

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of SBC Communications, Inc. and AT&T Corporation For Consent To Transfer Control of Section 214 and 308 Licenses and Authorizations and Cable Landing License)	WC Docket No. 05-65
)	
)	

COMPTEL/ALTS REPLY COMMENTS

CompTel/ALTS hereby submits its reply comments in opposition to the merger applications of SBC Communications, Inc. (“SBC”) and AT&T Corporation (“AT&T”).

CompTel/ALTS is gratified that many of the other commenting parties provided economic and legal analysis persuasively demonstrating that the proposed merger would profoundly harm competition and disserve the public interest. In particular, a number of parties provided additional strong support for the key points discussed in CompTel/ALTS’ initial comments, including the following reasons for rejecting the proposed AT&T/SBC merger:

- (1) By eliminating AT&T as a competitor for special access and other forms of local connectivity, the proposed merger would strengthen SBC’s monopoly over those services, and would give the merged company stronger incentives to abuse that monopoly to harm competing providers by increasing their costs and imposing price squeezes. [1/](#)
- (2) The proposed merger would harm consumers by eliminating SBC as a significant new competitor of AT&T in the provision of national and global enterprise services. [2/](#)

[1/](#) CompTel/ALTS at 11-23, 27-30, 50-52; *accord*, ACN Communications, *et al.*, at 34-41; Broadwing/SAVVIS at 21-35 & Declarations of Mark Pietro and Gary Zimmerman; Cbeyond Communications, *et al.*, at 19-30; Cox Communications at 5-13; Global Crossing at 6-22 & Statement of Dr. Joseph Farrell; Qwest at 24-25 & Declaration of Dr. B. Douglas Bernheim at 17-21, 30-32 (¶¶ 40-56, 84-92).

[2/](#) CompTel/ALTS at 23-26; *accord*, ACN Communications, *et al.*, at 26-31; Qwest at 23-32 & Declaration of Dr. B. Douglas Bernheim at 22-29 (¶¶ 57-83).

- (3) The merger would harm competition in the Internet marketplace by increasing the merged company's ability and willingness to impose interconnection costs on other Internet backbone providers. [3/](#)
- (4) The merger would harm national security, since it would eliminate competition and facilities redundancy on which emergency responders and other government agencies rely. [4/](#)
- (5) SBC's extensive track record of broken promises, unfulfilled merger conditions, and numerous violations of the Communications Act and the Commission's rules demonstrate that it lacks the requisite character qualifications to satisfy the Commission's public interest standard. [5/](#)

In short, the "public interest" standard that the Commission is obligated to apply in reviewing these transfer of control applications – including the explicit Congressional expectation that the Telecommunications Act of 1996 would "open[] all telecommunications markets to competition" [6/](#) – requires the Commission to reject this proposed merger, which would transform the telecommunications marketplace in a deeply anti-competitive manner. [7/](#)

[3/](#) CompTel/ALTS at 30-40; *accord*, ACN Communications, *et al.*, at 31-34, 41-43; Broadwing/SAVVIS at 35-56 & Declarations of Dr. Mathew P. Dovens and Dr. Michael Bortz; Cox Communications at 13-15; Vonage at 9-13, 16-18.

[4/](#) CompTel/ALTS at 60-61; *accord*, ACN Communications, *et al.*, at 66-68; Cbeyond Communications, *et al.*, at 63-65.

[5/](#) CompTel/ALTS at 61-69; *accord*, ACN Communications, *et al.*, at 48-52; Cbeyond Communications, *et al.*, at 10-19.

[6/](#) Telecommunications Act of 1996, Conference Report, Rpt. No. 104-458, 104th Cong., 2d Sess. (Jan. 31, 1996).

[7/](#) There is no basis for the notion that the FCC's public interest analysis under the Communications Act should ignore competitive impacts and defer competition analysis to the Department of Justice. Letter from Randolph May, Progress & Freedom Foundation, to Chairman Martin, FCC, WC Docket No. 05-65 (filed April 25, 2005). Such an approach is precluded by specific requirements of the statute, and flies in the face of extensive FCC precedent under both Republican and Democratic administrations over at least the past two decades. *See e.g., In re Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application To Transfer Control of a Submarine Cable Landing License*, CC Docket 98-0184, Memorandum Opinion and Order, FCC 00-221, at ¶ 23 (released June 16, 2000) (the Commission "must make an independent public interest determination that includes an evaluation of the merger's likely effect on competition.") *See e.g., In re Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application To Transfer Control of a Submarine Cable Landing License*, CC Docket 98-0184, Memorandum Opinion and Order, FCC 00-221, at

CompTel/ALTS submits these reply comments, and the attached Reply Declaration of Lee L. Selwyn, to provide further support for the following points made by other parties in their initial comments:

First, contrary to the contentions in SBC/AT&T's public interest statement and declarations, Dr. Selwyn demonstrates that the proposed merger would *not* promote competition outside the thirteen-state SBC region. To the contrary, Dr. Selwyn shows that the merged entity would have the same incentives to focus its efforts on what SBC calls its "sweet spot" 8/ (*i.e.*, its in-region ILEC footprint) and avoid vigorous competition in areas dominated by other ILECs. 9/ He also demonstrates that, if both the proposed SBC/AT&T and Verizon/MCI mergers are allowed to proceed concurrently, there are strong reasons to conclude that the net result would be to create de facto geographic market allocation between SBC and Verizon, and in so doing eliminate much of the competition that presently exists between AT&T, MCI, the RBOCs, and other market participants. 10/

Second, Dr. Selwyn shows that SBC's vertical integration into the provision of facilities-based long-distance service will harm competition for both long-distance and local services. AT&T and all other carriers that provide long-distance services and local/long-distance bundles, must purchase local connectivity – *i.e.*, switched access, special access, and/or unbundled network elements ("UNEs") – from local exchange carriers. In the vast majority of cases, these facilities within the SBC local region are owned and controlled on a monopoly or near-monopoly

¶ 23 (released June 16, 2000) (the Commission "must make an independent public interest determination that includes an evaluation of the merger's likely effect on competition.")

8/ Declaration of James Kahan (SBC) at 12 (¶ 27).

9/ Selwyn Decl. at ¶¶ 5-6, 15-27.

10/ Selwyn Decl. at ¶¶ 76-81.

basis by the SBC incumbent local exchange carrier (“ILEC”) operating companies, and the costs of access charges and other local services represent an enormous proportion of the costs faced by competitive telecommunications carriers. [11/](#) Dr. Selwyn shows that the vertical integration of AT&T and SBC would give the merged company virtually insurmountable advantages over its competitors. In particular, even if AT&T/SBC nominally pay their ILEC affiliates the same rates for special access and other forms of local connectivity as other carriers, in effect these intra-corporate “pocket-to-pocket” payments would be irrelevant to the merged company. In reality, the company would pay no more than the incremental cost of access, giving it an enormous advantage over rivals that are forced pay grossly inflated rates. [12/](#) As a result, Dr. Selwyn demonstrates, the merged company could impose price squeezes upon rival carriers, effectively precluding competition for enterprise and mass market customers. [13/](#)

Third, Dr. Selwyn shows, if SBC and AT&T are allowed to merge and to implement massive integration of their network facilities and organizational resources, it would become extremely difficult to enforce the existing rules governing the allocation of ILEC costs and police against cross-subsidization and predation. [14/](#) If the structural and non-structural safeguards of Section 272 are allowed to “sunset” on schedule (three years after Section 271 authority), this difficult task would be virtually impossible. [15/](#) Conversely, Dr. Selwyn demonstrates, SBC’s and AT&T’s claims that the proposed merger would bring supposed benefits of increased network integration are severely undercut by SBC’s past arguments for elimination of the

[11/](#) Selwyn Decl. at ¶¶ 7-10.

[12/](#) Selwyn Decl. at ¶¶ 11-14.

[13/](#) Selwyn Decl. at ¶¶ 14, 50, 71-75.

[14/](#) Selwyn Decl. at ¶¶ 58-70.

[15/](#) Selwyn Decl. at ¶¶ 58-64.

restrictions on joint operation, installation and maintenance (“OI&M”) activities for its ILEC and long-distance entities, which should have already conferred the same benefits. [16/](#)

Finally, Dr. Selwyn demonstrates that the proposed merger would diminish *horizontal* competition between the parties and other competitors for wholesale and retail interexchange services. Both parties compete effectively to provide retail interexchange services to mass market and enterprise customers today. [17/](#) Moreover, when coupled with the anti-competitive effects of the *vertical* integration of SBC’s local and AT&T’s long-distance networks, and viewed together with the concurrent vertical merger of Verizon and MCI, this proposed merger would eviscerate demand for wholesale interexchange services. [18/](#) The end result would be to give SBC increased monopsony power over suppliers of wholesale interexchange network services. [19/](#)

AT&T and MCI are the two largest facilities-based sellers of long-distance service. SBC and Verizon are the two largest buyers of long-distance service. CompTel/ALTS agrees with those parties that recognize that for the two largest buyers to acquire the two largest sellers (upstream vertical integration) would create substantial competitive problems.[20/](#) As noted by Dr. Selwyn: “SBC today makes few, if any, purchases of services from AT&T,” but “purchase[s] massive quantities of interexchange services from other carriers to support SBC’s downstream retail long distance business, *most or all of which can and likely will be provided by*

[16/](#) Selwyn Decl. at ¶¶ 53-57.

[17/](#) Selwyn Decl. at ¶¶ 28-29, 35.

[18/](#) Selwyn Decl. at ¶¶ 31-32.

[19/](#) Selwyn Decl. at ¶¶ 33-38.

[20/](#) See ACN Communications *et al.* at 29-30; Cox Communications at 15-16; Independent Alliance at 4; Consumer Federation of America *et al.* at 24; Bernheim Decl. (Qwest) at ¶¶ 51, 54-56, 91; Attachment to *Ex parte* letter of Patrick J. Donovan, April 22, 2005, on behalf of US LEC Corp. and Pac-West Telecomm, Inc. at 6, 12

AT&T following the merger.”^{21/} SBC’s market share in the long distance market (a fact that should have been, but was not, included with the initial filing) has grown rapidly through resale, and is in the 60%-70% range in states in which SBC has been providing long distance service for five or more years.^{22/}

If this merger and the Verizon/MCI merger are approved, SBC and Verizon will each hold a share in its in-region market in the range of 80%, and will have little or no need for any other carrier’s wholesale long distance service in or out of its region.^{23/} The remaining demand will be sufficiently diminished as to threaten the continued survival of independent facilities-based long-distance carriers.^{24/} As Professor Bernheim states: “it is not clear that” the remaining independent long-distance capacity “would be sufficient to maintain the current level of competitive intensity,” in part because “the remaining independent facilities-based long-distance firms would be heavily dependent on SBC and Verizon for interconnections for access, as well as long-distance traffic, so SBC and Verizon would be in a much stronger position with respect to their ability to manipulate this market to their advantage.”^{25/}

At a later point in time, after SBC and Verizon have succeeded in driving out or marginalizing their facilities-based long distance competition, they will no longer have any incentive to sell long-distance service at wholesale at reasonable rates to their local competitors, who, as the result of consumer preference for bundled service, must have long-distance service in

^{21/} Selwyn Decl. at ¶ 29 (emphasis original); *see id.* at ¶ 32; Kahan Decl. (SBC) at ¶ 25.

^{22/} Selwyn Decl. at ¶ 30.

^{23/} Selwyn Decl. at ¶¶30,32; *see* Kahan Decl. (SBC) at ¶ 25 (expressing desire to use AT&T facilities to provide long-distance service).

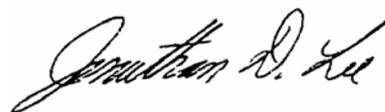
^{24/} Selwyn Decl. at ¶ 32.

^{25/} Bernheim Decl. (Qwest) at ¶ 54; *see id.* at ¶ 91.

order to remain in the local market.^{26/} Thus, SBC and Verizon’s integration into facilities-based long distance will enable them to divert demand away from wholesale long distance service providers and eliminate wholesale interexchange competition; subsequently, they would be able to eradicate the remaining retail service competition simply by refusing to make wholesale services available to long distance resellers – a tactic that SBC has already employed with great success in dismantling competition for *local* services.^{27/}

For the foregoing reasons, and for the reasons stated in CompTel/ALTS’ Petition to Deny and in other parties’ initial comments, the Commission should reject the proposed SBC/AT&T merger.

Respectfully submitted,



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May 10, 2005

^{26/} Selwyn Decl. at ¶¶ 31-32, 92; *see* ACN *et al.* at 30; Consumer Federation of America *et al.* at 23-24 (AT&T and MCI, as independent companies, have an incentive to maximize traffic. By contrast, SBC and Verizon “would have an incentive to abuse their control, over these assets to diminish competition for their retail businesses”) While SBC contends that it will have no economic interest in abandoning AT&T’s wholesale long distance business, SBC has never provided wholesale service to a competitor without being legally required to do so, and often has refused to serve competitors even when required by statute and FCC regulations to do so. Selwyn Decl. at ¶ 32; *see* Bernheim Decl. (Qwest) at ¶ 91 (removal of AT&T and MCI as independent sources of supply to CLECs “by itself, may result in reduced competition and higher prices for necessary CLEC inputs”).

^{27/} Selwyn Decl. at ¶¶ 31-32. Moreover, with respect to at least some long haul routes, as Cox points out, the merger will immediately result in an SBC monopoly, either because AT&T already holds a monopoly or because AT&T and SBC are the only two providers offering service. SBC could simply stop offering service on such routes as a means of disadvantaging its local competitors. Comments of Cox Communications, Inc. at 15-16; *see* Bernheim Decl. (Qwest) at ¶ 51.