

August 11, 2005

BY ECFS

Chairman Kevin Martin
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:

Although it is only August, some of our competitors seem to believe that it is time to present their Christmas lists to the Commission. Several already have asked the Commission to force unnecessary and customer-disrupting divestitures so that they can obtain network facilities at fire-sale prices. Now Telscape is asking the Commission to lower SBC's basic two wire residential loop rates, even though those rates already are among the lowest in the country and the Commission has initiated a rulemaking proceeding to ask whether TELRIC rates already are generally too low. Specifically, on July 29, 2005, Danny E. Adams of Kelley Drye & Warren LLP wrote to you on behalf of Telscape Communications, Inc. ("Telscape") urging the Commission to condition any approval of the SBC/AT&T merger on the combined company's provision of a more steeply discounted rate for a CLEC like Telscape for basic two wire residential loop. This request is as improper as it is unnecessary, and it should be rejected.

Telscape claims that "[t]his condition is intended to address the substantial reduction in residential telephone competition that would otherwise result from the merger." In fact, however, as we have demonstrated,¹ the merger will not reduce competition for residential customers. In July 2004, AT&T irrevocably stopped actively

¹ See, e.g., SBC/AT&T Public Interest Statement, Polumbo Declaration ¶¶ 3-34; SBC/AT&T Public Interest Statement, Carlton & Sider Declaration, ¶¶ 41-55; SBC/AT&T Joint Opposition, Carlton & Sider Reply Declaration ¶¶ 94-98; Letter from Christopher M. Heimann, SBC, and Lawrence J. Lafaro, AT&T, to Marlene H. Dortch, FCC, dated July 12, 2005.

marketing traditional mass market services. AT&T no longer promotes its mass market services through advertising, direct mail, or affinity agreements. The technical infrastructure to support a significant outbound telemarketing sales campaign has been eliminated, and the acquisition infrastructure, data, and reporting applications associated with consumer marketing campaigns are being removed. Remaining telemarketing personnel have been reassigned to perform more traditional customer care functions. AT&T also has stopped matching competitive offers for its mass market services and, in fact, has significantly raised the prices of its existing mass market services. Because AT&T is already not actively competing on price or marketing itself as an alternative to SBC for mass market services, the merger will not change SBC's current pricing incentives, which are strongly influenced by cable, wireless, and other competitors.

Telscape's attempts to avoid these facts are unpersuasive. While acknowledging that AT&T "may no longer be actively marketing to new customers," Telscape nevertheless asserts that AT&T's interest in serving its current customer base "should provide incentives to maintain a watchful eye on ILEC pricing and marketing strategies." This statement is nonsensical – Telscape does not, and cannot, explain how AT&T can affect SBC's market behavior, when AT&T has stopped active marketing to residential customers, stopped matching competitive offers to residential customers, and accepted as part of its long-term business strategy that its residential customer base will erode away.

Telscape also argues that, because the majority of its customers are "Spanish-language-dominant, low-income families," they "cannot afford broadband or cable." As a result, Telscape argues, those customers have no realistic alternatives to SBC's traditional wireline services, apart from Telscape and other CLECs, whose competitive position would be enhanced by a more steeply discounted rate for basic two wire residential loop. Once more, Telscape's arguments are unpersuasive. Because AT&T has irrevocably stopped actively marketing traditional mass market services, the merger will not affect competition for the customers that Telscape targets. Thus, even if there were a need for the Commission to take steps to ensure the continued availability of communications services to those customers, it would be inappropriate to do so through a merger condition imposed solely on a combined SBC/AT&T. Indeed, the Commission *could not* establish such a merger condition even if it wanted to without violating the 1996 Act's requirement that federal universal service subsidies be explicit and competitively neutral.²

In sum, the SBC/AT&T merger will have no harmful effects on mass market customers, and there is thus no need or justification for the condition that Telscape has proposed. As much as Telscape may want artificial discounts on the wholesale services it

² *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 (1997) at ¶ 46; 47 U.S.C. §§ 254(b)(4) & (e).

chooses to purchase and therefore increased profit margins on the retail services it sells, facilitating this is not a proper role for the Commission in this proceeding.

Sincerely,

SBC Communications Inc.

AT&T Corp.

/s/ Gary L. Phillips

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