



**EX PARTE**

June 8, 2005

***By hand and ECFS***

Kevin Martin, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *SBC Communications Inc. and AT&T Corp., Applications for Approval of Transfer of Control, WC Docket No. 05-65; Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control, WC Docket No. 05-75.*

Dear Chairman Martin:

The Ad Hoc Telecommunications Users Committee supports the May 25, 2005 request of Cbeyond Communications, Eschelon Telecom, SAVVIS Communications, Inc., TDS Metrocom, and XO Communications<sup>1</sup> that the Commission (1) stop the clock on its informal 180-day review schedule for the proceedings captioned above, and (2) consolidate its review of those proceedings. Ad Hoc urges the Commission to take these actions in order to ensure that interested parties (and the Commission itself) have an adequate opportunity to review the data filed by the applicants in response to the Commission's data requests, and to ensure that the Commission has an adequate opportunity to develop the pro-competitive conditions required for the proposed mergers to serve the public interest, convenience, and necessity.

As Ad Hoc observed in its Reply Comments filed in the dockets above, the applicants chose to support their applications with attractive rhetoric, comforting economic theory, and sunny speculation regarding the market-opening potential of new and innovative technologies that have not yet been deployed in the marketplace. They chose not to include data that would substantiate their claims regarding the current state of competition in their markets and the impact of the proposed mergers on those markets. The applicants' decision to omit supporting data from their applications and to supply that evidentiary support only in response to data requests from the Commission – and only in impenetrable formats that impede review by third parties – is a tired though not uncommon

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<sup>1</sup> Letter from Brad Mutchelknaus, Edward Yorkgitis, and Christopher Wright to Chairman Martin, WC Docket Nos. 05-65 and 05-75 (May 25, 2005).



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litigation tactic in some quarters. But that tactic is simply not compatible with the Commission's internal goal of processing 214 merger applications in 180 days.

If speedy review by the Commission were the applicants' priority, they should have made pro-active compliance with Section 214 their practice.

Like the parties filing the May 25 request and the parties challenging the applicants' May 27 response to that request,<sup>2</sup> Ad Hoc attempted to review the data produced by SBC and AT&T in response to the Commission's information requests. Ad Hoc was similarly frustrated by the applicants' indefensibly overbroad designation of virtually all documents as documents that could not be copied, including items the applicants have already made public such as press releases or data filed routinely and publicly with state public service commissions. These obstacles to effective review were compounded in SBC's case by its bizarre and obstructionist organization of its documents according to the employee who produced the document, which effectively stymied any useful review or even association of a document with the Commission information request to which it purported to respond.

Ad Hoc was particularly troubled by the applicants' reliance on print-outs of multi-row, multi-page spread sheets for their answers to requests for particular data from the Commission. Because these data were voluminous, were not made available in native format, could not be copied, and did not even include in many print-outs the rows totaling or aggregating data in columns that stretched over dozens of pages, the applicants' insistence upon time-limited viewing of spread sheet print-outs was tantamount to providing no data at all.

Accordingly, Ad Hoc urges the Commission to adapt its informal review schedule to the circumstances orchestrated by the applicants and stop the 180-day clock until such time as (1) the applicants provide adequate access to the data upon which they rely for their responses to the Commission's information requests, including production of spread sheets in native format for parties to retain and exercise; and (2) the Commission and interested parties have an adequate opportunity to analyze the data disclosed by the applicants.

Applicants who decide to withhold crucial supporting data until (and even after) the data are pried loose by staff information requests should not be

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<sup>2</sup> Letter from Brad Mutchelknaus, Edward Yorkgitis, Christopher Wright, Timothy Simeone, Andrew Lipman, Eric Bronfman, and Patrick Donovan to Chairman Martin, WC Docket Nos. 05-65 and 05-75 (June 7, 2005) at fn. 4.



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surprised, nor be heard to complain, when that tactic disrupts the Commission's preferred schedule for reviewing applications.

Please contact the undersigned should you have any questions or wish to discuss this matter further.

Respectfully submitted,

A handwritten signature in cursive script that reads "Colleen Boothby".

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Colleen Boothby

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