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August 23, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Ex Parte
WC Docket Nos. 05-65, 05-75

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on August 22, 2005, the undersigned, representing ATX Communications, Inc., Biddeford Internet Corporation d/b/a Great Works Internet, Bridgecom International, Inc., Broadview Networks, Inc., BullsEye Telecom, Inc., Cavalier Telephone Mid-Atlantic, LLC, CTC Communications Corp., Gillette Global Network, Inc., d/b/a Eureka Networks, Granite Telecommunications, Inc., Lightship Communications, LLC., Lightwave Communications, LLC, Lightyear Network Solutions, LLC, Pac-West Telecomm, Inc., USLEC Corp., U.S. Telepacific Corp. d/b/a Telepacific Communications, met with Michelle Carey, Office of the Chairman, concerning issues in the above-captioned proceedings. Martin Clift, Cavalier Telephone Mid-Atlantic, LLC and Nancy Lubamersky, U.S. Telepacific Corp. d/b/a Telepacific Communications, participated via teleconference. We presented the views set forth in the attached document which was provided at the meeting.

Sincerely,

Patrick J. Donovan

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SBC/AT&T
Verizon/MCI

Concerns/Proposed Conditions

WC Dockets Nos. 05-65, 05-75
August 22, 2005

APPLICANT CLAIMS NOT CREDIBLE

- AT&T and MCI do not have significant in-region local assets.
  - AT&T and MCI have 21,000 and 9,000 nationwide local route miles, respectively. (BOC UNE Fact Report, WC Docket 04-313, III-4.
  - AT&T and MCI have about 50% of local fiber routes nationwide. (*Id.*)

- AT&T and MCI are not significant independent providers of access service.
  - AT&T and MCI sell special access at rates that "typically were 15%-30% below, and sometimes more than 35% below, SBC's tariffed rates." (SBC *TRO* Reply Comments, filed 10/19/2004, at 44-46)

APPLICANT CLAIMS ARE NOT CREDIBLE

- AT&T and MCI local networks could be easily duplicated by CLECs.
  - Constructing local network facilities is time consuming, capital intensive, and very difficult for a number of reasons. (*See generally*, AT&T *TRRO* Comments)
- The mergers will not diminish competition in the mass and enterprise markets.
  - AT&T and MCI will exit the market as independent providers of wholesale, retail, and IP backbone services.

APPLICANT CLAIMS NOT CREDIBLE

- The mergers do not increase the risk of price discrimination and price squeeze behavior.
  - SBC and Verizon will become facilities-based IXCs, creating new incentives and opportunities to discriminate.
- Risk of fines will preclude non-price discrimination.
  - SBC paid record fines in connection with its previous merger.

POTENTIAL HARMS SHOULD BE ADDRESSED IN THE MERGER PROCEEDINGS

- Rules of general applicability are not suitable for addressing merger specific harms:
  - Loss of competition
  - Increased ability to discriminate, engage in price squeeze behavior.

REGULATORS MUST CONSIDER TRENDS

- Other BOCs could acquire remaining facilities-based IXCs
  - Sprint local operations will be spun off after Nextel merger
  - Independent facilities-based long distance industry may not survive
- Other BOCs could acquire other Internet backbone providers (also issue of last mile)
- Pending mergers must be considered together

BOCs POSSESS MARKET POWER

- CLECs have no alternative to ILEC facilities in the vast majority of situations
- AT&T and MCI are two of the larger providers of alternative facilities.
- FCC recently found in the *Triennial Review Remand Order* that CLECs are impaired with respect to DS1 and DS3 loops and transport based in part on number of fiber-based collocators.
  - Mergers could skew impairment threshold if AT&T (or MCI) fiber-based collocations counted as unaffiliated, reducing the availability of UNEs.

CONCERNS

- Discrimination in provision of facilities
- Diminished choice in competitive access providers
- Acquisition of in-region customers
- Loss of independent facilities-based IXCs
- Concentration in, and access to, IP backbone

DISCRIMINATION

- Price squeeze behavior
  - SBC can charge high access prices to its affiliate without harm because they are transfers within the affiliated enterprise
  - Volume, "growth," region or nation-wide, discounts for which only the IXC affiliate could qualify
    - Are barriers to entry.

DISCRIMINATION (Cont'd)

- Price squeeze behavior (cont'd)
  - BOCs have been raising special access prices under pricing flexibility
  - BOCs have been successful in gaining long distance market share by setting long distance prices low in relation to access.
  - Bundling facilitates discrimination.

DISCRIMINATION (Cont'd)

- Untimely and substandard ordering, provisioning, repair, and maintenance
  - "Integration" of IXC and ILEC facilities would make detection of discrimination difficult or impossible
- Previous discrimination validates the concern
  - FCC in 2003 TRO found that restrictions on commingling and Verizon's "no facilities" policy were unlawfully discriminatory
  - NYPSC found in 2001 that Verizon discriminated in provision of special access

DIMINISHED CHOICE IN COMPETITIVE ACCESS PROVIDERS

- SBC and Verizon will be acquiring the largest competitive special access providers
- Increased dependence on ILECs
- Fewer choices for local metro networks
- CLECs will lose reasonable access to AT&T collocations/POPs

UNDUE BOC ADVANTAGE IN THE ENTERPRISE MARKET

- BOCS will use AT&T/MCI strengths along with anticompetitive tools to dominate the enterprise market.

PROBABLE DEMISE OF INDEPENDENT FACILITIES-BASED IXCs

- Independent facilities-based IXCs not likely to survive because BOCs will shift traffic to affiliates.
- For the first time since 1984, a majority of the nation's traffic will be handled exclusively over BOC networks.
- Increased dependence on ILECs -- not only for local access but long distance service as well.

CONCENTRATION, COLLUSION IN THE IP BACKBONE MARKET

- Post merger, fewer IP backbone providers will likely have the same volumes of traffic as Verizon and SBC
- Current approach to peering would permit Verizon and SBC to charge all others higher prices
- Further BOC acquisitions would compound the concentration
- Control of IP backbone enables discrimination in price and quality of interconnection
  - Discrimination in favor of ILEC affiliate facilitated

CONDITIONS

- Safeguards against discriminatory treatment of competitors.
- Reduce undue in-region concentration
- Safeguards to assure open IP-enabled marketplace
- Transition safeguards
- Enforcement

SAFEGUARDS AGAINST DISCRIMINATION

- All Agreements Between Bells, and BOC and affiliate, Regarding Access Available To Others Via Contract or Tariff
  – Lowest Rate Must Be Available For Opt-in Regardless Of Volume Or Term
- Set Special Access Pricing Based On LRIC

SAFEGUARDS AGAINST DISCRIMINATION (Cont'd)

- Comprehensive UNE and Special Access performance metrics
- Continuation of Section 272 separate affiliate
  - For existing as well as acquired LD.
- BOCs now using 272 affiliate even in states where the requirement has lapsed

REDUCE UNDUE IN-REGION CONCENTRATION

- Divestiture of in-region AT&T and MCI local exchange and exchange access facilities.
- Divestiture of in-region AT&T and MCI mass market, small and medium-sized business customers, and enterprise customers.
  - “Fresh look” opportunity.

SAFEGUARDS TO ASSURE OPEN IP-ENABLED MARKETPLACE

- Divestiture of IP backbones, or require provision of interconnection and transit service to non-peering ISPs and CLECs based on LRIC pricing with separate sub with public contracts.
- Net neutrality requirements prohibiting ILEC blocking, or provision of inferior access to non-ILEC IP-enabled services

TRANSITION PLAN

- Promotional discounts for UNEs and Special Access for 3 years, beyond existing plans.
- UNE price stability for 5 years.
- Commitment not to raise existing Special Access prices pending completion of LRIC price cases.
- Reduce GTE UNE prices to Verizon levels.

ENFORCEMENT

- Self-enforcing conditions to the extent possible, especially with respect to performance metrics.
- Authorize states to enforce merger conditions.
- Performance metric penalties paid to competitors.
- Meaningful penalties beyond cost of doing business.