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October 20, 2005

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

Re: Application for Consent to Transfer of Control filed by SBC Communications Inc. and AT&T Corp. WC Docket No. 05-65

Dear Ms. Dortch:

BT Americas Inc. files this *ex parte* letter on behalf of itself and other U.S. subsidiaries of BT plc in response to the SBC/AT&T joint *ex parte* letter of June 2, 2005 ("SBC/AT&T Letter").[1] As explained more fully below, the SBC/AT&T submission is replete with factual assertions that are undercut by evidence the merging parties themselves submitted in numerous FCC proceedings only months before the merger, and by the additional evidence that BT is submitting herewith.

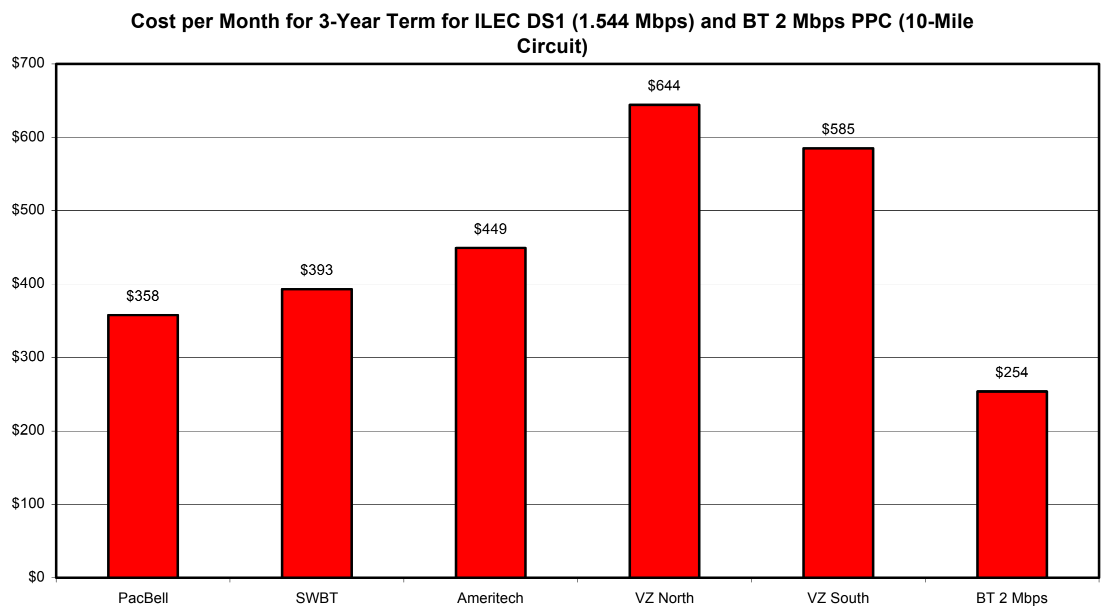
Miscalculation of BT's Special Access Prices in the U.K.

The merging parties' assert that BT's U.K. prices for special access (called partial private circuits, PPCs) are extremely high. They construct an example using circuit lengths that are longer than the ones used in BT's comparison, using pricing for enhanced service options instead of standard options, and adding in connectivity charges between BT's Tier 1 nodes in the U.K. which most competitive carriers in the U.K. typically do not need.[2] They then pass this off as an apples-to-apples comparison.

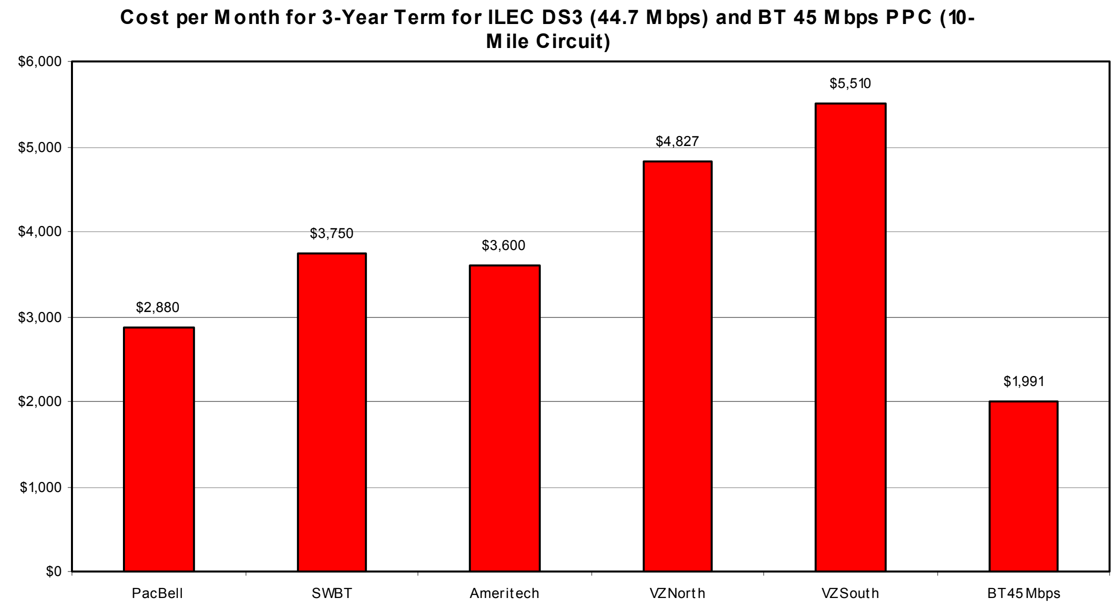
[1] *Ex Parte* letter from Gary L. Phillips, SBC Communications Inc., and Lawrence J. Lafaro, AT&T Corp to Marlene H. Dortch (filed June 2, 2005).

[2] SBC/AT&T at 7.

BT has not taken the same approach in deriving SBC's special access rates. BT considered SBC's Zone 1 price flex pricing which is the cheapest band of SBC pricing instead of using pricing from SBC's more expensive price flex bands. BT did not use the most expensive month to month SBC pricing in calculating SBC's rates. Instead BT used three year term discounted SBC pricing. Using these criteria, BT compared SBC's special access recurring charges to BT's U.K. recurring charges for the simplest configuration of a ten mile circuit from the customer's premises to handoff at an IXC POP. The results of the comparison are shown below.[3] BT's U.K. pricing is clearly lower. The sources and assumptions for BT's computations are discussed below.



3 BT has filed these comparison charts in the special access proceeding. *See* Reply Comments of BT Americas Inc in *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (July 12, 2005).



Sources and assumptions:

(1) The SBC rates are taken from the Declaration of M. Joseph Stith submitted with the Comments of AT&T Corp. in *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Dkt. No. 04-313, CC Dkt. No. 01-338 ("*TRO Remand Proceeding*") (Oct. 4, 2004). The 3-year ILEC rates are taken directly from Attachment 1, pages 11-20. The declaration describes the sources and calculation of the ILEC rates. Stith calculated ILEC charges for a circuit consisting of two channel terminations and ten miles of interoffice mileage between a customer premise and an IXC POP. Note that the ILEC rates are for MSAs where pricing flexibility applies (i.e., they are not price cap rates). Also note that these are discounted rates off of the base rates and are from ILEC optional payment plans. In Stith's analysis, the ILEC rates were current as of 7/1/04. For each of the five entities shown in the charts, the monthly rate is the average of the monthly rates for each of the states that make up the entity. Only recurring charges were considered in these calculations. Rates are for Zone 1 which is the cheapest of all zones and hence most favorable to SBC in conducting a rate comparison.

(2) For BT Rates, see BT Wholesale web site http://www.btwholesale.com/content/binaries/service_and_support/pricing_information/carrier_price_list_browsable/B8.03.rtf . Section B8, Part 8.03. Only BT's recurring charges were considered in these calculations. In calculating the U.K. pricing for a 2 Mbps circuit, BT included a local end charge of £712 per year (equivalent to a channel termination charge), a main link fixed charge of £424 per year (equivalent to the fixed charge for interoffice transport), and a term segment cost of £749.95 per year (equivalent to the per kilometer charge multiplied by sixteen kilometers of interoffice mileage). The resulting annual charge of £1885.95 was then, for the reasons explained more fully in

note 3 below, converted using the 2004 OECD Purchasing Power Parities (PPP) rate of \$1.6161/£. and divided by 12 to arrive at BT's U.K. monthly recurring charge for a 2 Mbps circuit of \$254. In the U.K. a second channel termination charge would not apply for the circuit between BT's central office and an IXC POP. What would apply would be a one time equipment charge at the point of handover to the IXC. At the point of handover, the IXC would use the equipment to interconnect multiple circuits. The one time pro rata equipment charge for the handover of a 2 Mbps circuit is £232.59. This charge amortized over a three year term and converted using the OECD's 2004 PPP exchange rate adds a cost of \$10.40 to BT UK's rate for a 2 Mbps dedicated access circuit. This would bring BT's monthly charge for a 2 Mbps access circuit in the U.K. up to \$264.40 per month. BT followed a similar methodology in calculating its U.K. rate for a 45 Mbps dedicated access circuit.

(3) BT rates are converted at the 2004 OECD PPP rate of \$1.6161/£. The web address for the OECD PPP is http://www.oecd.org/statisticsdata/0,2643,en_2649_34347_1_119656_1_1_1,00.html. BT uses PPP exchange rates because they are a more accurate reflection of the cost of living in each country and tend to be less volatile than pure currency exchange rates (except in countries with runaway inflation). PPPs are also what the OECD uses in its comparisons of telecommunications rates among countries.[4]

Note also that BT's U.K. prices for special access are geographically neutral. Customers pay the same rate in rural Scotland as they do in central London. This is not the case for SBC whose rates increase significantly in higher priced bands within a price flex MSA. It is clear from the discussion above that BT's rates in the U.K. for equivalent special access circuits are far lower than rates charged by SBC.

Assertions that the Merged Entity will have Neither the Incentive nor Ability to Engage in Prices Squeezes and Service Discrimination are Utterly without Merit

SBC and AT&T claim that the merged entity will not be able to leverage its dominant market power in the upstream in-region special access market to unfairly gain advantage in the downstream global telecommunications services ("GTS") market through price squeezes or service discrimination. It is based on SBC's and AT&T's assertion that no single GTS service provider, including SBC, owns local access in a sufficient number of locations needed to provide GTS, to engage in anticompetitive conduct.[5] But that assumes that SBC does not dominate special access in-region and that AT&T is not a major player in the GTS market. But both of those assumptions are belied by the evidence each adduced in other proceedings before this merger was announced. Specifically, AT&T itself has repeatedly demonstrated in the *Special*

4 Note that in BT's Ex Parte filed on May 6, 2005, and BT's Reply Comments filed in Dkts. 05-65 and 05-75, BT inadvertently transposed the PPP rate it used. Instead of listing the May 2004 OECD PPP rate as 1.467099128US\$PPP = £1 in its calculations, it transcribed the PPP rate as 1US\$PPP = £1.467099128. This resulted in an inadvertent error in the calculation of BT's U.K. pricing for an equivalent 1 Mbps, 2 Mbps, and 45 Mbps circuits. The correct (non-transposed) PPP rate is used in the charts in this filing.

5 SBC/AT&T Letter at 2.

Access Proceeding,[6] and the *TRO Remand Proceeding*,[7] that SBC's special access prices and rate of return in-region demonstrate its ongoing near-monopoly power over special access in-region. Similarly, SBC, prior to the merger, asserted that "the more lucrative enterprise market … remains *dominated* by the big three IXCs."[8] Verizon similarly noted that AT&T and MCI "*dominate* the most lucrative portion of the long distance market – the enterprise/large business segment."[9]

SBC/AT&T's assertion here that SBC is not the sole source of access in-region because substantial competition exists in the densest business districts and because it is economically feasible for competitors to deploy facilities to high demand locations [10] ignores the impact of SBC's acquisition of its largest special access competitor whose facilities are located in these denser areas. Moreover, SBC is the sole source of access for the vast majority of a multinational customer's site locations in the SBC's territory that typically are not located in the downtown area or a city center, but are geographically dispersed – in office parks, in suburbs and beyond where they can benefit from less expensive real estate, major transportation facilities and reduced labor costs.

Moreover with respect to AT&T's position in the GTS market, BT would note that the Ovum report now challenged by SBC/AT&T,[11] which found that on a global level, AT&T is the market leader with a market share of 30-40% followed by MCI with 15-25 %, for the provision of GTS services to MNCs, is the best independent market share data and was independently verified by the European Commission.[12] The global WAN data presented by AT&T and SBC[13] is incomplete because it only covers data traffic and none of the voice services provided to multinational customers.

SBC and AT&T further argue that every nation has a vertically integrated incumbent carrier competing in the GTS space[14] each subsidizing its competition with monopoly access (including special access) rents and that no single carrier controls a "significant minority" of global access lines. They argue that the home court advantage of SBC/AT&T is no greater than it is for BT or FT/Equant. That is certainly not true as to BT, whose special access rates are

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6 AT&T's Petition in *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM No. 10593 ("*Special Access Proceeding*") (Oct. 15, 2002) and Reply Comments (Jan. 23, 2003).

7 *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Dkt. No. 04-313, CC Dkt. No. 01-338, Comments of AT&T Corp. (Oct. 4, 2004) at 86-89 and 91-101 and the Reply Comments of AT&T Corp. (Oct. 19, 2004) at 68-81.

8 Reply Comments of SBC Communications, Inc., *Non-Dominance NPRM Proceeding*, WC Dkt. No. 02-112 (May 19, 2003) at 4 (emphasis added).

9 *Ex parte* Letter from Dee May, Vice President, Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Dkt. No. 02-112 (May 19, 2004) ("Non-Dominance NPRM Proceeding") (emphasis added).

10 SBC/AT&T Letter at 6-7.

11 *Id* at 3-4.

12 Case No. COMP/M.3641 – BT/INFONET (January 25,2005) at 4. *See* http://europa.eu.int/comm/competition/mergers/cases/decisions/m3641_en.pdf

13 SBC/AT&T Letter at note 21.

14 *Id* at 2.

regulated, requiring pricing at long run incremental costs ("LRIC"), and whose accounts are subject to accounting separation between BT's wholesale and retail units.[15] BT, unlike SBC, cannot engage in a price squeeze because of these safeguards.[16] Nor can BT engage in service discrimination because it must publish detailed quarterly Key Performance Indicators on provisioning, repair and maintenance metrics.[17] In the U.S., by contrast, because of the absence of safeguards, GTS competitors could easily be price squeezed out of serving customers that fall in SBC's or Verizon's "sweet spots," making it less and less viable for non-U.S. GTS competitors to have an active presence in the U.S. and continue to be a choice for U.S. based multinationals or multinationals with a heavy presence in the U.S.[18]

Against this backdrop, the merging parties seek to consummate combinations of dominant access providers that control enterprise access in some of the largest economies in the world with the largest providers of national and global enterprise and backbone services, all the while maintaining that safeguards against price and service discrimination are unnecessary. The merger radically changes SBC's incentives to discriminate against AT&T's competitors. Pre-merger SBC had no incentive to favor AT&T whereas post-merger SBC will have every incentive to favor AT&T in price and service. Therefore the Commission must impose safeguards to preserve competition in the enterprise and Internet backbone service markets.

Respectfully submitted,

A. Sheba Chacko

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15 *See* Direction Under Regulation 6(6) Of The Telecommunications Interconnection Regulations 1997 Relating To A Dispute Between British Telecommunications plc And GTS, FIBERNET, Global Crossing, NEOSCORP, THUS, WorldCom, ENERGIS And COLT Concerning The Provision Of Partial Private Circuits, http://www.ofcom.org.uk/static/archive/oftel/publications/broadband/leased_lines/ppc1202/direction.htm;

Review of the retail leased lines symmetric broadband origination and wholesale trunk segment markets, Final Statement and Notification, http://www.ofcom.org.uk/consult/condocs/llmr/statement/; and Partial Private Circuits Charge Control, Final Statement, 30 September 2004, http://www.ofcom.org.uk/consult/condocs/ppc_charge_control/statement/ .

16 And even Equant's parent FT is required to charge LRIC for special access in France. The French regulator, Autorité de Régulation des Communications Electroniques et des Postes ("ART"), has chosen LRIC as the basis for PPC pricing with the rate of return set at 10.4%. *See* ART's decision n° 03-1231 dated November 13, 2003 approving France Telecom's 2004 Reference Interconnection Offer (RIO). www. art-telecom.fr.

17 The latest quarterly service performance report on PPCs from January to March 2005 is available at http://www.btwholesale.com/content/binaries/service_and_support/contractual_information/docs/ppcoffer/briefings/Quarterly_Report_of_BT%27s_PPC_Service_Performance_to_PECNs_January_to_March_2005_new.pdf.

18 By SBC's and AT&T's own admissions (SBC/AT&T Letter at 6) about 19% of multinational companies' sites sit in SBC territory, which includes California, one of the most important states in the world for commerce. California, with a $1.3 trillion gross state product, is the seventh largest economy in the world and is the largest exporting state in the United States. Roughly an equal percentage of multinationals' sites sit in Verizon territory which dominates enterprise access in states whose economies are also equal in size or larger than economies of most other countries. For instance, New York has the eleventh largest economy in the world while Pennsylvania has the sixteenth largest economy in the world. Extrapolating the Dun and Bradstreet data SBC and AT&T cite in their letter of June 2, the two merged entities will control access for about 35% of multinationals' global sites.