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CompTel ASCENT

October 15, 2004

VIA ELECTRONIC FILING

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

Re: *WT Docket No. 04-70, Cingular/AT&T Wireless Merger*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, CompTel/ASCENT ("CompTel") hereby gives notice that on October 14, 2004, its representatives met with Sheryl Wilkerson, Legal Advisor to Chairman Powell. In this meeting, CompTel explained the potential anticompetitive effects of the above-referenced merger, both from a unilateral effects and coordinated effects standpoint. CompTel also explained how some fairly limited conditions (discussed in detail in our October 1st ex parte), if adopted by the Commission as part of its order approving the merger, could offset the significant potential anticompetitive effects of this combination.

The potential danger of this merger from a unilateral effects perspective is simply that, post-merger, the merged entity will be the provider of first and second best substitutes for a significant portion of consumers. Throughout the BellSouth and SBC in-region territories, the merged firm will be the sole provider of a bundled consumer wireline/wireless offering, due to the well-publicized consumer market exits by the largest competitive wireline carriers. Similarly, the merged firm will be the market share leader in the wireless-only market. This increases the likelihood that the merged firm could profitably raise prices on its bundled offering, while holding prices for its wireless-only product constant. In describing this potential merger danger, CompTel referred to its October 1st ex parte in this docket.

CompTel also explained how as a dominant input supplier to in-ILEC-region wireless rivals, the merged firm would be able to better coordinate downstream, wireless market prices. The risk of anticompetitive coordinated effects stems from the increased concentration downstream (in wireless) resulting from the merger, and also the merged firm's ability, as a dominant supplier, to monitor other wireless carriers' output decisions in advance. For example, if, post-merger, a wireless rival wanted to offer a plan to better compete with Cingular, the rival would presumably be likely to expand capacity in advance of a significant price cut. The merged firm could use a combination of retail price responses, and/or special access provisioning delays to communicate its disapproval of the rival's actions.

CompTel then explained that, by adopting a few conditions on the ILEC parent's conduct in the special access market, the Commission could offset potential future anticompetitive effects from the merger through the de-regulatory solution of advancing wholesale competition in the local transport market. Specifically, CompTel suggested the Commission prohibit the Bell company parents of post-merger Cingular from using the following provisions in special access tariffs:

1) Termination, or "shortfall," liabilities that extend beyond the initial term of the volume tariff discount. Once the original term of the tariff has been fulfilled, these penalties have no legitimate cost basis, and only serve to impose costs on customers that would like to switch to a competitive alternative to SBC or BellSouth.
2) Volume commitments based on significant percentages of prior purchase requirements. Commitments that are based solely on prior purchases bear no relationship to pecuniary economies that might be used to justify volume discounts. Instead, "requirements" type commitments only serve to lock up the customer's base of circuits, and prevent the customer from choosing a more efficient alternative supplier of access services.
3) Discounts—especially "first dollar" discounts—predicated on moving circuits off competitive carrier networks. Again, these are discounts which bear no relationship to reduced costs to provide service; and, as such, have no efficiency justification. The anticompetitive effect of these incentives is equally obvious: sooner or later the customer will migrate 100% of its circuits to SBC or BellSouth; at which time its costs will increase significantly—leaving post-merger Cingular with enhanced ability to raise retail rates, and be assured that rivals will follow.

Representing CompTel were Michael Pelcovits of Microeconomic Consulting & Research Associates, and the undersigned attorney.

Sincerely,

Jonathan D. Lee

Jonathan Lee
Sr. Vice President
Regulatory Affairs