



September 27, 2007

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Via Electronic Filing
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

EX PARTE NOTICE

RE: *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25, RM-10593*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, BT hereby gives notice that, on September 26, 2007, Aryeh Friedman and Sheba Chacko met with John Hunter, Chief of Staff to Commissioner McDowell. At that meeting the following matters were discussed:

(1) The evidence in the record of a persistent market failure in the U.S. wholesale special access services market;¹ that in other jurisdictions the national regulatory agencies, in the face of similar evidence of market failure, have regulated the wholesale access market, the focus being on promoting downstream *service* competition; and that increased service competition will drive market-driven access infrastructure innovation despite such wholesale access regulation.

(2) The BOCs' argument that the record is incomplete because the Commission does not have enough information about the CLECs network is a strategic misdirection. The Department of Justice used compulsory process in the merger proceedings to obtain this data and concluded

¹ Noting that the BOCs' were able to maintain their extraordinary high market share in the wholesale special access market despite the fact that their rates were substantially higher than their local competitors. *See Ex parte* letter from Jonathan Lechter, Willkie Farr & Gallagher to Marlene Dortch Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Sept. 18, 2007) comparing BOC and competitor rates.

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that “for the vast majority of buildings in a given metropolitan area the SBC or Verizon is the only firm with a last-mile connection to the building.”²

(3) BT discussed Ethernet over TDM, and noted that it is inefficient both in terms of cost and quality.

(4) The appropriate remedy is *proportional* regulation. This includes an interim regulatory remedy as proposed by the Commission in its NPRM in 2005³ based on the cumulative evidence already in the record submitted in 2002, 2005 and 2007 as well as in the merger proceedings. An immediate interim remedy is necessary to ensure that the BOCs cannot further entrench their monopoly power.⁴ A longer proportional, regulatory remedy could be developed in a subsequent expedited proceeding.

Sincerely,



Aryeh Friedman

cc: John Hunter

² Plaintiff United States' Response to Public Comments <http://www.usdoj.gov/atr/cases/f215100/215174.htm> (03/21/2006) at 18, n. 28.

³ 70 Fed. Reg. 19381 (April 15, 2005).

⁴ And recent financial results show national CLECs faltering (e.g. Level 3 reported that for the 2nd Quarter, 2007 revenue from core communications services fell 2 percent to \$888 million and its forecast for third-quarter EBITDA (earnings before income, taxation, depreciation and amortization), at \$210 million to \$230 million, was below the average analysts' forecast of \$239 million. *Level 3 results disappoint and shares slump*, Reuters News, Thursday July 26th, 2007) even as profits for the BOCs are soaring (e.g., AT&T Inc. posted a 61 percent increase in second-quarter 2007 earnings (July 25, 2007) <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/24/AR2007072400508.html>; Qwest Communications International Inc. posted second-quarter earnings for 2007 that more than doubled from the same period last year. (Aug. 1, 2007)).