

Ex Parte of EarthLink, Inc.  
September 23, 2005

## Proposed Merger Conditions and Remedies

WC Docket 05-65

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

WC Docket 05-75

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

## Proposed Merger Conditions and Remedies

- Consumer Decisions: Stand-Alone DSL
- Consumer Freedoms: Non-Interference
- Compliance & Enforcement

## Let Consumers Decide: Stand-Alone DSL

- Wholesale Stand-Alone DSL
  - Merging parties must offer in-region wholesale stand-alone DSL
  - Wholesale must include term/volume discounts, adequate OSS, no usage restrictions, contract pricing
- Retail Stand-Alone DSL
  - Merging parties must offer in-region retail stand-alone (with resale) without restrictions
  - Merging parties must accept customer Letters of Authorization
- Stand-Alone DSL Pricing
  - Rate must be just and reasonable and imputed to merging parties for their retail services

### Rationale for Proposed Condition

- Promotes consumer choice -- VoIP and other IP-enabled Services available as actual and potential competitive alternatives for retail consumers
- Condition will remedy decreased wholesale broadband competition due to elimination of AT&T and MCI

## Stand-Alone DSL: Background

- Stand-Alone DSL is technically feasible
  - Qwest currently offers unrestricted stand-alone DSL
  - Verizon already offers type of “stand-alone” service
- Verizon’s service is complex and subject to implementation issues
  - Service restrictions are unnecessarily complex and consumers have no way of knowing if restrictions apply
    - Ex: Service restricted if CLEC doesn’t offer free line-sharing
    - Ex: Service restricted if “dispatch of Company personnel is required”
    - See Verizon Tariff FCC No. 20 § 5.1.2.D
  - Consumers encounter difficulties ordering service
- SBC fails to offer any stand-alone service at all

## Consumer Freedoms: Non-Interference

- Merging parties must not interfere with, degrade or block traffic traversing their networks
- Merging parties must abide by “net neutrality” principles
  - Merging parties must designate compliance officer responsible for service provider complaints and provide quarterly reports describing any issues and resolution

### Rationale for Proposed Condition

- Promotes consumer freedom to access full range of services
- Condition will remedy increased opportunity for discrimination and preferential treatment due to vertical integration resulting in preferences by merging companies in favor of their own services and traffic
- Condition will remedy negative effects of decreased wholesale broadband competition due to elimination of AT&T and MCI

## Compliance and Enforcement

- Violations subject to expedited process and pre-set damages
  - Afford “injunctive” relief for alleged violations pending resolution
- Penalties paid to harmed parties in addition to fines
- Merged parties must have a senior company Compliance Officer
  - Compliance officer will submit publicly available reports
- Merged parties will retain an independent auditor and issue publicly available reports

### Rationale for Proposal

- Enforcement penalties and mechanism will help deter violations
- Remedies require effective monitoring and enforcement if they are to redress public interest harms
- Enforcement should seek to restore competitive balance due to violations of merger conditions