

June 15, 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 Chairman Martin:

We are writing on behalf of SBC and AT&T to respond to a letter from counsel to the Ad Hoc Telecommunications Users Committee (“Ad Hoc”) urging the Commission to delay its review of the SBC/AT&T merger.¹

Ad Hoc claims that it has not had an “adequate opportunity to review the data filed by the applicants in response to the Commission’s data request.” The reality is altogether different. Ad Hoc has never visited the data room at Arnold & Porter LLP, and has spent only 6 hours in the data room at Crowell & Moring LLP and 3 hours in the data room at Sidley Austin Brown & Wood LLP. Ad Hoc’s perfunctory review is not attributable, as Ad Hoc suggests, to “time-limited viewing” – the data rooms have sat empty most of the time (83% of the time at Arnold & Porter LLP, 65% of the time at Crowell & Moring LLP, and 75% of the time at Sidley Austin Brown & Wood LLP)² – and Ad Hoc or any other party could have visited repeatedly and stayed as long as they wanted to during these times. The fact that Ad Hoc waited 19 days after its last visit to

¹ Letter from Colleen Boothby, Levine, Blaszak, Block & Boothby, LLP, to Chairman Kevin J. Martin, FCC, dated June 8, 2005.

² The data room occupancy statistics are during business hours from May 16, 2005 to June 7, 2005.

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the data rooms to complain about a purported lack of access further illustrates the lack of sincerity in Ad Hoc's claim.³

The cursory nature of Ad Hoc's effort to review the materials in the data rooms is reflected by the generalized nature of its allegations about restrictions on the copying of "items that the applicants have already made public." Ad Hoc has never identified any *particular* document that it believes was classified improperly, notwithstanding our repeated offer to re-review any such document so identified and reclassify it if appropriate.⁴ SBC and AT&T have made available their response to the FCC Information Request in accordance with the Staff's instructions: a public version of the narrative response and its exhibits is on ECFS; and for those, like Ad Hoc's representatives, who have signed on to the both protective orders, the data rooms contain a completely unredacted version of the narrative response, exhibits, and documents, all labeled with the legend called for by the protective orders. Another set of documents is available for those who have signed onto only the First Protective Order, with both copy allowed and copy prohibited versions. Some parties have asked to be given complete sets of all copying allowed materials, and SBC and AT&T have provided such copies.⁵

Ad Hoc insists that SBC and AT&T should provide copies of all the materials in the data room – which include each company's business plans, segmented customer revenue, customer addresses, and other highly proprietary, competitively sensitive information – "in native format for parties to retain." As we have discussed previously,⁶

³ Ad Hoc visited the data rooms on May 19 and May 20 and wrote to you on June 8 to complain about a lack of access to data.

⁴ Letter from Gary L. Phillips, SBC Communications Inc., and Leonard J. Cali, AT&T Corp., to Hon. Kevin J. Martin, dated June 9, 2005; Letter from Gary L. Phillips, SBC Communications Inc., and Lawrence J. Lafaro, AT&T Corp., to Hon. Kevin J. Martin, FCC, dated May 27, 2005.

⁵ Ad Hoc's other complaints about the data room – "organization of documents according to the employee who produced the document" and "multi-row multi-page spread sheets" – are equally meritless. The information was produced exactly as the Staff directed in its instructions to SBC and AT&T.

⁶ Letter from Gary L. Phillips, SBC Communications Inc., and Lawrence J. Lafaro, AT&T Corp., to Hon. Kevin J. Martin, FCC, dated June 13, 2005; Letter from Gary L. Phillips, SBC Communications Inc., and Leonard J. Cali, AT&T Corp., to Hon. Kevin J. Martin, dated June 9, 2005; Letter from Peter J. Schildkraut, Arnold & Porter LLP, and David L. Lawson, Sidley Austin Brown & Wood LLP, to David L. Sieradzki, Hogan & Hartson L.L.P., dated June 9, 2005; Letter from Gary L. Phillips, SBC Communications

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this would depart from longstanding Commission precedent – which seeks to balance the needs of applicants to protect sensitive proprietary information and the needs of other parties to participate in the license transfer process – and expose applicants to an unparalleled risk of disclosure of their most sensitive information. No justification is offered for such an abrupt departure from the Commission’s longstanding procedures for protecting proprietary information, and none can be. Such a demand is especially astonishing coming from Ad Hoc, which refuses even to identify the names of the companies it purports to represent and be filing on behalf of.

Finally, Ad Hoc supplements its complaints about access to data with another theory for delaying consideration of the SBC/AT&T merger: the supposed need to consolidate this proceeding with the Verizon/MCI merger review. As we have previously discussed, consolidating the two proceedings is wholly inappropriate, unnecessary and contrary to Commission precedent.⁷

Sincerely,

SBC Communications Inc.

AT&T Corp.

/s/ Gary L. Phillips

/s/ Lawrence J. Lafaro

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Inc., and Lawrence J. Lafaro, AT&T Corp., to Hon. Kevin J. Martin, FCC, dated May 27, 2005.

⁷ Letter from Gary L. Phillips, SBC Communications Inc., and Lawrence J. Lafaro, AT&T Corp., to Hon. Kevin J. Martin, FCC, dated May 27, 2005; *see also* Joint Opposition of SBC Communications Inc. and AT&T Corp. to Petitions to Deny and Reply to Comments at 6, 62 n.171 (filed May 10, 2005).

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cc (via email):

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The Honorable Jonathan S. Adelstein

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