

October 21, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 20554

**RE: 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;
Ex Parte Submission**

Dear Ms. Dortch:

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., this letter is submitted to augment our October 14, 2005 joint *ex parte* filing. We are attaching a detailed set of remedial rules to implement the “Crucial Special Access Conditions” that we provided with our October 14, 2005 joint *ex parte* filing.

Respectfully submitted,

Ad Hoc Telecommunications Users Committee
Broadwing Communications LLC
BT Americas Inc.
Level 3 Communications, LLC
Qwest Communications International, Inc.
SAVVIS, Inc.
XO Communications, Inc.

Attachment

cc: Daniel Gonzalez (Daniel.Gonzalez@fcc.gov)
Michelle Carey (Michelle.Carey@fcc.gov)
Russ Hanser (Russ.Hanser@fcc.gov)
Jessica Rosenworcel (Jessica.Rosenworcel@fcc.gov)
Scott Bergmann (Scott.Bergmann@fcc.gov)
Thomas Navin (Thomas.Navin@fcc.gov)
William Dever (William.Dever@fcc.gov)
Tamara Preiss (Tamara.Preiss@fcc.gov)
Donald Stockdale (Donald.Stockdale@fcc.gov)

Terri Natoli (Terri.Natoli@fcc.gov)
Gail Cohen (Gail.Cohen@fcc.gov)
Marcus Maher (Marcus.Maher@fcc.gov)
Gary Remondino (Gary.Remondino@fcc.gov)
Jeff Tobias (Jeff.Tobias@fcc.gov)
Mary Shultz (Mary.Shultz@fcc.gov)
David Krech (David.Krech@fcc.gov)
JoAnn Lucanik (JoAnn.Lucanik@fcc.gov)
Charles Iseman (Charles.Iseman@fcc.gov)
Jim Bird (Jim.Bird@fcc.gov)
Jonathan Levy (Jonathan.Levy@fcc.gov)

DETAILED PROPOSAL REGARDING CONDITIONS ON SBC/AT&T AND VERIZON/MCI MERGERS

Definitions:

- “Applicant”: [SBC Communications Inc. / Verizon Communications Inc.] and its affiliates as of and after the Merger Closing Date (including but not limited to the Acquired Company), and their successors and assigns.
- “Other Merged Company”: [Verizon Communications Inc. / SBC Communications Inc.] and its affiliates as of and after the Merger Closing Date (including but not limited to [MCI, Inc. / AT&T Corp.]), and their successors and assigns.
- “Acquired Company”: [AT&T Corp. / MCI, Inc.] and its affiliates prior to the Merger Closing Date, and their successors and assigns.
- “In-Region” or “Applicant Service Area”: The states served by the Applicant’s Bell Operating Company affiliates, as well as the geographic areas served by the Applicant’s non-Bell Operating Company ILEC affiliates.
- “Special Access”: All telecommunications services that are included in Applicant’s special access tariffs, all services that formerly were included in such tariffs but have been removed from those tariffs, and all comparable non-switched dedicated telecommunications services, including but not limited to private line.
- “Special Access Customers”: All carriers, end users, and other entities that purchase, or that agree or seek to purchase, Special Access from the Applicant, other than Affiliates of the Applicant.
- “Special Access Offerings”: All tariffs, Agreements, or offers to provide Special Access, including by general tariffs filed with the FCC or state commissions, contract tariffs filed with the FCC or state commissions, non-tariffed offers to provide service, and non-tariffed commercial agreements.
- “Contracts” or “Agreements”: Includes all contracts, agreements, and tariffs, whether or not a customer has ordered service pursuant thereto, and other service offers that a customer has accepted and pursuant to which has ordered service.
- “Existing” or “Pre-Existing” contracts or customers: Contracts in place on or before the Merger Closing Date, and/or customers that had agreed to such Contracts and/or subscribed to service pursuant to such Contracts on or before the Merger Closing Date.
- “Local Connectivity”: The Applicant’s Special Access Offerings, the Applicant’s Unbundled Network Elements, and comparable local services and facilities offered In-Region by service providers other than the Applicant.

- “Offer” or “Provide”: In each case, the current provision of service, an offer to provide service that customers may not yet have accepted or subscribed to, and an agreement to provide service in which the customer has not yet ordered service.
- “Merger Closing Date”: The date on which the Applicant’s merger transaction is consummated.
- “Sunset Date”: Defined in Section IV below.
- “Offering Window”: The time period from the “Merger Closing Date” until the “Sunset Date.”
- “Base Rate Schedule”: Defined in Section I.A.2.b below.
- “Corrective Pricing Adjustment”: Defined in Section I.A.3 below.
- “Type I” and “Type II” circuits: Defined in Section I.B.1.a below.
- “Effectively Available” Defined in Section III.A.3 below.
- All terms not specifically defined above have the meaning specified in the Communications Act of 1934, as amended (“Act”), or in relevant FCC rules, orders, and policies.

I. Pricing Remedies

A. Special Access Corrective Pricing Adjustment

1. Implementation of Corrective Pricing Adjustment

- a. Applicant shall implement the Corrective Pricing Adjustment described herein in the Applicant Service Area. Applicant shall implement the Corrective Pricing Adjustment by amending each interstate access tariff and offering to amend each contract tariff, effective no later than 10 days after the Merger Closing Date, as required to implement and provide the Corrective Pricing Adjustment.
- b. Applicant shall immediately establish necessary internal processes and procedures to ensure that its wholesale business units provide notice of the Corrective Pricing Adjustment to all Existing Special Access Customers and bill the adjusted rates accurately beginning not later than 10 days after the Merger Closing Date.

2. Application of Corrective Pricing Adjustment

- a. The Corrective Pricing Adjustment applies to all recurring and nonrecurring charges for DS1 and DS3 level Special Access services, including, without limitation, channel terminations, interoffice transmission, entrance facilities, central office services such as multiplexing and collocation used in connection with DS1 and DS3 level Special Access transmission services, and other

non-switched Special Access services used for transport and termination of telecommunications and information services.

- b. The Corrective Pricing Adjustment shall apply to all rate elements in all of the Applicant's existing Special Access Base Rate Schedules, including Base Rate Schedules subject to price cap regulation, Base Rate Schedules subject to pricing flexibility, comparable intrastate tariffed Base Rate Schedules, and Base Rate Schedules included in contract tariffs and non-tariffed Special Access Offerings. "Base Rate Schedules" are those to which Applicant currently applies its non-negotiated and negotiated discount pricing plans, and existing unique rate schedules set forth in executory contract tariffs, volume and term plans, and other Special Access Offerings.
 - c. The existing percentage discounts in the Applicant's discount pricing plans, contract tariffs, and other Special Access Offerings apply to the corrected base rates established through application of the Corrective Pricing Adjustment.
 - d. Applicant may neither: (i) withdraw existing Special Access Offerings, nor (ii) introduce or file new Special Access services or Special Access Offerings with rate schedules exceeding the prices resulting from application of the Corrective Pricing Adjustment. The Corrective Pricing Adjustment does not restrict Applicant from offering Special Access at rates that are lower than the base rate ceilings established through application of the Corrective Pricing Adjustment.
3. Definition of Corrective Pricing Adjustment. The Corrective Pricing Adjustment is defined as a 50 percent reduction in the rates in the Base Rate Schedules that apply to the Special Access services specified in Section I.A.2 above.
4. Anti-Backsliding Requirements
- a. Applicant may not increase any of the Special Access rates subject to the Corrective Pricing Adjustment, less any further rate reductions required pursuant to applicable price cap rules.
 - b. Applicant shall not apply any termination liabilities, reductions in percentage discount availability, revenue shortfall charges, or other contract or tariff penalties to Special Access Customers whose dollar purchase volumes fail to meet prescribed volume commitments due to the rate reductions implemented through application of the Corrective Pricing Adjustment.
 - c. Applicant is required to offer all Special Access Offerings, including executory special access contract tariffs and volume and term plans, to any requesting Special Access Customer, despite the fact such offerings originally may have been offered on a temporary, promotional, or time-limited basis.
 - d. Applicant shall honor all rates in its existing contracts that are lower than the levels produced by the application of the Corrective Pricing Adjustment.

B. Pricing Requirements for Services Offered by the Acquired Company

1. Pre-Existing Contracts. During the Offering Window, upon customer request, the Applicant must honor the terms and conditions of the Acquired Company's Existing Contracts for dedicated (non-switched) services for both existing and newly ordered circuits.
 - a. All circuits ordered pursuant to such Contracts in the Applicant Service Area shall be priced as a Type I circuit under the terms of the applicable private line services agreement, regardless of whether such circuits were treated as Type I or Type II circuits prior to the Merger Closing Date. For this purpose, "Type I" circuits are those provided entirely over the network facilities owned by the Acquired Company, and "Type II" circuits are all circuits other than Type I circuits. Circuits provided over a combination of network facilities owned by the Acquired Company and network facilities owned by the Applicant's ILEC affiliate are Type I circuits.
 - b. Existing Customers of such Existing contracts with the Acquired Company shall be entitled to extend any such contracts for the duration of the Offering Window, regardless of the contract term set forth in such contracts, and whether or not such agreements include other facilities and services than DS1 and DS3 private line services.
2. Fresh Look. Customers that have Existing Agreements with the Acquired Company may terminate such Agreements with no termination liability, revenue shortfall charges, or other penalty for a period of 12 months after initial implementation of the Corrective Pricing Adjustment. Customers that exercise their right to terminate such Existing service Agreements with the Acquired Company shall be provided a transition period of six months after the date on which they exercise that right to migrate off the Acquired Company network, during which they will not be charged shortfall charges and will be billed the discounted rates provided under their Existing Contracts. Effective discounted rates will continue to apply at the level in effect at the time fresh look is exercised, regardless of any reductions in traffic volume attributable to migration of traffic during the transition period.

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

A. Requirements Precluding the Applicant From Bundling Competitive Special Access Services with Non-Competitive Services or Unbundled Network Elements

1. Continued Offering of Pre-Existing Services. The Applicant shall continue to provide Special Access Offerings with discount levels and other terms and conditions (subject to the Corrective Pricing Adjustment specified in Section I.A) at least as favorable to a Special Access Customer as those offered as of August 1, 2005; provided, however, that terms or provisions in such Special Access Offerings that violate any of the provisions in this Section II.A shall be null, void, and unenforceable.

2. Restriction on Percentage Purchase Commitments. The Applicant may not provide Special Access Offerings in which, as a condition of receiving favorable price levels, price discounts, or other terms and conditions for some or all Special Access services, a Special Access Customer must commit to purchasing from the Applicant a minimum percentage of the Customer's (i) total Special Access service requirement; (ii) Special Access spending with the Applicant during a past time period; (iii) total purchase of all forms of Local Connectivity purchased from the Applicant and all other In-Region service providers; or (iv) any similar volume commitment tied to past or future Local Connectivity requirements ("Percentage Requirements Restriction").
3. Restriction on Bundling of Less Competitive With More Competitive Special Access Services. The Applicant may not provide Special Access Offerings in which, as a condition of receiving favorable price levels, price discounts, or other terms and conditions for some or all Special Access services, a Special Access Customer must commit to purchase more competitive services of the Applicant together with less competitive services, and shall allow the Special Access Customer to purchase some Special Access Services without purchasing others without paying a higher price for the Services purchased ("Access Bundling Restriction"). For purposes of this requirement,
 - a. higher capacity services (*e.g.*, OC-48) shall be considered "more competitive" than lower capacity services (*e.g.*, DS-1);
 - b. interoffice transmission services and entrance facilities shall be considered "more competitive" than channel termination services;
 - c. all transmission services shall be considered "more competitive" than multiplexing, collocation and other central office-based services;
 - d. services offered in denser portions of a LATA, MSA, or state (*e.g.*, UNE Zone 1) shall be considered "more competitive" than services offered in less dense portions of the LATA, MSA, or state (*e.g.*, UNE Zone 3);
 - e. services offered on an unregulated basis shall be considered "more competitive" than services offered pursuant to pricing flexibility, which shall be considered "more competitive" than services offered pursuant to the Price Cap rules; and
 - f. services offered in MSAs in which the Applicant has obtained "Phase II" pricing flexibility for some or all services pursuant to 47 CFR §§ 69.701 *et seq.* shall be considered "more competitive" than services offered in MSAs in which the Applicant has obtained "Phase I" pricing flexibility for some or all services, and services in such MSAs shall be considered "more competitive" than services offered in MSAs in which the Applicant has not obtained any forms of pricing flexibility.
4. UNE Purchase Restriction. The Applicant may not provide Special Access Offerings in which, as a condition of receiving favorable price levels, price discounts, or other terms and conditions for some or all Special Access services, a Special Access

- Customer must commit not to purchase UNEs offered pursuant to Sections 251 or 271, not to purchase more than a specified percentage or volume of UNEs offered pursuant to Sections 251 or 271, or not to exercise any rights they may have pursuant to the FCC's rules to commingle UNEs with Special Access Services ("UNE Purchase Restriction"). To the extent that, prior to the Merger Closing Date, the Applicant has provided a Special Access Offering that includes a provision that violates the UNE Purchase Restriction, Special Access Customers that purchased or agreed to purchase services pursuant to such an Offering shall be entitled to continue subscribing to the Offering under the same terms and conditions (as adjusted by the Corrective Pricing Adjustment described above) except that such provisions in violation of the UNE Purchase Restriction shall be null and void.
5. Right of First Refusal Restriction. To the extent Applicants' Special Access contracts include a "right of first refusal" with regard to Special Access Customers' ability to accept Local Connectivity bids from competing service providers, the Applicants may not enforce such contract terms unless their services are offered at rates equal to or lower than the lowest offer from a competing service provider.
 6. The Percentage Requirements Restriction, the Access Bundling Restriction, the UNE Purchase Restriction, and the Right of First Refusal Restriction shall apply to all Special Access purchased during the Offering Window, including Special Access purchased as part of a bundled offering that also includes other telecommunications services. In addition, to the extent that, prior to the Merger Closing Date, the Applicant has provided a Special Access Offering that includes a provision that violates these restrictions, Special Access Customers that purchased or agreed to purchase services pursuant to such an Offering shall be entitled to continue subscribing to the Offering under the same terms and conditions (as adjusted by the Corrective Pricing Adjustment described above) except that any terms that violate the Percentage Requirements Restriction or the Access Bundling Restriction shall be null, void, and unenforceable.

B. Fresh Look for Special Access Customers

During the period from the Merger Closing Date until 12 months after the Merger Closing Date, Special Access Customers shall be entitled to terminate or reduce their purchases of the Applicant's Special Access Services without termination liability, and without losing eligibility for the discount levels provided in their preexisting Special Access Offerings. Any contractual or tariffed requirements to the contrary in such Special Access Offerings shall be null and void and unenforceable.

III. Safeguards Against Anticompetitive Discrimination and Collusion

A. Requirements Precluding the Applicant From Discriminating In Favor of Itself or the Other Merged Company and/or Against Other Special Access Customers

1. No Discrimination In Favor of Applicant's Affiliates. The Applicant may not provide Special Access Offerings to itself or its Affiliates that are not effectively available in service options available to other Special Access Customers.
2. No Discrimination In Favor of One Another. The Applicant may not provide Special Access Offerings to the Other Merged Company or the Other Merged Company's Affiliates that are not effectively available in service options available to other Special Access Customers.
3. Definition of "Effectively Available." For purposes of the preceding two paragraphs, a service is not "effectively available" if it is contingent on a commitment to any specified quantity, volume, or minimum revenue of purchases [*since unaffiliated Special Access Customers are unlikely to have quantities or volumes comparable to those of the Applicants*] or to a service term of longer than three years.
4. No Unreasonable Grooming Restrictions. The Applicant may not implement unreasonable restrictions on Special Access Customers with respect to the addition, deletion, modification, or other change, hot cut, or groom of circuit facility arrangements. For purposes of this paragraph, "unreasonable" restrictions include, but are not limited to, unreasonable tariffed or non-tariffed limitations on the quantity of additions, deletions, modifications, changes, hot cuts, or grooms that a particular Special Access Customer may implement during a specified time period. Nondiscriminatory and even-handed restrictions that the Applicant can prove are necessitated by resource constraints, and do not favor its own network rearrangements, are not "unreasonable" for this purpose.
5. Structural Requirements to Facilitate Enforceability of Nondiscrimination Safeguards. In order to ensure that the nondiscrimination safeguards described herein remain enforceable, the Applicant and its Affiliates shall comply with all provisions of 47 U.S.C. §§ 272(a), (b), and (c), and 47 C.F.R. § 53.203, notwithstanding the statutory "sunset" of any such requirements.
6. Public Information Requirement to Facilitate Enforceability of Nondiscrimination Safeguards. The non-ILEC affiliates of the Applicant must conduct all transactions with the ILEC affiliates and with the Other Merged Company on an arm's length basis, with any such transactions reduced to writing and available for public inspection via the Applicant's website, consistent with the FCC's policies adopted to enforce 47 U.S.C. § 272(b)(5). This requirement shall apply notwithstanding the statutory "sunset" of any such requirements.

B. Requirements for Non-Discriminations in Provisioning, Maintenance and Customer Care of Special Access Services

1. General Non-Discrimination Requirement. The Applicant must provide the following Special Access provisioning and OSS functionalities to Special Access Customers at a quality level that is no worse than the quality at which it provides such functionalities to itself, its affiliates, and to the Other Merged Company and its affiliates.
 - a. Percent of committed due date met
 - b. Installation interval
 - c. Mean time to restore out of service (dispatch required)
 - d. Mean time to restore out of service (no dispatch required)
 - e. Groom project completion interval
 - f. Percent of installations without outage trouble reports in the first 30 days
 - g. Repeat circuit failures (twice within 30 days)
 - h. Chronic circuit failures (three times within 60 days)
 - i. Return of DLR percent met
 - j. Circuits outside of submission interval
2. Reporting on Provisioning. The Applicant shall provide quarterly reports for the service quality metrics listed above, beginning 90 days after the Merger Closing Date, on a state-by-state basis, for DS-1 and DS-3 circuits, and broken down to show performance separately by (a) service to self and/or its own Affiliates, (b) service to the Other Merged Company and/or its Affiliates, and (c) service to other Special Access Customers. Such reports shall be filed with the FCC and made publicly available on the Applicant's website.
3. Enforcement for One-Time Violations. If the Applicant fails to meet any service quality measure in any state in a calendar quarter, it shall be required to provide credits to all Special Access Customers equal to 5% of each such Customer's total special access bills for the quarter in the state in which the failure occurred. If the Applicant is unable to provide credits to Special Access Customers on a state-by-state basis, it must apply a 5% credit to Special Access Customers' bills for the quarter nation-wide.
4. Enforcement for Repeated Violations. If the Applicant fails to meet any specified service quality measure two calendar quarters in a row in a given state, it shall be required to provide credits to each Special Access Customer equal to 10% of the

Customer's special access bills, consistent with the requirements of the preceding paragraph. Each consecutive failure to meet a specified service quality measure shall require an additional credit of an additional 5%.

C. Requirements that the Applicant Offer The Same Special Access Services In-Region That It Purchases or Agrees to Purchase From Other ILECs

The Applicant must make available Special Access Services to In-Region Special Access Customers at substantially the same rates to those at which the Applicant has purchased or agreed to purchase Special Access Services from other Local Exchange Carriers or other service providers, *provided* that any commitments the Applicant may have made relating to quantity, volume, or minimum revenue of purchases, or relating to term commitments of longer than three years shall not apply to the Applicant's offering of such services at identical rates to In-Region Special Access Customers. To facilitate enforcement of this requirement, all transactions involving the Applicant's purchase of Special Access Offerings from other entities must be reduced to writing and available for public inspection via the Applicant's website.

IV. Sunset Date

Except as otherwise specified herein, the requirements and safeguards set forth above shall cease to be effective on the date (the "Sunset Date") defined as the *later* of:

- A. The date five years after the Merger Closing Date, or
- B. The date 30 days after the day of Federal Register publication of a Commission order affirmatively determining that—
 - 1. the Corrective Pricing Adjustment is unnecessary to protect Special Access competition in the Applicant Service Area; and
 - 2. the Applicant has been in substantial compliance with the safeguards and other requirements stated herein for at least the preceding 12 months. For this purpose, "substantial compliance" shall include, but not be limited to, full compliance with at least eight of the ten performance metrics listed in Section III.B.1 above for the entire 12 month period.