

July 7, 2005

BY ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *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 Ms. Dortch:

Throughout the course of this proceeding, CLECs have attempted to convince the Commission that the merger of AT&T and SBC will materially increase concentration in the special access marketplace. They have largely based this claim on a study conducted on their behalf by Professor Simon Wilkie.

In our previous filings and in meetings with members of the Commission and its Staff, SBC and AT&T have shown that this study is fundamentally flawed, both as an analytical matter and because it is based on inaccurate and misleading data.¹ We have shown, for example, that the study vastly overstates the number of buildings in the SBC region served by AT&T with its own fiber, apparently by failing to distinguish between buildings that are on-net and those that are not. We also have shown that the study grossly exaggerates AT&T's significance as a provider of wholesale private line services and that it significantly understates the amount of competition from CLECs other than AT&T.

SBC and AT&T *know* that the Wilkie study is based on inaccurate data because AT&T knows, far better than these CLECs, its own network and network operations. Yet, while AT&T has provided the Commission with detailed information on *inter alia* its own network and network operations, the CLECs that rely on the Wilkie study have withheld the data on which that study was based. For example, although Dr. Wilkie stated in his initial declaration that his results were derived solely from GeoResults data, the CLECs now claim that the study was based

¹ See e.g. *ex parte* letter from Lawrence J. Lafaro, AT&T, and Gary L. Phillips, SBC, to Marlene H. Dortch, May 17; *ex parte* letter from Gary L. Phillips, SBC, and Lawrence J. Lafaro, AT&T, to Marlene H. Dortch, June 24, 2005; *ex parte* letter from Peter J. Schildkraut, Arnold & Porter LLP, to Marlene H. Dortch, June 29, 2005 (attaching Anthony J. Giovannucci, *Presentation to the Federal Communications Commission* (June 28, 2005) and Dennis Carlton & Hal Sider, *SBC/AT&T Merger: Competitive Analysis of Special Access* (June 28, 2005)); see generally SBC-AT&T Joint Opposition at 26-48; Reply Declaration of Anthony Fea et al.; Reply Declaration of Dennis W. Carlton & Hal S. Sider ¶¶ 7-62.

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primarily on certain CLEC building lists, which they have not disclosed.² Similarly, the study bases its analysis of wholesale competition on an ostensible single bid for Type II private line services, but provides no identifying information whatsoever about that supposed bid or the circumstances under which it occurred.

In an effort to identify and understand in more detail the specific inaccuracies in the data and analysis underlying the Wilkie study, counsel for AT&T asked the CLECs' counsel on June 22 to submit into the record, subject to the Protective Orders already in place, some of that data and analysis.³ Our hope was to clear up Professor Wilkie's confusion about the facts so that, going forward, the parties and the Commission could focus on the facts as they actually exist.

On June 29, the CLECs' counsel sent a letter flatly refusing this request.⁴ That letter disingenuously based this refusal, in part, on supposed concerns about revealing confidential data, despite the fact that much of the data requested related to AT&T's network, and even as the CLECs demand that SBC and AT&T forego their rights under the Commission's protective orders with respect to information they have placed on the record that is undoubtedly far more competitively sensitive.

One can reasonably speculate why the CLECs might be reluctant to reveal the "facts" underlying a study that has been so completely discredited. Ultimately, however, the specific reasons the Wilkie study is so flawed do not matter. The facts on the record show that this study is completely unreliable and that its factual premises – whatever their source – are simply wrong.

Sincerely,

SBC Communications Inc.

AT&T Corp.

/s/ Gary L. Phillips

/s/ Lawrence J. Lafaro

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Attachment

² Compare Declaration of Simon Wilkie ¶ 18 n.7 (“The source for the commercial building data cited in this Declaration is GeoResults, Inc. . . .”) with Letter from Brad E. Mutschelknaus & Edward A. Yorkgitis, Jr., Kelley Drye & Warren LLP, to Marlene H. Dortch, Secretary, June 6, 2005, at 6-7 (“In point of fact, Professor Wilkie’s HHI calculations do *not* rely on lit building list information from GeoResults. While Professor Wilkie does make use of GeoResults data regarding the total telecommunications bandwidth demanded by buildings in Chicago, his primary sources for information regarding the buildings served by AT&T and other carriers are various ‘on-net’ building lists provided to CLECs by the wholesale carriers themselves.”) (emphasis in original).

³ See letter from Michael J. Hunseder, Sidley Austin Brown & Wood LLP, to Brad E. Mutschelknaus and Edward A. Yorkgitis, Jr. Kelley Drye & Warren, LLP, attached hereto.

⁴ See letter from Brad E. Mutschelknaus, Kelley Drye & Warren, to Michael J. Hunseder, Sidley Austin Brown Wood LLP, June 29, 2005, attached hereto.

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