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EX PARTE

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October 21, 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 October 20, 2005, the following parties met with Michelle Carey to discuss the above-named dockets. In person were Melissa Newman and Lynn Starr, Qwest Communications International; Joanna Lowry, Savvis; Larry Strickling, Broadwing Communications; Christopher Wright, representing Broadwing Communications and Savvis; Peter Rohrbach, Hogan & Hartson, representing Qwest; and Brad Mutschelknaus, representing XO Communications. Participating by phone were: Heather Gold, XO Communications; Bill Hunt and Cindy Schonhaut, Level 3 Communications; and Sheba Chacko, BT Americas. The attached documents formed the basis of the discussion.

Sincerely,
/s/ Melissa E. Newman

Attachment

Copy by email to:
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October 14, 2005

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

Re: Notice of Ex Parte Presentation

SBC/AT&T Application for Transfer of Control, WC Docket No. 05-65
Verizon/MCI Application for Transfer of Control, WC Docket No. 05-75

Dear Ms. Dortch:

This letter is submitted on behalf of the Ad Hoc Telecommunications Users Committee; Broadwing Communications LLC; BT Americas Inc.; Level 3 Communications, LLC; Qwest Communications International, Inc.; SAVVIS, Inc.; and XO Communications, Inc. These parties come together out of their common concern that the mergers at issue here, if approved as proposed, will substantially increase the cost of telecommunications in this country. The parties respectfully suggest a set of conditions addressing special access competition that must be adopted to ameliorate some of the anticompetitive effects of the proposed mergers.

Numerous interested parties have filed data demonstrating the negative impact on competition of the proposed SBC/AT&T and Verizon/MCI "megamergers." There can be no question that the two transactions would be industry-transforming events, resulting in a tremendous increase in market concentration through the absorption of the nation's two most important competitive telecommunications carriers by the two largest incumbent local exchange carriers. More importantly, the record is replete with evidence that the removal of AT&T and MCI as independent and effective competitors will severely disrupt the wholesale market for local termination services in the territories of SBC and Verizon, thereby directly and indirectly harming end users. Today AT&T and MCI provide by far the largest sources of competition to the special access services offered by SBC and Verizon. AT&T and MCI operate the largest local networks, and they are the best positioned to further overbuild SBC and Verizon with new competitive facilities, fueled by their large customer bases and access to capital. The record evidence shows beyond question that AT&T and MCI routinely bid to provide special access alternatives on both a Type I and Type II basis nearly nationwide, that no other company can do so, and that the prices they offer commonly undercut SBC and Verizon special access rates by up to 80%.

The risk that the mergers will undermine competition is greatly increased by the failure of SBC and Verizon to compete against each other. They have not done so in the past even when their territories abut, and in particular they have not overbuilt each other's local wireline networks. Accepted economic theory explains that those two companies will have strong incentives to mutually forbear from competing with one another in their respective home markets with anything like the same vigor that the independent AT&T or MCI does today. The result is that special access customers will lose the existing and potential competition of *both* AT&T and MCI -- in *both* the SBC and Verizon regions. The result will be higher rates and less diverse networks for end users.

The prospect that SBC and Verizon will discriminate in favor of their new AT&T and MCI affiliates is of equal concern. The newly vertically integrated companies will have both a powerful incentive and the unique capability to discriminate against competitors by providing local network access to AT&T and MCI on preferential terms. Worse yet, the record demonstrates that SBC and Verizon will be uniquely positioned to provide preferential local access arrangements to each other in order to create a market in which there can be only two significant wireline competitors.

The enterprise customer, IXC, CLEC, and VoIP communities are nearly unanimous in documenting the substantial harm to competition directly attributable to the mergers absent the imposition of conditions on the merging parties that would protect competition. The conditions proposed by the various parties in this record range from structural remedies that would have the Applicants divest in-region assets of AT&T and MCI, to an array of behavioral remedies that would correct the disruptions to the special access market and the manner in which the mergers undermine the UNE regime established by the TRRO.

This letter addresses only special access remedies. In an effort to bring focus to the debate in this area, the undersigned parties have carefully reviewed the various proposals in the record in search of common baseline recommendations regarding the minimum remedial conditions the Commission should adopt with respect to post-merger special access services provided by SBC and Verizon. It is evident to us that the flash-cut removal from the market of the competitive pressure produced by AT&T's and MCI's provision of local services will both undermine the market for high capacity transport and loops, and open the door to a new era of severe price and non-price discrimination by SBC and Verizon. In both cases, the problem is that once the pre-merger competitive pressure provided by AT&T and MCI is withdrawn from the market, the only remaining practical option for special access customers typically will be to purchase ILEC services at excessive prices.

A necessary, but not sufficient, solution would be to substantially reduce the special access pricing of SBC and Verizon on a temporary basis to replicate the competitive market prices established pre-merger as a result of the independent market presence of AT&T and MCI, and maintain the prices thus on a transitional basis until such time as new local access competitors are able to fill the void. The undersigned parties agree that this approach has promise, but also share the fervent view that such a remedy can work only if the temporary special access price reductions are both substantial (at least 50%) and accompanied by protections against anti-competitive discrimination in how plans are offered.

Our joint proposal is intended to assist the Commission by identifying the minimum special access conditions that are necessary to prevent the mergers from harming the public through reduced competition and higher prices. All of the undersigned parties support these conditions. Many of the parties joining in submitting this letter believe that additional remedial conditions are needed beyond those discussed here, and nothing in this letter should be interpreted as any party's waiver of its positions regarding those matters. We hope that you find helpful our effort to formulate a major component of a solution to the serious harm to competition posed by the proposed megamergers.

Respectfully submitted,

Ad Hoc Telecommunications Users Committee

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CRUCIAL SPECIAL ACCESS MERGER CONDITIONS

In these two unprecedented transactions, SBC and Verizon propose to acquire the two companies with the most extensive local networks, and with the most potential to build additional local facilities based on the scale and scope of their existing operations and large customer base. These mergers are not in the public interest without remedies to address the resulting anti-competitive harm to end users, both directly and insofar as other service providers face a less competitive special access marketplace.

I. Safeguards to Address Special Access Price Competition Lost From the Elimination of AT&T and MCI

- **Corrective Pricing Adjustment**

  a. Scope of Remedial Adjustment: As of merger close, SBC and Verizon are required to reduce their base DS1 and DS3 special access rate elements by 50%, the amount required to approach the competitive pricing dynamic present today due to AT&T's and MCI's presence in the market as independent providers of special access services. (The mergers also reduce competition in other special access product markets, but DS1 and DS3 are the most competitively sensitive services.)

  b. Adjustment Mechanism: This Corrective Pricing Adjustment applies to all DS1 and DS3 special access rate elements (in both the price caps and pricing flexibility rate schedules, as well as any unique rate schedules set forth in individual contract tariffs or volume and term plans). The existing percentage discounts in the SBC and Verizon discount pricing plans and contract tariffs would apply to the new corrected base rates. (No penalty would apply if a customer's dollar purchase volume falls below prescribed commitments to the extent due to the Corrective Pricing Adjustment.)

  c. Backsliding Protection: SBC and Verizon cannot increase the adjusted rates for DS1 and DS3 services above the levels produced by the Corrective Pricing Adjustment less any further annual price cap related reductions for the later of five years or until the FCC determines that the ceilings are not necessary to protect competition. (They remain free to further reduce any rate element below this ceiling.) Furthermore, SBC and Verizon are required to honor prices in their existing contracts that are lower than the levels produced by the Corrective Pricing Mechanism, and offer volume and term discount plans and contract tariffs in place on the merger date to other companies. SBC and Verizon also must honor, for both existing and new circuits, the terms and conditions of contracts of their respective AT&T and MCI affiliates; post-merger, a circuit purchased as a Type II circuit from the IXC affiliate shall be priced as a Type I circuit if it is owned by the acquiring BOC. These safeguards apply for the later of five years or until the FCC determines that the ceilings are not necessary to protect competition. Parties with existing contracts with any of the Applicants are entitled to extend those contracts at least through the five-year period, whether or not such contracts include special access services in addition to DS1 and DS3 services.

- **Fresh Look.** To enable the Corrective Pricing Adjustment to have a pro-competitive impact in the downstream retail marketplace, customers with negotiated service arrangements with AT&T and MCI may terminate their agreements and pay no termination liability for a period of 12 months following application of the Corrective Pricing Adjustment. Terminating customers will have a six month post-termination transition period to migrate off of the AT&T and MCI networks during which they will pay no shortfall charges and will continue to pay the discounted rates established by their contracts.

II. Safeguards Against Anticompetitive Leveraging of Special Access Services to Restrict Customers' Ability to Use Competitors' Services Even Where Available

- SBC and Verizon may not bundle channel terminations or other non-competitive special access services with potentially competitive services, effectively deterring use of CLECs even where alternate facilities exist. For example, they may not condition favorable special access pricing on a requirement that some specified percentage of a customer's in-region wholesale spending will be committed to SBC's or Verizon's special access offerings.

- SBC and Verizon may not condition more favorable special access pricing on customers' waiving their rights to UNEs pursuant to Sections 251 or 271, including rights to commingle UNEs with special access services. Nor may SBC and Verizon implement unreasonable grooming restrictions or other conduct that would interfere with customers' ability to move to CLECs, or to use more efficient SBC or Verizon special access facilities.

- For 12 months after the mergers close, special access customers may terminate some or all SBC and Verizon special access circuits without termination liability, and without losing eligibility for existing discount levels.

III. Safeguards Against Anticompetitive Discrimination and Collusion

- SBC and Verizon may not give their respective AT&T and MCI affiliates (or other affiliates, or each other) special access rates, terms, and conditions that are not effectively available in service options purchased by third parties (irrespective of volume or term commitments).

- SBC and Verizon must not favor themselves (or each other) in the provisioning, maintenance and customer care of special access services.

- SBC and Verizon must offer customers in their own regions the same special access services at the same rates that they or their affiliates (*i.e.*, AT&T and MCI) purchase or agree to purchase from other LECs outside their regions.

- These safeguards will be enforced through public informational postings by SBC and Verizon, appropriate audits, and penalties and/or customer credits for violations.