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EX PARTE

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September 1, 2005

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

RE: *WC Docket No. 05*-65 In the Matter of SBC/AT&T Applications for Approval of Transfer of Control; *WC Docket No. 05-75* In the Matter of Verizon/MCI Applications for Approval of Transfer of Control

Dear Ms. Dortch:

On August 31, 2005, Melissa Newman, Phil Roselli, Sean Lindsay, Larry Sarjeant *(in person)*, and Sue Mason *(by phone)* -- all of Qwest -- and Peter Rohrbach of Hogan and Hartson met with Bill Dever, Pam Arluk, Ben Childers, Craig Stroup, Rodger Woock, Gail Cohen, Marcus Maher, C. Anthony Bush, Jim Bird, Jon Minkoff, Joel Rabinovitz, Neil Dellar and Don Stockdale of the FCC to discuss the above-named dockets.

The attached document was used as the basis of the discussion.

Sincerely,
/s/ Melissa E. Newman

Attachment

Copy by email to:
Bill Dever
Pam Arluk
Ben Childers
Craig Stroup
Rodger Woock
Gail Cohen
Marcus Maher
C. Anthony Bush
Jim Bird
Jon Minkoff
Joel Rabinovitz
Neil Dellar
Don Stockdale

Qwest Ex Parte

WC Docket No. 05-65

In the Matter of SBC/AT&T Applications for Approval of Transfer of Control

and

WC Docket No. 05-75

In the Matter of VZ/MCI Applications for Approval of Transfer of Control

August 31, 2005

Proposed Merger Conditions and Remedies

- **Structural Remedies**
  - Divestiture
  - Fresh Look
- **Conduct Remedies**
  - Pricing
  - Non-Discrimination
  - Reciprocity
  - Stand-Alone DSL
  - Service Quality Measures
  - Facility Reporting
  - Sunset

Structural Remedy: Divestiture (1)

- **Require AT&T to divest assets in SBC region and MCI to divest assets in Verizon region, including:**
  - Facilities: all in-region network facilities (as well as other assets needed to operate – *e.g.*, interconnection agreements, etc.).
  - Customers: in general, in-region retail customers and wholesale (carrier) customers must follow divested facilities.
    - Exception where customer contract also covers out-of-region. locations and more than 50% of revenues are out-of-region.
    - Precedents for divesting customers: WorldCom/MCI (internet backbone customers); Bell Atlantic/GTE, Cingular/AT&T Wireless, and Alltel/Western Wireless (wireless customers); AT&T/MediaOne (internet access customers).

Rationale for Proposed Remedies

1. To counter loss of competition, divestitures would enable a viable facilities-based competitor to replace AT&T and MCI
2. A broadly defined divestiture (e.g., including wholesale and retail) would help the purchaser of the divested assets to achieve economies of scope and scale, enabling it to compete as effectively as AT&T and MCI do today

Structural Remedy: Divestiture (2)

- **Ensure successful divestitures**
  - Disqualify merging parties as purchasers of divested assets: Verizon may not purchase AT&T assets; SBC may not purchase MCI assets.
  - MCI or AT&T must provide transitional support through an operational systems agreement.
  - If customer contract is non-assignable and customer opts out of being divested, merging parties must provide compensating wholesale revenue commitments to the purchaser of the divested assets.
  - Fresh look for Verizon and SBC customers to help offset the MCI/AT&T customers with non-assignable contracts who opt out of going to acquirer of divestiture assets.

<u>Rationale for Proposed Remedies</u>

(see preceding page)

Structural Remedy: Fresh Look

- **Fresh look to be offered to all carrier customers buying switched and special access services from SBC and Verizon**
  - Fresh look includes ability to reduce purchase commitments without losing discount eligibility or incurring termination penalties.
- **Fresh look to be made available for all retail enterprise customers of SBC and Verizon.**

<u>Rationale for Proposed Remedies</u>

1. Fresh look counters the anticompetitive effect of the mergers by opening the special access market to greater competition.
2. Fresh look is necessary for the divestiture remedy to work because some customer contracts will be non-negotiable. Accordingly, for the purchaser of the divested assets to have the opportunity to attain a competitive scale, existing contract lock-in clauses should be waived.

Conduct Remedy: Pricing (1)

- **Merging parties honor all existing AT&T and MCI contracts**
  – Extend terms at the wholesale carrier's discretion.
- **Merging parties shall provide discount to wholesale carriers for SBC and Verizon services**
  – 50% price discount off "effective" rate on 25% of switched and special access services purchased from Verizon or SBC.
  – Discounts spread proportionately over all types of services purchased.
  – If decrease in "effective rate" prices during the five year period, 50% discount will be taken off the lower rates.

Rationale for Proposed Remedies

1. By eliminating AT&T and MCI as competitive local providers, the mergers reduce competitive pressure on SBC's and Verizon's special access pricing
2. The mergers eliminate major independent purchasers of SBC's and Verizon's services, reducing pressure for reasonable rates
3. The mergers increase SBC's and Verizon's incentives to discriminate against competitors in order to benefit their "downstream" affiliates

Conduct Remedy: Pricing (2)

- **Add or delete circuits**
  - No minimum or maximum demand levels.
  - Continue applicable contract or discounted rates, regardless of levels.
- **Wholesale carriers have sole discretion to terminate existing contracts**
  - No termination liability.
- **Restrictions on discount of special access services cannot be conditioned on whether or not wholesale carriers purchase other services such as UNEs**

Rationale for Proposed Remedies

1. Provisions that enable the purchaser of the divested assets and/or other competitors to attract business from SBC and Verizon would help those carriers build the necessary economies of scale and scope to compete as effectively as AT&T and MCI do pre-mergers.

(Also, see preceding page)

Conduct Remedy: Non Discrimination

- **Merging parties shall offer any service arrangements that it offers to its partners/affiliates/business units to other carriers**
  - Same rates, terms and conditions.
  - No minimum volume or revenue requirement.
- **Merging parties shall not discriminate against other carriers to the benefit of each other**
  - Same rates, terms and conditions.
  - No minimum volume or revenue requirements.
- **Post descriptions of service arrangements, contracts, etc.**

<u>Rationale for Proposed Remedies</u>

1. The mergers increase SBC's and Verizon's incentives to discriminate against competitors in order to benefit their "downstream" affiliates.
2. The two concurrent mergers give SBC/AT&T and Verizon/MCI incentives to tacitly collude, e.g., by discriminating in favor of one another and by not actively competing in one another's regions.

Conduct Remedy: Reciprocity

- **Merging parties must offer wholesale customers the same terms and conditions that they obtain from others**
- **Minimum volume or revenue requirements will not apply**

Rationale for Proposed Remedies

1. AT&T or MCI will continue to provide market pressure on other companies that they will no longer place on their merger partners
2. As the largest and most powerful purchasers of access services, SBC/AT&T and Verizon/MCI will be able to extract the most beneficial terms and conditions from other ILECs and service providers. If these terms and conditions are reasonable, SBC and Verizon should be required to make them available to others.

Conduct Remedy: Stand Alone DSL

- **Merging parties must offer stand-alone DSL throughout their regions without any restrictions to any new or existing end users**
  - Cannot limit offer to existing SBC or Verizon voice customers.
  - Cannot prohibit purchase for customers whose phone numbers have been ported to CLECs.
  - Cannot limit geographic availability.

Rationale for Proposed Remedies

1. By eliminating AT&T and MCI as independent competitors, mergers will reduce competition for mass market customers.
2. Merging parties claim VoIP provides a competitive alternative – but competing VoIP providers cannot compete without access to stand-alone DSL

Conduct Remedy: Service Quality (1)

- **The merging parties shall provide quarterly reports for the following service quality metrics:**
    - Percent of committed due date met
    - Installation interval
    - Mean time to restore out of service
    - Groom project completion interval
    - Percent of installations without outage trouble reports in the first 30 days
    - Repeat circuit failures
    - Return of FOC percent met
    - Circuits outside of submission interval
  - Reporting
    - 90 days after merger closing dates: data by state, for DS-1 and DS-3 circuits.
  - Parties must make reports publicly available on their web sites.

Rationale for Proposed Remedies

1. The mergers increase SBC's and Verizon's incentives to discriminate against competitors in order to benefit their "downstream" affiliates.
2. Without metrics, there is no way to determine whether discriminatory behavior is occurring.

Conduct Remedy: Service Quality (2)

- **Failure to meet any service quality measure in a quarter**
  - Shall credit all wholesale carriers 5% of their total special access bill in the state where failure occurred.
  - Credit will apply to every state where the measure is missed.
  - If unable to credit circuits on a state-by-state basis, will apply a 5% credit to wholesale carriers' circuits nation-wide.
- **Repeated Failure on same service quality measure in following quarter**
  - Credit will increase to 10% for entire quarter, to be shown on next month's bill.
  - Each consecutive miss will increase each quarter by additional 5% credit.
- **Effective billing date for grooming orders 45 days**
  - No limit upon the number of grooming orders during a calendar year.
  - Existing limits are null and void.

<u>Rationale for Proposed Remedies</u>

(see preceding page)

Conduct Remedy: Facility Reporting

- **SBC and Verizon shall provide wholesale carriers with a list of fiber-lit buildings similar to that provided by the CLECs**

<u>Rationale for Proposed Remedies</u>

1. Elimination of AT&T and MCI as independent access providers would reduce incentives for SBC and Verizon to be responsive to carrier customers' needs
2. The mergers increase SBC's and Verizon's incentives to discriminate by providing more information to their affiliates than to independent competitors

Sunset

- **Merger conditions will cease to be effective and shall no longer bind the merging parties in any respect 60 months after the merger closing date**
  – Exception: Conditions remain in effect if the merging parties are not in substantial compliance with their service quality metrics, i.e., failure to meet at least 6 of the 8 service quality metrics for 12 continuous months.