

June 13, 2005

By ECFS

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from AT&T Corp., Transferor, to SBC Communications Inc., Transferee, WC Docket No. 05-65*

Dear Mr. Chairman:

We are writing on behalf of SBC and AT&T to respond to yet another letter from our competitors, this one sent to you on June 7, 2005, again asking the Commission to delay its consideration of our merger.¹ As you may recall, many of those competitors had written you on May 25, 2005, to make the same request.² At that time, their assertion was that their access to data rooms with confidential information was inadequate. In our letter to you dated May 27, 2005, we clearly rebutted that accusation and showed that the data rooms sat empty nearly two thirds of the time.

Now our competitors take just the opposite approach with a new complaint: that the data rooms contain too much data. They groan about “[t]he sheer enormity of the Applicants’ submissions,” with “175 banker boxes,” plus “tabular material dense with figures” and “pages filled with tiny rows and columns of numbers.” Of course, the contents of the data rooms were dictated by the detailed itemized specifications of the Information and Document Request served on us by the FCC staff. Nevertheless, analyzing this, our competitors say, “is like sending Hercules to King Augeas’s stables with shovel and basket.”³ What do they claim should be done? After rejecting the idea

¹ Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP, et al. to Kevin J. Martin, FCC, dated June 7, 2005.

² Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP, et al. to Kevin J. Martin, FCC, dated May 25, 2005.

³ Our competitors also allege that our materials “are not, for the most part, organized according to the FCC’s information request.” This is simply untrue – they are organized exactly as the FCC asked us to organize them.

of “diverting the Potomac through the Applicants’ document rooms,” our competitors come up with an idea that is equally preposterous – giving the dozens of parties to this proceeding, our direct competitors, electronic copies of all the materials in the data room, including each company’s business plans, segmented customer revenue, customer addresses, and other highly proprietary, competitively sensitive information.

What should be clear from this latest request is that these competitors’ primary objective in these multiple requests is to delay this transaction. This effort should be rejected by the Commission for the reasons described below.

Our competitors’ proposal is contrary to the Protective Orders in this proceeding, which are nearly identical to the Protective Orders that the Commission has used in numerous other proceedings. These Protective Orders seek to balance the needs of parties to protect sensitive proprietary information that they are compelled to submit to the Commission and the legitimate interest of competitors and other members of the public to participate in the license transfer process. The Protective Orders recognize that there is “information so sensitive that it should not be copied by anyone”⁴ and information which, “if released to competitors, will allow those competitors to gain a significant advantage in the marketplace”⁵ and provide appropriate protections for such information, including restrictions on copying. Our competitors are asking the Commission to repudiate its own protective orders and depart from longstanding precedents,⁶ by creating a new process that dramatically tilts the balance away from the protection of proprietary information. Our competitors have advanced no unique basis for such different treatment in this case, and there is none.

It is no answer to our concerns about the risks of disclosure to say, as our competitors do, that their attorneys are “legally and ethically bound not to divulge” protected data. Once these data leave our control, the risk of disclosure increases, and incalculable damage could result. As we outlined in our letter to Qwest’s counsel –

⁴ First Protective Order, WC Docket No. 05-65, ¶ 6.

⁵ Order Adopting Second Protective Order, WC Docket No. 05-65, ¶ 2.

⁶ Compare Order Adopting First Protective Order with, e.g., *In re Applications of SBC Communications Inc. and BellSouth Corp.*, Order Adopting Protective Order, 15 FCC Rcd. 15095 (2000) and *In re Applications of US West, Inc. & Qwest Communications Int’l Inc.*, Order Adopting Protective Order, 14 FCC Rcd. 19362 (CCB 1999); compare Order Adopting Second Protective Order with *In re News Corp., General Motors Corp., & Hughes Elecs. Corp.*, Order Concerning Second Protective Order, 18 FCC Rcd. 15198 (2003); see also *In re Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exch. Carriers*, Order, 19 FCC Rcd. 16292 (WCB), modified, Order, 19 FCC Rcd. 20531 (WCB 2004); *In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exch. Carriers; et al.*, Order, 17 FCC Rcd. 5852 (WCB 2002).

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attached to our letter to you of June 9, 2005, responding to a similar argument by Qwest – the communications bar recently has experienced several episodes involving the mishandling of confidential data.⁷ The Protective Orders recognize these dangers and allow us to protect our most sensitive information from copying, which is what we have done.

Instead of trying to eviscerate the Commission's longstanding process for protecting confidential information, our competitors should work within it. We note that our data rooms continue to remain empty most of the time – one data room has been empty 65% of the time since it opened, another 75% of the time, and the third 83% of the time. Instead of writing yet another letter about why the 180-day clock should be stopped, our competitors should get to work analyzing the information that we have provided.

Sincerely,

SBC Communications Inc.

AT&T Corp.

/s/ Gary L. Phillips

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cc (via email):

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⁷ Letter from Gary L. Phillips, SBC Communications Inc., and Leonard J. Cali, AT&T Corp., dated June 9, 2005, to the Honorable Kevin J. Martin, Chairman, FCC (attaching Letter from Peter J. Schildkraut, Arnold & Porter LLP, and David L. Lawson, Sidley Austin Brown & Wood LLP, dated June 9, 2005, to David L. Sieradzki, Hogan & Hartson L.L.P.).

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