

Proposed Mergers Of SBC/AT&T And Verizon/MCI Threaten Competition

CTC's Concerns And Proposed Conditions

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SBC/Verizon Claims Are Not Credible

- **Myth 1: 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. (BOC UNE Fact Report, WC Docket 04-313, III-4).
- **Myth 2: 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).

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- Myth 3: AT&T and MCI local networks could be easily duplicated by CLECs.
 - Constructing local network facilities is time consuming, capital intensive, and often impractical for a number of reasons. (*See generally, AT&T TRRO Comments*).
- Myth 4: 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.

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- **Myth 5: 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.
 - Mergers increase ILEC power to charge excessive prices for special access. Loss of AT&T & MCI as suppliers; loss of their disciplining effect on prices of special access. (*See, generally, AT&T Petition, RM-10593; WiTel Comments, WC Doc. 05-25*).
 - Post TRRO, the reduced availability of unbundled high cap loops and transport make CTC more dependent on special access.
- **Myth 6: Risk of fines will preclude non-price discrimination.**
 - SBC paid record fines in connection with its previous merger.

BOCs Possess Market Power

- CLECs have no alternative to ILEC facilities in the vast majority of situations, especially for DS1s.
- AT&T and MCI are two of the larger providers of alternative facilities.
- FCC should require ILECs to provision, maintain and repair copper loops on a non-discriminatory basis to ensure that competitors have access to critical “last mile” facilities.

BOCs Possess Market Power (Cont'd)

- The *Triennial Review Remand Order* limits the continued availability of unbundled DS1 and DS3 loops and transport based in part on the number of fiber-based collocators present in a serving wire center.
 - Mergers skew the impairment thresholds if AT&T (or MCI) fiber-based collocations are counted as unaffiliated, reducing the availability of UNEs despite lack of alternatives. If it permits the mergers, the FCC should revisit wire center tiers.

ILEC Discrimination

- Probable Price squeeze behavior in Special Access Market.
 - Volume, “growth,” commitment discounts on special access for which only the ILEC IXC affiliates could qualify.
 - Growth commitments and contracts that lock-in demand in exchange for steep discounts are a barrier to entry.
 - BOCs have been raising special access prices under pricing flexibility regime.

Diminished Choice In Competitive Access Providers

- SBC and Verizon will be acquiring the largest competitive special access providers and providers of last mile facilities, which will serve only to increased dependence on ILECs for last mile and other facilities.
- Fewer choices for local metro networks.
- CLECs will lose reasonable access to AT&T collocations/POPs.
- BOCS will use AT&T/MCI strengths along with anticompetitive tools to dominate the enterprise market.

Safeguards Against Discrimination

- Eliminate Pricing Flexibility to Raise Special Access Prices.
- Require Lowest Special Access Rates be Made Available to Competitors Independent of Volume or Term Commitments.
- Impose comprehensive UNE and Special Access performance metrics.

Ensure Loops Are Available

- Require SBC & Verizon to maintain Copper loops and preclude removal of these facilities after fiber overbuild.
- Change UNE loop & transport rules (*e.g.*, tiered thresholds) to reflect loss of competition from the two largest collocators and increased market concentration.
- Commitment not to raise existing Special Access prices pending completion of LRIC price cases.

Enforcement of Merger Conditions

- 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.