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Comments to the FCC: AT&T-BellSouth Merger,

WC Docket No. 06-74

Part 2: Competition. October 24, 2006

FCC Can't Create Enforceable Merger Conditions.

FCC/Bells Harmed Competition. The Mergers Eliminated Competitors.

The Proposed ATT-Bellsouth Competition Conditions Are Gobbily-Gook.

Teletruth and New Networks Institute has tracked the Bell mergers since their start in 1996. . Let's put some facts on the table about competition to back up our three statements. (*Note: this is our second filing; the first is about broadband. A 3rd filing is on AT&T and MCI phone bill charges and harm to customers.)

1) The History of the SBC-Ameritech Merger: Failure to Create Enforceable, Reasonable Merger Conditions Or Hold Phone Companies Accountable for Their Hype.

Here's the original merger conditions, as stated in summary by the FCC.
http://www.fcc.gov/Bureaus/Common_Carrier/News_Releases/1999/nrc9077a.html

It contains the following gem:

"Out-of-Territory Competitive Entry (National-Local Strategy)

> * Within 30 months from the merger closing, SBC/Ameritech will enter at least 30 major markets outside of its region as a facilities-based competitive provider of local services to business and residential customers.
> * SBC/Ameritech is liable for voluntary incentive payments of nearly $1.2 billion dollars if it misses the entry requirements in all 30 markets.

> * This condition will ensure that residential consumers and business customers outside of SBC/Ameritech's region benefit from increased facilities-based local competition."

By 2002, SBC was supposed to be competing in 30 cities outside of their own region with residential wireline competition or pay $1.2 billion in penalties. Here's a list of the cities.
http://newnetworks.com/SBCfailedcities.html

BellSouth as a competitor: SBC was supposed to enter the BellSouth territories and compete. In fact, SBC claimed (SBC, 10K 2001 Annual Report) it was competing in Louisville Kentucky, Atlanta Georgia, Charlotte North Carolina, Miami and Tampa Florida -- all BellSouth cities.

> "As of December 31, 2001 we had introduced service in 22 new markets (Boston, Fort Lauderdale, Miami, New York, Seattle, Atlanta, Denver, Minneapolis, Philadelphia, Phoenix, Baltimore, Bergen-Passaic, Middlesex, Nassau, Newark, Orlando, Salt Lake City, Tampa, Washington D.C., West Palm Beach, Louisville and Charlotte), and plan to enter at least eight more by April 2002."

The FCC, in granting the Ameritech-SBC merger, stated that the merger was based on this outside competition. It would not have been granted without this competition guarantee.

> "This will ensure that residential consumers and business customers outside of SBC/Ameritech's territory benefit from facilities-based competitive service by a major incumbent LEC. This condition effectively requires SBC and Ameritech to redeem their promise that their merger will form the basis for a new, powerful, truly nationwide multi-purpose competitive telecommunications carrier. We also anticipate that this condition will stimulate competitive entry into the SBC/Ameritech region by the affected incumbent LECs."

Outcome: We could not find any of the 30 cities were SBC is competing with wireline, local residential competition, especially in the BellSouth territories.

BellSouth could, of course, also compete with SBC as well. A map of the US shows that SBC states Texas and Missouri touch the BellSouth territories.

Tele Truth

Therefore, the BellSouth-AT&T merger kills off competition between two major players, and rewards SBC, even though they clearly lied about its competition, including competition with BellSouth, in order to get the SBC-Ameritech merger through.

2) Blatant Holes in the FCC's Merger Conditions: 3 Customers = Competition?

The FCC's fine print reveals that the merger conditions were worth nothing as the merger condition stated that "at least 3 customers" per city could fulfill some of the phone companies' obligations. According to SBC in 2001, the company completed some of its commitments by having "at least 3 customers in 19 states"! I repeat — only 3 customers in 19 states — 57 customers in 19 states.

> "In total, SBC notified the FCC that it had installed in 2001 a local telephone exchange switching capacity and was providing facilities - based local exchange service to at least three unaffiliated customers in the above listed seventeen markets, five more than the required additional twelve markets to be deployed by April 8th, 2001."

Teletruth could find more customers by simply hanging out at a local bar and offering free drinks to new customers.

Also, in our filings we outline that the FCC also missed a primary condition: SBC was supposed to offer the entire city competition using UNE-P and resale. This did not happen.

Here's what the FCC should have done with the SBC-Ameritech merger: Broke up the merger. How is it that not being in 30 cities is not a 'systematic failure'?

> "Should the merged entity systematically fail to meet its obligations, we can and will revoke relevant licenses, or require the divestiture of SBC/Ameritech into the current SBC and Ameritech companies."

Teletruth has previously pointed out the fact that competition did not occur and that the FCC was failing to hold these companies accountable.
http://www.teletruth.org/TakeAction/Breakupsbcameritech/liarliar.htm

3) The Merger Conditions: Everything was based on advanced network competition and local competition--- The networks would be available to

competitors to 'even' the playing field.

FROM SUMMARY:
http://www.fcc.gov/Bureaus/Common_Carrier/News_Releases/1999/nrc9077a.html

> * SBC/Ameritech will provide data CLECs the economic equivalent of "line sharing" by providing them a second loop at a 50% discount for purposes of providing advances services to consumers.
> * This condition will ensure a comparable playing field between the advanced services separate affiliate and its competitors.
>
> * SBC/Ameritech will make UNEs available until the Commission's new UNE rules are completely final and non-appealable.
> * This condition will reduce uncertainty for competitors arising from litigation over the Commission's rules.

While the ink was drying on these mergers, the companies lobbied the FCC and Congress to remove all of the competitive openings, from ISPs and CLECs being able to use the networks with line-sharing to the UNE-p regulations, for offering local phone service.

OUTCOME: Because the FCC simply ignored these commitments (or they were prematurely 'sunset', meaning erased) 6000 ISPs were put out of business, as well as hundreds of competitors.

4) Vertical integration was a bad idea. A massive loss of competition was created by the FCC's rulings, even though the mergers were clear about opening the networks.

The FCC allowed SBC to essentially put these companies out of business by allowing them to vertically integrate multiple products, thus squeezing everyone else out of the market. For example, AT&T can now offer local, long distance, broadband, ISP connectivity, and even cable television without having their networks open to competitors.

* By removing the requirement for line sharing and DSL resale, the Bells got to own the wireline ISP market. In 2000, the Bells were not even in the top 10 of ISPs in America. Now, they own the marketplace for wireline services.

*   By removing line sharing the Bells got to own the broadband market ---this eliminated most D-LECs, data local competitors offering DSL. DSL was NOT rolled out by the phone companies first. It was the independent companies who created the market.
*   By removing UNE-P, the Bell got to put the CLEC competitors, because they could no longer sell local and long distance services and make a profit.

We stress: Because of the removal of UNE-P (wholesale rates) AT&T was also lost as a competitor as was MCI. The primary reason was that the two largest competitors were put up for sale because AT&T, and MCI, who were offering local and long distance competition, could not longer compete and thus were put up for sale.

Today, AT&T (the new AT&T) is not offering local and long distance competition except as a "VOIP" service, which first requires a customer to have a broadband connection.

We summarized what happened to competitive offerings in our Harvard Nieman Watchdog article: How the Baby Bells and the government destroyed competition for DSL, long distance and local phone service

http://www.niemanwatchdog.org/index.cfm?fuseaction=Ask_this.view&askthisid=196

5) The long distance debacle. There are multiple ironies here. Long distance service is "interstate" and AT&T and MCI were the two largest companies.

The Bell companies under the Telecom Act of 1996 were allowed to enter long distance when and if they fully opened their networks to competitors. State by state the Bells were able to get into long distance, claiming their networks were open. As soon as this process was complete, the FCC got rid of the requirement to open the networks to competitors and the two largest competitors, AT&T and MCI, who had started to offer local competition, were shut out of competing.

But that's not the ugly secret --- It is now clear that SBC used the money it was supposed to use to compete in the various markets to enter the long distance markets.

Let's follow the money. In the SBC 2001 Annual Report, we find that SBC spent virtually no money in 2001 to fulfill its obligations of the merger conditions and that SBC's costs "decreased approximately $90 million in 2001". However, long distance spending was way up. In total contrast, SBC spent $320 million in 2001 and $260 million in 2000 for entry into just four states to offer long distance.

6) Competition Grid: The FCC's Analysis is Flawed.

The FCC believes that there is competition today. That analysis is seriously flawed. Let's put each part of competition to the test.

US Households: 111 million

Phone competition: Cable-telephony: 7.5 million --- about 7% of households.
Cable Competition: Bell IPTV: Less than 110,000 --- less than 1%
VOIP: Vonage has only 2 million lines. It requires a broadband connection, now controlled by the Bell companies or the cable companies.

Excuse me, but where's the competition from phone or cable? The cable companies have only 7% of the market, and the Bells have less than 1% of the cable market. Vonage has only 2 million, but the kicker is it requires a broadband connection – owned by the cable of phone companies, so they still get to charge customers.

More to the point, in out next analysis of AT&T and MCI phone bills, most customers do not benefit from packages. Try to find a brand name offering long distance service or even local phone service, especially for low volume users.

Wireless has proven to be an enhancement of the Bells' revenues, and not a solution/replacement for local service, especially with low volume users.* (see part 3 for an explanation.)

7) The Proposed Merger conditions by AT&T are gobbily-gook.

> "The AT&T and BellSouth incumbent LECs shall continue to offer and shall not seek any increase in State-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. This condition shall not limit the ability of the AT&T and BellSouth incumbent LECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates."

What isn't said is that most of the UNE regime has been dismantled because of the previous Bell filings and actions at the FCC. Thus, the condition is meaningless.

Conclusion

If the FCC was working in the public interest it would require the Bells to open all networks for competition, as the Telecom Act stated, or it would require them to divest their long distance services or their DSL/advanced network services, or wireless. Vertical integration should not be allowed to stand as it harmed competition.

The Telecom Act was created a situation to make sure that first the networks should be open, then the Bells could enter long distance. However, then the FCC closed the competition opening requirements, putting the long distance companies in an financial dilemma, which caused them to be sold instead of competing.

Also, the previous mergers were ALL based on competition and opening of networks.

Eliminating AT&T, MCI, 6000 ISPs, hundreds of CLECs did not increase competition or public interest. It raised rates and supplies less choice.

Part 3: Phone Bill Issues; SBC and Verizon Screwed AT&T and MCI customers, and the majority of customers have been harmed by the mergers...

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More Reading:

Mini Report on SBC-Ameritech-Pac Bell-SNET-Southwestern Bell Mergers.
http://www.teletruth.org/docs/SBCMergerharms.pdf

Teletruth's analysis of the failed merger commitments.
http://www.teletruth.org/TakeAction/Breakupsbcameritech/liarliar.htm

ebook: $200 Billion Broadband Scandal
http://www.newnetworks.com/broadbandscandals.htm

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