Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
AT&T Wireless Services, Inc.,	)	WT Docket No. 04-70
Transferor, and Cingular Wireless LLC,	)	
Transferee,	)	
	)	
Applications for Transfer of Control	)	
of Licenses and Authorizations	)	

REPLY COMMENTS OF THE COMPTEL/ASCENT ALLIANCE

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SUMMARY

The proposed merger of Cingular Wireless and AT&T Wireless is not in the public interest and approval should be denied. This acquisition will stifle competition and create additional and unnecessary obstacles for both wireline and wireless carriers. The Applicants fail to bear their burden under Sections 310(d) and 214 of the Communications Act of 1934, as amended, to demonstrate that the proposed transfer of control will serve the public interest. Key to the Commission's public interest analysis is whether the transaction will have significant anticompetitive effects. This analysis is not limited to the discrete market in which the transaction will take place, but all related markets and submarkets that may be affected by the merger, in order to further the procompetitive objectives of the Communications Act.

Of primary concern is the anticompetitive and discriminatory effect the proposed transaction will create in the special access markets. Because interconnection is essential to competition in both the wireless and wireline market sectors, a further breakdown of competition in the special access markets will be particularly damaging. The proposed transaction will give the Applicants, and their ILEC parents, a significantly larger amount of market control than they currently enjoy, and will serve to further concentrate the market for special access services, which already is burdened by anticompetitive and discriminatory conduct. SBC in particular has already demonstrated its ability to impose anticompetitive terms on its special access customers, who have no other choice than to interconnect with SBC. The proposed transaction will not only harm competing carriers, but will harm consumers and the market as a whole.

In addition, the acquisition will also allow the Applicants and their ILEC parents to package bundles of service that no other competitor will be able to match. Congress and the Commission have previously recognized the potential for anticompetitive effects as the result of a vertical relationship between companies. Both SBC and BellSouth already sell bundled services, which include long distance service and voicemail in the same package, and Applicants make no attempt to refute the contention that they intend to exploit their new alliance by selling bundles of wireline, broadband and wireless services.

Moreover, competitors cannot count on procompetitive statutes and regulations to prevent the discrimination that will result from this merger. Existence of statutes and regulations do not prevent them from being violated; in fact, the Commission has previously found SBC responsible for "willful and repeated" violations of merger conditions, despite the existence of regulatory restraints. Also, the regulations themselves are under constant assault by the ILECs; SBC was instrumental in eviscerating the Commission's recent Triennial Review Order. CompTel believes the Commission must eliminate the use of all anticompetitive restraints in the provision of special access as a condition to approving this merger.

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The Competitive Telecommunications Association ("CompTel")/Association of Communications Enterprises ("ASCENT") Alliance ("CompTel/ASCENT") hereby supports the Petitions to Deny filed by Thrifty Call, Inc. ("Thrifty Call") and Consumer Federation of America/Consumers Union ("CFA/CU"), and opposes and replies to Cingular Wireless Corporation ("Cingular") and AT&T Wireless Services, Inc.'s ("AWS's") (together, the "Applicants") *Joint Opposition to Petitions to Deny and Comments* filed in the above-captioned matter. Cingular and AWS have failed to establish that the acquisition will enhance competition; specifically, they failed to adequately rebut Petitioners' argument that this merger will provide the Applicants and their ILEC parents with even greater incentive to discriminate in the provision of special access and bundled services. Applicants further failed to demonstrate that the acquisition will serve the public interest. If this acquisition is approved, it will only serve to better facilitate collusion among now-rival companies, and will further concentrate the market for these essential services.

I. Applicants Fail to Bear Their Burden of Proving that the Acquisition Serves the Public Interest.

Under Sections 310(d) and 214 of the Communications Act of 1934, as amended, the Applicants must demonstrate that the proposed transfer of control will serve the public interest. In discharging these statutory responsibilities, the Commission weighs the potential public interest harms of the proposed transactions against the public interest benefits to ensure that, on balance, the transfers of control serve the public interest, convenience and necessity.[1] In making this determination, the Commission considers the competitive effects of the proposed transfers and whether such transfers raise significant anticompetitive issues. Consideration of the competitive effects of the proposed transfer is a key factor in the Commission's public interest analysis.[2] This analysis appropriately reviews and considers the competitive effect on all markets and submarkets within the Commission's purview.[3] The Commission also considers the efficiencies and other public interest benefits that are likely to result from the proposed transfers

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1 *Voicestream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, Memorandum Opinion and Order, 16 FCC Rcd 9779, para. 17 (2001).

2 *General Motors Corporation and The News Corporation Limited General Motors Corporation and Hughes Electronics Corporation, Transferors And The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, para. 16, FCC 03-330, MB Docket No. 03-124 (Jan. 2004) ("*DirecTV Order*").

3 *In the Matter of GE American Communications, Inc., Application for Consent to Transfer of Earth and Space Station Licenses of Columbia Communications Corp.*, DA 00-1332, para. 5 (June 27, 2000),"[O]ur public interest analysis is not, however, limited by traditional antitrust principles . . . . It also encompasses the broad aims of the Communications Act. . . . To apply our public interest test, then, we must determine whether the merger violates our rules, or would otherwise frustrate our implementation or enforcement of the Communications Act and federal policy. That policy is, of course, shaped by Congress and deeply rooted in a preference for competitive processes and outcomes."

of control of the licenses and authorizations.[4] The applicants bear the burden of proving that the transaction, on balance, serves the public interest.[5]

II. This Acquisition Will Enhance the Ability of the Merged Firm to Lessen Competition In the Wireless Market Through Coordinated Interaction.

Both CFA/CU and Thrifty Call identify aspects of the vertically integrated firm which plausibly will enhance the merged firm's ability to coordinate prices in the downstream wireless markets. CFA/CU points to expanded spectrum capacity which could be used to raise the cost of roaming to rivals who fail to price rationally in the wireless market.[6] Similarly, Thrifty Call identifies the dominant position of SBC and BellSouth in the market for a critical input as a factor that, combined with the significant concentration in the wireless retail market, will enhance the merged firm's ability to facilitate coordination in that market.[7]

Both petitioners raise concerns that are a primary focus of the Horizontal Merger Guidelines analysis—the ability of the merged firm to lessen competition by enhancing the ability of firms in the post merger market to coordinate pricing behavior.[8] The merging parties, however, have (wrongly, in CompTel's opinion) interpreted the concerns of the petitioners as solely focused on the potential of the post-merger firm to "foreclose" competition by driving competitors out of business, or some such unilateral tactic. While these concerns seem to have

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4 *Global Crossing Ltd. (Debtor-in-Possession), Transferor and GC Acquisition Limited, Transferee, Applications for Consent to Transfer Control of Submarine Cable Landing Licenses, International and Domestic Section 214 Authorizations, and Common Carrier and Non-Common Carrier Radio Licenses, and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, 18 FCC Rcd 2031, paras. 16-24 (2003).

5 *DirecTV Order* at para. 15.

6 *CFA/CU Petition to Deny* at 11.

7 *Thrifty Call Petition* at 17-18.

8 See Merger Guidelines, Section 2.1 ("A merger may diminish competition by enabling the firms selling in the relevant market more likely, more successfully, or more completely to engage in coordinated interaction that harms consumers.")

more merit than the parties give them credit, the parties have, again, ignored their burden to prove that the merger is in the *public* interest and does not lessen *competition*.

Thus, curiously, in their attempts to "rebut" the observations of CFA/CU and Thrifty Call, the merging parties lead off their defense with statements of other wireless industry participants, all of which seem supportive of the merger.[9] That the other industry participants believe that a better qualified price leader, better able to help rationalize industry pricing, is good for the industry is not surprising. What is surprising, however, is that the parties believe these statements actually support their argument that the merger is in the public interest—particularly, when these statements are all consistent with the self interest of industry members who will be better able to coordinate their market behavior.[10]

Similarly, the parties' reliance on Cingular's relatively low share of new customers in many markets is entirely consistent with the role of Cingular as a potential price leader in these markets.[11] Certainly, with such low shares the parties cannot suggest that Cingular was a particularly aggressive competitor, or "maverick" pricer, to begin with. The combination of AWS and Cingular will, for various reasons, be even better equipped to perform the role of market coordinator.

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9 *Joint Opposition* at 35-36.

10 The statement by the Deutsche Telecom CEO that the merger will increase T-Mobile's chances of exceeding its revenue growth forecast seems especially consistent with a firm that expects more rational, and less competitive, pricing in the newly-structured market.

11 *Joint Opposition* at 37.

A. Control of Critical Inputs Enhances Applicants' Ability to Coordinate Behavior of Downstream Rivals.

Amazingly, Applicants argue that it is inappropriate to deal with special access concerns in the context of a merger proceeding.[12] By focusing exclusively on the ability of SBC and BellSouth to discriminate against rivals of their downstream affiliate, their argument completely misses the point. Central to the Commission's public interest evaluation of a transfer of control is whether the transaction will raise significant anticompetitive issues.[13] As noted previously, the question of whether a merger enhances the likelihood of post-merger coordination in any market is a central concern, and the enhancement of the merged firm's ability to detect "cheating" is as important as the firm's ability to subsequently punish such cheating.[14]

1. Requirements Contracts for Special Access Enhance the Merged Firm's Ability to Detect and Punish Cheating.

A particularly good example of how the merged firm will be better able to monitor and punish cheating in the downstream market for wireless service can be seen in a recent contract tariff filed by SBC, and included here as ***Attachment A***. In addition to the ordinary high volumes, excessive terms, and unreasonable termination liabilities imposed by

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12 *In the Matter of AT&T Wireless Services, Inc. and Cingular Wireless Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, Joint Opposition to Petitions to Deny and Comments, pg. 37 (May 13, 2004) ("*Joint Opposition*").

13 *Infra*, note 2.

14 Merger Guidelines, Section 2.1 ("Successful coordinated interaction entails reaching terms of coordination that are profitable to the firms involved and an ability *to detect and punish* deviations that would undermine the coordinated interaction. Detection and punishment of deviations ensure that coordinating firms will find it more profitable to adhere to the terms of coordination than to pursue short-term profits from deviating, given the costs of reprisal. In this phase of the analysis, the Agency will examine the extent to which post-merger market conditions are conducive to reaching terms of coordination, *detecting deviations from those terms*, and punishing such deviations.") (emphasis added)

most ILEC "contract tariffs,"[15] this tariff includes a special plan, whereby the purchaser can accrue maximal discounts (50% on the carrier's total purchases) if the customer migrates at least 4% of its total volume from competitive sources.[16] To see how this contract would work, consider two wireless carriers, both of which have and equal amount of special access demand with SBC—for example, $1 million per month. However, one of the wireless carriers currently purchases some of its special access demand from competitive sources, and can thus migrate special access circuits to SBC. The carrier who migrates circuits from competitive sources will pay $500,000 per month instead of the $1 million per month paid by the carrier who either does not have enough competitive business to migrate, or chooses not to migrate this business. Given the already-high volume commitments that carriers must make in order to get the best prices, four percent of this already-high amount is likely to constitute almost all of a carrier's special access demand. Indeed, as the Applicants note, "AWS today purchases the vast majority of its special access services from ILECs rather than the 'competitive wholesalers' that Thrifty suggests will be foreclosed."[17]

The more of a given wireless carrier's demand provided by SBC or BellSouth, the easier it is for the merged firm to monitor "cheating" by rivals of the downstream wireless affiliate. This is because any rival firm offering lower prices will be growing its special access demand. The ILEC monopolies, through the use of "requirements" contracts like the contract tariff described here, are thus better able to monitor coordination in a more concentrated wireless

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15 "Typically, such arrangements require AWS to purchase substantial volumes of special access services over 3 to 5 year terms. Onerous penalties attach for failure to meet the volume and term commitments and effectively lock AWS into the ILECs' special services." *Comments of AT&T Wireless, Petition of AT&T for Rulemaking to Reform Regulation of ILEC Special Access Rates*, RM No. 10593 (Dec. 2, 2002) at 8.

16 See SBC Contract Tariff, Section 22.20.3(c).

17 *Joint Opposition* at n. 133, p. 40.

industry by "rewarding" downstream firms who submit to "monitoring" and punishing those that do not. Moreover, the upstream monopolies, in the present case, have targeted those wireless rivals of the merged entity that have shown the greatest willingness to develop a cost structure, and supply sources, independent from the integrated SBC-BellSouth-Cingular-AWS.

Finally, regarding the merged firm's ability to punish cheaters, it is immaterial whether special access price increases, or access degradation, are alone sufficient to provide a suitable "punishment" mechanism, but the Applicants must explain why their excess spectrum capacity—as described by CFA/CU—in conjunction with their special access monopoly is insufficient to discipline "maverick" firms who do not cooperate with the downstream affiliate. Significantly, though, with respect to the contract described above, over time – as wireless competitors to the merged firm migrate all their special access to SBC – the rivals' input costs will double when SBC has completely eliminated competitively supplied special access to the wireless rivals of Cingular-AWS.

B. The Commission's Nominal Authority to Regulate Special Access Is Immaterial To Applicants' Ability to Facilitate Coordination By Use of Their Monopoly Over A Critical Input.

Interconnection to the landline telephone network is key to competition in nearly all sectors of the market, including the wireless sector.[18] Applicants attempt to diminish and ignore the legitimate concerns of Thrifty Call simply by invoking general statutory provisions as if they are magical incantations to ward off scrutiny. Instead of addressing Thrifty Call's concerns, the Applicants have failed to offer any explanation of how anything but the Applicants' good nature

18 Congress has found that "the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network." Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking*, 11 FCC Rcd 5020, para. 96 (1995) (*citing* House Report on H.R. 2264 at 261 (1993)).

will constrain them from exercising their enhanced ability and incentive to use their special access monopoly anticompetitively. Applicants cite to statutory provisions and performance metrics, and claim that the existence of these measures alone is sufficient to safeguard the market from discriminatory and anticompetitive conduct.[19] Their argument is illogical. The existence of a law does not prevent it from being broken.

In hiding behind general statutory provisions, the Applicants conveniently fail to acknowledge that they have virtually complete discretion in setting the prices and terms of their special access services. In fact, CompTel (along with Applicant AWS and others) has asked the DC Circuit to issue a Writ of Mandamus to compel the FCC to actually enforce the provisions regarding just and reasonable pricing of special access that the Applicants point to as sufficient to constrain their acknowledged market power.[20] Moreover, while there are indeed general rules prohibiting SBC and BellSouth from engaging in unfair discrimination, these same parties have steadfastly fought any attempts to get them to publicly report provisioning performance so these provisions could be easily enforced. Thus, discrimination in interconnection arrangements, which SBC, for example, has proven capable of in the past,[21] continues to threaten competition.[22]

III. Applicants Have Failed to Demonstrate that the Merger Will Not Harm Competitive Providers of Special Access.

In another instance where the Applicants are quick to diminish, but slow to account for, legitimate concerns expressed by Thrifty Call, the Applicants generally assert that this merger

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19 *Joint Opposition*, pgs. 37-38.

20 *In re AT&T Corp., et al, Petitioners*, No. 03-1397 (D.C. Circuit 2003). The court has ordered briefing on the merits, and is now considering this petition.

21 *Core Communications, Inc. v. SBC Communications Inc., Memorandum Opinion and Order*, 18 FCC Rcd 7568, para. 41 (2003).

22 *In the Matter of AT&T Wireless Services, Inc. and Cingular Wireless Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, Petition to Deny of Thrifty Call, Inc.*, WT Docket No. 04-70, pg. 18 (May 3, 2004) ("*Thrifty Call Petition*").

can have no anticompetitive effect on competitive providers of special access service.[23] However, it is far from clear to CompTel (and should be to the Commission as well) how this should be so abundantly clear given the size of this acquisition and the types of anticompetitive vertical restraints currently employed by SBC and BellSouth, and described in Section II. A. 1. above. CompTel represents many competitive providers of wholesale transport services, and disagrees strongly with the Applicants' conclusory dismissals of the concerns expressed by Thrifty Call.

The Applicants first attempt to dismiss Thrifty Call's concern by reciting some general observations about vertical mergers from *The Antitrust Paradox*.[24] However, as CompTel has earlier explained, what we are talking about in this case is a vertical merger further exacerbating the already anticompetitive effects of aggressive vertical restraints. The effects of this particular vertical restraint, in combination with the outright elimination of an aggressive independent purchaser of competitive access services, could, indeed, foreclose business from competitive access providers and thereby limit the ability of these competitors to expand. It is well-recognized in the antitrust literature that the anticompetitive potential of vertical restraints/combinations increases when a dominant upstream supplier also controls (through restraint or combination) a significant share of the downstream market as well.[25]

It is unavailing to simply point out, as Applicants do, that the dollar volume of special access purchases supplied by AWS and other wireless carriers is small compared to the total special access market, controlled by the ILECs. Indeed, without knowing the importance, based on the current "flow share" of competitive access purchases in the relevant markets by AWS and

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23 *Joint Opposition*, pp. 40-41.

24 *Id.* at 40.

25 *See, e.g.*, HERBERT HOVENKAMP, ANTITRUST LAW, PARA. 1802d5 (2002).

the other non-SBC, or BellSouth, affiliated wireless carriers it would seem impossible—using the Applicants' favored method of analysis—to rule out the importance of competitive wireless carriers (including AWS) to the ability of competitive providers of special access to grow their business.

In other words, given the anticompetitive nature of the SBC special access contracts, it is clear that the only volume presently available to competitive access providers in SBC's markets will come from growth telecommunications industries, such as wireless. This is because, given the vertical restraints imposed by SBC, it is unlikely that traditional IXC's, whose revenue continues to erode, will be able to meet their commitments to SBC, migrate circuits from competitors, and still have enough access growth to continue to initiate new special access purchases from competitive providers. Thus, comparing AWS' competitive access purchases to the base of special access revenue most likely understates the importance of AWS to competitive providers in the relevant markets.[26]

IV. The Acquisition Will Promote Anticompetitive Effects in the Market for Many Bundled Services by Giving SBC and BellSouth Market Power Unmatchable by Anyone But Verizon.

Applicants claim that "bundling is procompetitive,"[27] however they fail to acknowledge or address the unprecedented synergies that will be generated by this acquisition. Applicants' assertion that "[t]his transaction will not have any adverse impact on the bundling of wireless

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26 In fact, there is evidence to suggest that AWS—relative to other carriers—was able to divert a substantial amount of purchases to competitive access providers. For example, AWS was able to purchase around 10% of its demand from competitors, while another wireless rival had only been able to divert 4% of its demand to competitors. See presentation of AWS in RM No. 10593, at slide 4, December 18, 2002.

27 *Joint Opposition* at 41.

services with other telecommunications services"[28] oversimplifies the real risk of anticompetitive harm due to the vertical relationship between the companies.

Despite Applicants' claims, not all bundling is procompetitive. Economists believe that when vertically related firms enter into long term or exclusive contracts that inefficiently deter or foreclose entry to a market, consumers may be harmed.[29] Congress also has recognized the potential for anticompetitive effects, and has found that "vertically integrated program suppliers ha[ve] the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies."[30] Moreover, the Commission also recognizes the potential for anticompetitive conduct as the result of a vertical relationship between companies.[31] This acquisition will create an unprecedented vertical relationship among ILECs with an already huge market share that must not be ignored.

As Thrifty Call pointed out in its *Petition to Deny*,[32] local wireline and wireless customer bases and associated facilities can and will be used by Applicants to create bundled service offerings that no other provider can match. In fact, both local and wireless services are already sold by SBC in bundles, which include long distance service and voicemail in the same

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28 *AT&T Wireless Services, Inc., Transferor, and Cingular Wireless LLC, Transferee, Applications for Transfer of Control of Licenses and Authorizations*, WT Docket No. 04-70, File Number: 0001656065, pg. 41 (submitted March 18, 2004) ("*Application*").

29 *In re Promotion of Competitive Networks*, WT Docket No. 99-217, para. 28. (Oct. 25, 2000).

30 *DirecTV Order* at 41 (although "the competitive landscape had changed for the better since 1992, but [ ] vertically integrated programmers continued to have the incentive and ability to favor affiliated cable operators over other MVPDs").

31 *Id.* at para. 124. *See also Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 3160, para. 126 (Feb. 18, 1999) (AT&T-TCI could inflict competitive harm by offering a package of bundled products if rivals were unable to offer a similar package).

32 *Thrifty Call Petition*, pg. 19.

package.[33] There is no reason to believe Applicants will not soon bundle wireline, broadband and wireless services. In fact, as recently as yesterday, the Washington Post quoted market analysts on the importance of and the ability to bundle services, particularly the ability to bundle wireline services with wireless services.[34] In their *Joint Opposition*, Applicants make weak assertions that such bundling would not harm competition, but they do not refute Thrifty Call's contention that they intend to sell bundles of wireline, broadband and wireless services.

V. The Commission Must Eliminate the Use of All Anticompetitive Vertical Restraints in the Provision of Special Access by SBC and BellSouth as a Condition to Approving this Merger.

CompTel has, in these comments, demonstrated that the public interest concerns raised by petitioners Thrifty Call and CFA/CU are substantial, deserve consideration, and have not been adequately refuted by the Applicants. Absent conditions to correct these problems, the Commission would be justified in denying the Applicants' request.

Accordingly, CompTel believes that the only way the Commission could potentially approve this merger would be if the Commission would make a tangible commitment to establishing a strong and competitive market for special access provided by competitive facilities providers. The most effective step the Commission could take in this direction would be to eliminate the use of anticompetitive term and volume contracts by all purchasers of SBC and BellSouth special access. The Commission should require SBC and BellSouth to immediately reduce by half the volume commitments in their highest volume contracts, eliminate any

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33 *See* www.bellsouth.com; www.sbc.com for various, combined packages offered. Also see http://www.sbc.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=20648, *Michigan Wins FCC Long Distance Approval* (SBC announces that it will soon offer a full bundle of telecommunications services to customers in nine of the 13 states in which it operates, along with a new service, MinuteShare, "created with BellSouth and Cingular Wireless to enable residential consumers to share a single bucket of minutes for calls made from either their SBC or BellSouth wireline and Cingular wireless phones").

34 Washington Post, Page E05, *AT&T Back in Wireless Business*, (May 19, 2004).

termination liability that prevents customers who have performed under a contract for at least a year from grooming circuits to competitive providers, and eliminate the use of "exclusive" or "requirements" type contracts that encourage "all or nothing" discounting, or provide any non-cost based discounts for the migration of traffic from competitive carriers.

VI. CONCLUSION

For the foregoing reasons, the Commission should deny the merger, or order the requested relief as a condition to approving the merger.

Respectfully submitted,

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May 20, 2004

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I, Nancy Boudrot, hereby certify that copies of the foregoing "Reply Petition of the CompTel/ASCENT Alliance" were served this 20th day of May, 2004, as follows:

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Attachment A

22. Pricing Flexibility Contract Offerings (N)

22.20 Contract Offer No. 20 – MVP DS1, DS3 and OCN Service Offer

22.20.1 General Description

MVP DS1, DS3 and OCN Service Offer ("Contract Offer No. 20") is an access discount pricing plan for MVP Customers where subscription is required in four of the SBC Companies: Ameritech Operating Companies, Southwestern Bell Telephone Company, Southern New England Telephone Company and Pacific Bell Telephone Company. This Offering provides a 50% discount off recurring tariff rates for DS1, DS3, and OCN Services that meet the Eligibility Criteria as described in Section 22.20.3 and are subject to the Terms and Conditions as described in Section 22.20.4. Customers will continue to receive MVP discounts provided that they meet their MVP contract obligations in Section 20 of F.C.C. No. 2 Tariff.

Customers must commit to a Current Annual Revenue Commitment (CARC), as described in Section 22.20.5. To ensure that the customer will meet the CARC by end of year 2004 and 2005, the Telephone Company will review revenue quarterly. In the event the customer is not meeting their CARC, the customer will be required to remit payments, via the quarterly True-Up process described in Section 22.20.6, otherwise termination liabilities will apply.

This Contract Offer No. 20 will only be available between November 18, 2003 through January 18, 2004.

22.20.2 Services Available Under Contract Offer No. 20

(A) This Contract Offer No. 20 offers discounts on the recurring rates for the Price Flex eligible DS1, DS3 and OCN Access Services (hereafter referred to as Subject Services) contained in the Tariff Sections listed below, and only in the Metropolitan Statistical Areas (hereafter referred to as MSAs) defined in Section 22.20.4(C).

Service	General / Basic Description	Phase 1 MSAs Rates and Charges	Phase 2 MSAs Rates and Charges
DS1 and DS3 Services	7.2.9	7.5.9	21.5.2.7
Optical Carrier Network (OCN) Point-to-Point Service	7.2.10	7.5.10	21.5.2.7

(N)

22. Pricing Flexibility Contract Offerings (N)

22.20 Contract Offer No. 20 – MVP DS1, DS3 and OCN Service Offer (Cont'd)

22.20.2 Services Available Under Contract Offer No. 20 (Cont'd)

(B) Purchase of the Subject Services listed above pursuant to Contract Offer No. 20 are subject to the specific terms and conditions of Section 22.20.4. Additionally purchase of the services listed above pursuant to Contract Offer No. 20 are also subject to the general terms and conditions of F.C.C. Tariff No. 2 as set forth in Sections 2-General Regulations, 5-Ordering Options for Switched & Special Access Service, 6- Switched Access Service, 7-Special Access Service and 13-Additional Engineering, Additional Labor & Miscellaneous Services. Such general terms and conditions may be modified through the filing of tariff changes at any time during the Term Period, however, such changes will not change the regulations described in Contract Offer No. 20.

Subject Services continue to be governed by the respective terms and conditions of the MVP provisions in section 20, F.C.C. Tariff No. 2 except as noted herein.

22.20.3 Eligibility Criteria for Contract Offer No. 20

(A) Contract Offer No. 20 is only available to Customers who are currently subscribing to MVP, in the following Telephone Companies:

- Ameritech Operating Companies (AIT) F.C.C. No. 2 Section 19 (N)
- Southwestern Bell Telephone Company (SWBT) F.C.C. No. 73 Section 38; and (Nx)
- Pacific Bell Telephone Company (PBTC) F.C.C. No. 1 Section 22.

(B) Customer must also concurrently subscribe to the identical contract offers of Contract Offer No. 20 pursuant to the following tariffs:

- SWBT Tariff F.C.C. No. 73, Section 41, Contract Offer No. 15;
- PBTC Tariff F.C.C. No. 1, Section 33, Contract Offer No. 20; and
- SNET Tariff F.C.C. No. 39, Section 25, Contract Offer No. 1. (Nx)

(N)

(C) A minimum of 4% of the Customer's Current Annual Revenue Commitment, as described in Section 22.20.5, must come from services previously provided by a carrier other than the Ameritech Operating Companies and it's affiliates. This 4% level will be measured at the end of the Term Period, however, the 4% requirement may be demonstrated at any time during the contract period. Customer must adhere to the following Sections (1) and (2). (N)

(xx) Issued under authority of Special Permission No. 03-100 of F.C.C

22. Pricing Flexibility Contract Offerings (Cont'd) (N)

22.20 Contract Offer No. 20 – MVP DS1, DS3 and OCN Service Offer (Cont'd)

22.20.3 Eligibility Criteria for Contract Offer No. 20 (Cont'd)

(C) (Cont'd)

(1) Customer must provide documentation to demonstrate that the Subject Services have been converted from another carrier to Telephone Company services. Documentation may include but is not limited to: circuit detail records, invoices, and coordinated orders to move the service. The Telephone Company is willing to review other documents that the Customer may deem appropriate to meet this criteria, however only to the extent that it does not result in breach of any non-disclosure agreements which may govern the distribution of such information.

(2) If Customer fails to reach the 4% requirement as measured at the end of the Term Period, the Customer will be deemed to have terminated Contract Offer No. 20 and termination liabilities will apply as set forth in Section 22.20.7.

22.20.4 Terms and Conditions

(A) Term Period

The contract Term Period will commence on the date the Telephone Company receives a completed Letter of Authorization and expires on December 31, 2005 ("Term Period").

This offer is not renewable.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.20 Contract Offer No. 20 – MVP DS1, DS3 and OCN Service Offer (Cont'd)

22.20.4 Terms and Conditions (Cont'd)

(B) Application

Subject Services to which the Customer already subscribes as of the commencement of the Term Period will receive discounts effective upon the commencement of the Term Period.

Subject Services purchased after the commencement of the Term Period will receive the discounts only after the service has been provisioned.

Monthly billing credits will be issued for every month in which the Subject Services are purchased in compliance with the eligibility criteria in Section 22.20.3. The Credits will be applied within 30 days after each billing cycle.

(C) This Contract Offer No. 20 is only available for Subject Services located in the following MSAs:

Pricing-Flexibility MSAs: Chicago, Illinois; Detroit/Ann Arbor, Michigan; Cleveland/Lorain/Elyria, Dayton, and Columbus, Ohio.

(D) Contract Offer No. 20 provides a discount of 50% off the monthly recurring tariff rates listed in Section 22.20.2 (A) for existing and new Subject Services.

Example:

Subject Services Monthly Recurring Charge	= $2000
50% Discount	= $1000

(E) Customer agrees to maintain a Current Annual Revenue Commitment (as described in Section 22.20.5) for the calendar years of 2004 and 2005.

(F) Customer agrees to a quarterly true-up as described in Section 22.20.6 for the calendar years of 2004 and 2005.

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.20 Contract Offer No. 20 – MVP DS1, DS3 and OCN Service Offer (Cont'd)

22.20.5 Current Annual Revenue Commitment (N)

Under Contract Offer No.20, Customer will commit to maintain a Current Annual Revenue Commitment (CARC). The CARC will be established using either the Customer's current MVP MARC or an Annual Revenue Commitment calculated as outlined below in Section 22.20.5(A), whichever is greater. The CARC will be established as soon as the Telephone Company receives the Letter Of Authorization from the customer.

(A) Determining the Annual Revenue Commitment

The Customer's Annual Revenue Commitment is calculated based on the total of the previous three (3) months recurring billing for all MVP qualified access services prior to any MVP discounts (as listed in F.C.C. 2, Section 19.2), multiplied by four (4). The Annual Revenue Commitment is calculated as follows:

Previous Three (3) Months Recurring Billing X 4 = Annual Revenue Commitment

(B) The CARC will not change during the contract Term Period.

(C) If the Customer fails to achieve the CARC on either of the contract anniversary dates (December 31, 2004 or December 31, 2005), and fails to remit the annual projected gap payment, the Customer will be deemed to have terminated its participation in Contract Offer No. 20 and termination liability charges will apply as set forth in Section 22.20.7. (N)

22. Pricing Flexibility Contract Offerings (Cont'd) (N)

22.20 Contract Offer No. 20 – MVP DS1, DS3 and OCN Service Offer (Cont'd)

22.20.6 Quarterly True-Up

To ensure that the customer will meet the CARC by the end of year 2004 and 2005, the Telephone Company will review revenues quarterly. In the event that the Customer has an estimated shortfall, the Customer is required to remit Quarterly Gap Payments as described below. Quarterly is defined as consecutive three (3) month periods commencing January 1, 2004. The process of remitting payments to eliminate the Annual Projected Gap is referred to as the True-Up process.

The Telephone Company will calculate the Customer's Annual Projected Gap (if any) on a quarterly basis. The Annual Projected Gap is the CARC, less any annual projected MVP discounts, less actual annualized revenues. Actual annualized revenue is the Customer's actual billed amount to date, annualized to determine end of year estimated revenues. Actual annualized revenues will include any previous quarterly gap payment that the Customer has made. For this calculation, the actual annualized revenues are calculated after discounts from this Contract Offer No. 20, and any other applicable credits or discounts (i.e., MVP) have been applied.

Example A: Annual Projected Gap calculation at end of 1st quarter

CARC	= $12,000,000
Less projected MVP discounts	= $ 2,000,000
Sub total	= $10,000,000
Less actual quarterly revenue ($1.5M) X 4 (annualized)	= $ 6,000,000
Annual Projected Gap	= $ 4,000,000

(A) If there is a positive Annual Projected Gap as measured above for the quarter, the Customer agrees to make Quarterly True-Up payments. Quarterly True-Up payments will be calculated using the percentages in section 22.20.6 (B) and will be applied to the Annual Projected Gap to determine the gap payment. See example B in Section 22.20.6.

(B) Quarterly True-up payments will be calculated utilizing the following percentiles:

Quarter	Percent
1st	0%
2nd	25%
3rd	66%
4th	100%

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.20 Contract Offer No. 20 – MVP DS1, DS3 and OCN Service Offer (Cont'd)

22.20.6 Quarterly True Up (Cont'd)

(B) (Cont'd)

Example B: Quarterly True-up

1st Quarter

Actual revenue 1st Quarter:

January	= $ 400,000
February	= $ 500,000
March	= $ 600,000
Total	= $1,500,000

CARC	= $12,000,000
Less projected MVP discount	= $ 2,000,000
Sub total	= $10,000,000
Less actual 3 months revenue ($1.5M) x 4 (annualized):	= $ 6,000,000
Annual Projected Gap	= $ 4,000,000

$4,000,000 x 0% = $0.00 Quarterly True-up payment

2nd Quarter

Actual revenue 1st and 2nd Quarter:

January	= $ 400,000
February	= $ 500,000
March	= $ 600,000
April	= $ 600,000
May	= $ 700,000
June	= $ 700,000
Total	= $3,500,000

CARC	= $12,000,000
Less projected MVP discount	= $ 2,000,000
Sub total	= $10,000,000
Less actual 6 months revenue ($3.5M) x 2 (annualized):	= $ 7,000,000
Annual Projected Gap	= $ 3,000,000

$3,000,000 x 25% = $750,000 Quarterly True-up payment

(N)

22. Pricing Flexibility Contract Offerings (Cont'd) (N)

22.20 Contract Offer No. 20 – MVP DS1, DS3 and OCN Service Offer (Cont'd)

22.20.6 Quarterly True Up (Cont'd)

(B) (Cont'd)

Example B: Quarterly True-up (Cont'd)

3rd Quarter

Actual revenue 1st, 2nd and 3rd Quarter

January	= $ 400,000
February	= $ 500,000
March	= $ 600,000
April	= $ 600,000
May	= $ 700,000
June	= $ 700,000
July	= $ 500,000
August	= $ 600,000
September	= $ 665,038
Total	= $5,265,038

CARC	= $12,000,000
Less projected MVP discounts	= $ 2,000,000
Sub total	= $10,000,000
Less (9 months actual revenue + 2nd Quarter Gap payment) x 1.33:	
($5,265,038 + $750,000) x 1.33	= $ 8,000,000
Annual projected Gap	= $ 2,000,000

$2,000,000 x 66% = $1,320,000 Quarterly True-up payment (N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.20 Contract Offer No. 20 – MVP DS1, DS3 and OCN Service Offer (Cont'd)

22.20.6 Quarterly True Up (Cont'd)

(B) (Cont'd)

Example B: Quarterly True-up (Cont'd)

Quarter 4

Actual revenue 1st, 2nd, 3rd and 4th Quarter

January	= $ 400,000
February	= $ 500,000
March	= $ 600,000
April	= $ 600,000
May	= $ 700,000
June	= $ 700,000
July	= $ 500,000
August	= $ 600,000
September	= $ 665,038
October	= $ 500,000
November	= $ 550,000
December	= $ 614,962
Total	= $6,930,000

CARC	= $12,000,000
Less projected MVP discounts	= $ 2,000,000
Sub total	= $10,000,000
Less (12 months actual revenue + 2nd & 3rd Quarter Gap payment):	
$6,930,000 + $750,000 + $1,320,000	= $ 9,000,000
Annual Projected Gap	= $ 1,000,000
$1,000,000 x 100% = $1,000,000 Quarterly True-up payment	

In the example above at the end of the 4th Quarter the Customer's actual revenue plus the Customer's Quarterly Gap payments, plus projected MVP discounts will equal the CARC.

$6,930,000 + $750,000 + $1,320,000 + $1,000,000 + $2,000,000 = $12,000,000

(C) SBC will provide customer a quarterly gap payment bill (if applicable) within 30 days after the end of the quarter.

(D) If at the end of either contract anniversary date (December 31, 2004 or December 31, 2005) the customer has exceeded their CARC (actual revenue + gap payments) and have made Quarterly Gap Payments, SBC will credit the customers account the amount exceeding the CARC, but not greater than the total gap payments the customer has made.

(N)

22. Pricing Flexibility Contract Offerings (Cont'd) (N)

22.20 Contract Offer No. 20 – MVP DS1, DS3 and OCN Service Offer (Cont'd)

22.20.7 Termination Liability Charges

If the Customer terminates service before the completion of the term for any reason whatsoever the customer agrees to pay the Telephone Company termination liability charges described below. These charges shall become due as of the effective date of the cancellation or termination. The Customer must provide written notification 60 days prior to the desired date of termination to the Telephone Company.

If the Customer fails to meet any of the eligibility criteria in section 22.20.3 or fails to maintain any of the Terms and Conditions in section 22.20.4, the Customer will be deemed to have terminated its participation in Contract Offer No. 20 and termination liability charges will apply as stated below and will be payable pursuant to F.C.C. No. 2 , Section 2.4.

Customers termination liability shall be equal to:

(A) 100% of all Discounts received under this Contract Offer No. 20 during the six (6) months immediately prior to the date of termination, plus;

(B) 25% of the CARC for each year in the remaining portion of the Term Period.

Any previous gap payments paid by the customer will be forfeited.

Example C:

The Customer signs up for Contract Offer No. 20 on November 1, 2003. The Customer terminates its participation in Contract Offer No. 20 effective September 15, 2004. The termination liability charge that would apply is calculated as follows:

Annual CARC = $12M
Monthly CARC = $12M / 12 months = $1M
Number of months remaining in contract = 15.5
Remaining value of CARC = 15.5 x $1M = $15.5M
25 % of remaining value of CARC = .25 x $15.5M = $3.875M
March 2004 - August 2004 discounts = $500K

Total Termination Liability Charge = $3.875M + $500K = $4.375M

(N)