solution for VOIP providers
 - Collocation
 - TRRO approach of following terms of interconnection agreements
 - Offering QPP, a UNE-P alternative
 - Over 95% of CLEC UNE-P lines have been converted to QPP

Qwest as a Competitor

- **Qwest's IXC/CLEC Retail Business Out-of-Region**
 - Sells a complete solution to small, medium, and large businesses
 - Has a certified sales force of over 1700 employees with technical support engineers across the U.S. serving all segments of businesses
 - Global
 - Major
 - Key
 - Federal
 - Local Government and Education
- **Qwest's IXC/CLEC Wholesale Business Out-of-Region**
 - Customers include CLECs, ESPs, ISPs, IXCs, resellers, wireless carriers
 - Dedicated Internet Access (“DIA”), Frame Relay, ATM, Private Line

Qwest as a Competitor (cont.)

- **Qwest's IXC/CLEC Products/Services**
 - Long Distance
 - Domestic and international
 - Major POPS in 44 on-net cities across the U.S.
 - Additional presence in 54 more cities
 - IXC customers in 184 LATAs in 50 States (including 14 in-region states)
 - VOIP
 - Carrying over two billion VOIP minutes per month
 - Data Services
 - Data Products
 - Frame Relay, Private Line, ATM
 - IP Products
 - DIA, Hosting, iQ WAN, Hosted VOIP, VPN

Qwest as a Competitor (cont.)

- **Qwest as QCC competes in 36 states, outside the RBOC 14 state region**
 - Facilities-based presence in 25 out-of-region cities
 - Albany, Baltimore, Boston, Chicago, Cincinnati, Cleveland, Columbus, Dallas, Detroit, Fort Worth, Indianapolis, Kansas City, Los Angeles/Orange County, Newark, New York, Philadelphia, Pittsburgh, Sacramento, San Antonio, San Diego, San Jose, San Francisco, St Louis, Washington DC, White Plains
 - Fiber facilities with 97 active collocations
 - Nationwide fiber network with newest technology and features
 - 28,000 national route miles of lit fiber
 - Equipped with latest technology OC-192 transport
 - One of the largest IXCs in the U.S.
 - High dependence on special access to reach the local customer

Qwest Metro City Locations

Current as of September 20, 2004



Qwest as a Competitor (cont.)

- **Qwest aggressively competes outside of its core region**
- **Qwest has attempted to expand the QCC scope through purchase of key assets**
 - Attempt to purchase Allegiance
 - Local facilities
 - 36 metro markets, 31 outside the Qwest local service region
 - Increase Qwest's points of presence (POPs) to nearly 700
 - Network facilities
 - » end-to-end voice and data communications to business customers across the U.S
 - The purchase was intended to increase Qwest's out-of-region business

Qwest as a Competitor (cont.)

- **Major special access purchaser from SBC**
 - Over 60,000 circuits in SBC region
 - 89% of loops are provisioned on SBC special access
 - 86% of interoffice local transport is on SBC special access
- **Major special access purchaser from Verizon**
 - Over 30,000 circuits in Verizon region
 - 94% of loops are provisioned on Verizon special access
 - 89% of interoffice local transport is on Verizon special access
- **Switched access**
 - 48 long distance switches located outside of 14 state region
 - Qwest transports approximately 100 billion long distance minutes per year
 - Switched access costs account for significant portions of QCC costs to supply long distance services

Harm to Competition

- **Ubiquitous non-ILEC supplier is necessary for integrated solutions in order to serve business customers**
 - Multiple providers
 - Multiple failure points
- **The AT&T/MCI role of keeping the SBC/Verizon prices down**
 - In October 1998, SBC stated the following in the FCC pricing flexibility docket with respect to competition, specifically AT&T and MCI:
 - “Similarly, the higher the industry elasticity of supply, the less likely any supplier can unilaterally raise (and maintain) prices above competitive levels, or even substantially above rival suppliers prices for similar services.”
 - AT&T/MCI extensive networks, expansion threats, and ability to buy in volume and resell force SBC/Verizon discounts
 - AT&T /MCI are key resellers of discounted special access

Harm To Retail Competition

- **Given the substantial overlap of AT&T's and MCI's customers, facilities, and services in the SBC and Verizon retail territories, the proposed mergers will harm intramodal retail competition**
 - AT&T and MCI are the largest retail wireline competitors to SBC and Verizon in the mass market, small business market, and enterprise segments in their territories
 - CLECs ability to offer retail services will be harmed without AT&T/MCI as underlying wholesale suppliers
 - Strong network presence
 - Strong wholesale presence

Harm To Retail Competition (cont.)

- **The mergers will also eliminate emerging intermodal retail competition**
 - VOIP
 - The mergers will eliminate AT&T and MCI as significant VOIP competitors
 - SBC's and Verizon's refusal to provide universal stand-alone DSL also harms the ability of VOIP providers to offer service
 - Wireless
 - SBC's and Verizon's ownership interests in the nation's two largest wireless carriers reduce their incentives to drive substitution between wireline and wireless services
 - Cable
 - Cable operators also need continued access to third-party wholesale inputs from AT&T and MCI

Merger Harm to Wholesale Competition

- **Mergers will enable SBC and Verizon to eliminate their most significant wholesale competitors**
 - SBC and Verizon are the primary sources of the collocations, switched/special access, and transport services that rivals need to serve customer locations in the SBC and Verizon territories
 - Qwest orders between 85-95% of all its special access circuits from SBC and Verizon in their regions
 - Approximately 42% of all QCC long distance minutes originate and terminate in SBC and Verizon regions
 - AT&T and MCI are the most ubiquitous wholesale alternatives to SBC and Verizon, and have deployed the most alternative local facilities in the SBC and Verizon territories

Merger Harm to Wholesale Competition (cont.)

- **SBC and Verizon unlikely to continue to discount wholesale prices in absence of competition**
 - Acquisition of AT&T and MCI will result in an effective increase in wholesale access prices, increasing the barriers to entry and expansion for competitive carriers and hindering the ability of competitive carriers to provide competitively-priced services in the SBC and Verizon regions
- **Mergers will increase competitors' dependence on SBC and Verizon facilities**
 - But for these mergers, AT&T and MCI would continue to have the incentives and scale economies to deploy more facilities to reduce their dependence on SBC's and Verizon's facilities
 - Competitive carriers would use new AT&T and MCI facilities to reduce dependence on SBC's and Verizon's facilities

Analysis of Competition: The power of SBC in the Special Access Market

Finding practical alternatives in a multi-provider environment

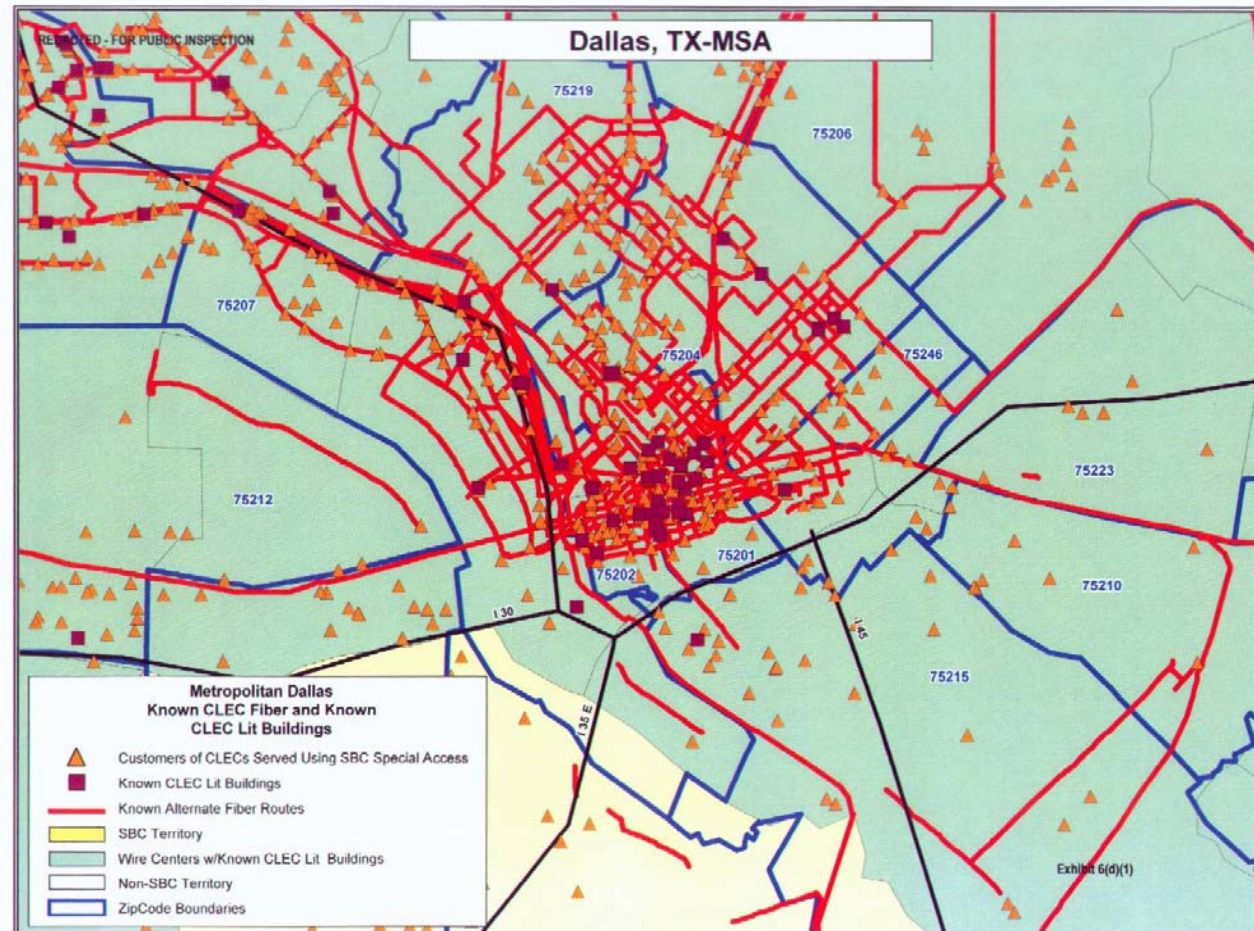
Map implies widespread “availability” of alternate fiber routes – yet the vast majority of locations are served via ILEC Special Access arrangements.

In practical application, using a myriad of providers to “build-up” circuits to customers presents insurmountable problems for the quality minded customer and operator.

This type of “10,000 foot view” of competition can be misleading – a more detailed analysis is required.

SBC and AT&T have not provided sufficient details of their network and the relationships to CLEC networks to allow the review necessary.

Available third party information is limited, however some insight into the issues can be highlighted.



Map from SBC submittal to information request

Qwest-Allegiance Divestiture Decree (Feb. 2004)

- **Divestiture Scope**
 - All in-region facilities
 - All in-region customers and services
 - Exception: customer contract also covers out-of-region locations and more than 50 percent of revenues are out-of-region
- **Allegiance only overlapped Qwest in the five largest in-region cities, each with substantial competition from AT&T, MCI and others**
 - DOJ examined extensive, disaggregated market data over a concentrated six week period
 - Qwest reserved the right to continue to debate issue and argue for a narrower divestiture, but DOJ was not encouraging given their view of competitive effects

Proposed Remedies

- **Divest overlapping facilities**
 - The entire local networks of AT&T and MCI between their POPs and the customers must be divested, including
 - Collocations
 - Fiber rings
 - Entrance facilities
 - Building entrances/Loops
 - Interoffice transport
- **Divest customers**
 - Customers must follow the divested facilities through either a retail or wholesale solution
- **Divestitures must ensure that a viable competitor emerges to replace AT&T and MCI**
 - The purchaser must be able to achieve maximum scale

Proposed Remedies

- **Open Access to Networks**
 - Stand-alone DSL
 - VOIP
 - Connectivity for MPLS (Multi Protocol Layer Switching)
- **Regulate/Constrain Prices**
 - Special access
 - Wholesale prices for Ethernet loops, DSL and local Frame/ATM
 - VOIP terminations
 - Switched access issues
- **Other Conditions**
 - Interconnection/Arbitration
 - Non-Discrimination
 - Resolution of disputes
 - Reporting requirements