September 15, 2005

Via ECFS

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

Re: ***In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from AT&T Corp., Transferor, to SBC Communications Inc., Transferee, WC Docket No. 05-65***

Dear Ms. Dortch:

In an August 30, 2005, *ex parte* letter,[1] Conversent Communications, NuVox Communications, TDS MetroCom, and XO Communications (which call themselves the "Joint CLECs") continue their strategy of demanding more data rather than confronting the substantial amount of information already submitted by SBC Communications Inc. and AT&T Corp. (jointly "the Applicants"). The submitted information convincingly shows that the merger of AT&T and SBC will not harm competition in any service, including special access services. The Joint CLECs' claims that the Applicants have failed to address these issues in a meaningful manner is belied by the Applicants' roughly 20 submissions on these issues.[2] Far from being "essentially anecdotal references," those submissions contain detailed data on the extent of the Applicants' special access facilities and revenues, collocation data for all CLECs, competitive special access facilities of which the Applicants are aware, fiber maps, and building-by-building analyses of special access facilities throughout the 19 MSAs in SBC's ILEC region where AT&T

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[1] Letter to Marlene H. Dortch from Brad E. Mutschelknaus, August 31, 2005 ("Joint CLECs' August 31 Letter") at 3.

[2] Those submissions include the Public Interest Statement submitted with the Applications (in particular pages 102-05 and related declarations) (Feb. 22, 2005); the Joint Opposition to the Petitions to Deny and Reply to Comments (in particular pages 26-60 and related declarations) (May 10, 2005); each Applicant's separate Response to the FCC's Information Request (May 9, 2005), and various supplements thereto; and *ex parte* submissions on May 17, June 2, June 24, July 7, July 7 and 8 (both providing a copy of Lexecon's presentation on special access), July 12, July 15 (two relevant submissions on that date), July 18, August 1 (two relevant submissions on that date), August 3, August 5, August 12 (as corrected on September 12), August 15, and August 24, 2005. The Applicants also filed additional information on September 6, 2005.

has such facilities. Indeed, our record of providing comprehensive empirical data stands in stark contrast to the submissions of the Joint CLECs, which consist of nothing more than speculation and unverifiable "analysis" they say is based on data ***they refuse to provide***.[3]

Instead of addressing the plethora of data and information submitted by the Applicants in this proceeding and their own failure to submit data, the Joint CLECs attempt to recast the competitive analysis standard the Commission has applied in previous merger proceedings to impose on the Applicants evidentiary burdens and requirements that simply have not been required by the Commission as a condition for the approval of mergers. The Commission must reject this effort to rewrite its merger standards.

Rather than repeat in detail all that has been said before, the Applicants wish merely to point out some of the fatal flaws in the Joint CLECs' most recent submission.

1. The Joint CLECs Ignore the Record and Misconstrue and Misapply Both the DOJ/FTC Horizontal Merger Guidelines and Commission Precedents.

The Joint CLECs contend that the Applicants have ignored the relevant "time-tested legal and economic standards" by failing to define all relevant markets and provide market share data.[4] This contention not only ignores the substantial record evidence, but also misconstrues and misapplies those very standards as set forth in both the Horizontal Merger Guidelines adopted by the Department of Justice and Federal Trade Commission and this Commission's own precedents. Because the record speaks for itself in this regard, the Applicants will not belabor these points in great detail. We do, however, note the following obvious flaws in the Joint CLECs' claims.

First, contrary to the Joint CLECs' contention, the Applicants *have* addressed market definition. We have demonstrated that, regardless of how the specific outlines of the relevant product and geographic markets are drawn, the transaction is not anticompetitive, particularly with respect to the special access services on which the Joint CLECs focus.[5] For example, the Applicants have provided and analyzed the relevant special access data at various geographic levels (from MSAs down to individual buildings) and with different demand and supply

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[3] *See* Applicants' *ex parte* letters of July 7 (at 1-3), July 12 (at 9), and August 1, 2005 (at 2).

[4] Joint CLEC August 31 Letter at 2-6.

[5] *See, e.g.,* Public Interest Statement at 102-05 and Carlton/Sider Declaration submitted therewith at ¶¶ 31-47; Joint Opposition at 31-48 and Carlton/Sider Reply Declaration submitted therewith at ¶¶ 15-62; AT&T's Responses to FCC Information Request at 7-9; SBC's Response to FCC Information Request at 10-12.

characteristics.[6] In these circumstances, it is clear that, no matter how markets are defined, the transaction is not anticompetitive.[7]

Second, in their doomed attempt to give credence to their market share calculations, which we have shown to be grossly inaccurate, the Joint CLECs continue myopically to inflate the relevance and role of market share data in a merger analysis. In particular, they fail to recognize that the purpose of calculating market shares is to determine whether a given transaction is so unlikely to generate anticompetitive effects that no detailed analysis need be performed. As the Commission stated in the *Western Wireless/ALLTEL Merger Order* which the Joint CLECs rely upon in support of the allegations, HHI and market share data "are the beginning, not the end, of the competitive analysis" and serve only as an "initial screen . . . to ensure that we did not exclude from further scrutiny any geographic areas in which any potential for anticompetitive effects exists."[8] Such a screen is not necessary in this proceeding because the Applicants have provided detailed analyses (along with the underlying data) to establish that there will be no anticompetitive effects in any relevant market. In any event, the Commission has imposed no requirement that merger applicants assign market shares or calculate HHIs as a condition for the Commission's consideration of a merger request, nor has the Commission required that an HHI analysis be part of its merger analysis.[9]

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[6] *See, e.g.,* the Applicants' *ex parte* submissions of June 24, 2005 & Exhibit 1; July 18, 2005 & attachment; July 15, 2005 (both submissions); August 1, 2005.

[7] *See, e.g.*, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor To AT&T Corp., Transferee*, 14 FCC Rcd 3160, ¶ 92 (1999) (As the Commission stated in deciding that it need not determine whether dial-up Internet access and broadband access were in the same product market, "We do not need to determine at this time whether narrowband and broadband Internet access services provided to residential and small business customers are sufficiently different to support the conclusion that they are in separate markets. As we explain in the following paragraphs, even if we were to assume that they are in separate markets, we would reach the same conclusion concerning the issues raised by parties opposing and commenting on the proposed merger.").

[8] *In the Matter of Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 05-50, ¶ 51 (rel. July 19, 2005) ("*Western Wireless/ALLTEL Merger Order*").

[9] In fact, on occasion, even where applicants and merger opponents have made HHI calculations, the Commission has rejected the HHIs and calculated its own. *See, e.g.*, *In the Matter of Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, FCC 04-255, ¶ 101 (rel. Oct. 26, 2004) (Commission calculated HHIs after finding that "Applicants' and some petitioners' HHI calculations are not helpful because their figures are based on a nationwide geographic market – a market definition we decline to adopt."). Thus, it would be pointless to require Applicants to calculate HHIs as a condition of merger approval in this proceeding when the Commission has made clear in previous merger

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As we have previously stated, market share information is particularly uninformative (and even misleading) in analyzing the competitive effects of a merger in today's telecommunications marketplace.[10] Market shares are less significant in rapidly changing marketplaces because they are retrospective in nature while, as the Joint CLECs recognize,[11] the purpose of a proper analysis of competitive effects, as set forth in the Merger Guidelines, is to determine what effects the merger will have on the marketplace going forward. As the Guidelines state, "Market concentration and market share data of necessity are based on historical evidence. However, recent or ongoing changes in the market may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance."[12]

Indeed, for services, such as special access, where the existence of alternative supply is the critical factor, it is only the number of actual or likely potential competitors, and not current sales, that is relevant in determining market concentration. As the Merger Guidelines explicitly

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orders that, if it thinks an HHI screen is necessary, it is more than capable of calculating the HHIs it thinks are most appropriate. And there can be no doubt that the Applicants have submitted for the record all of the information the Commission would need to do so, including extraordinarily detailed information on the actual and potential suppliers of special access at each building served by dedicated AT&T facilities, including information on each building's proximity to other fiber networks.

10 *See, e.g.,* Public Interest Statement at 48, 90-91; Joint Opposition at 92-93, 110-11; SBC/AT&T *ex parte* letters of July 15, 2005 at 3-7; August 1, 2005 at 5 & Appendix B at 6-9.

11 Joint CLECs' August 31, 2005 Letter at 3 ("the Horizontal Merger Guidelines provide for a 'forward-looking inquiry'"). Even as the Joint CLECs recognize that the Merger Guidelines are forward-looking, they contend that criticisms of market concentration statistics as static are "irrelevant and wrong as a matter of law." What they ignore, of course, is that the Merger Guidelines recognize that market concentration statistics, particularly those based on historical sales, may be misleading or even irrelevant certain circumstances. That is why the Merger Guidelines require the analysis of other factors, such as technological change and potential entry, factors the Joint CLECs totally ignore.

12 Merger Guidelines § 1.521. The Commission has repeatedly recognized this point. *See, e.g., AT&T Wireless Services, Inc. and Cingular Wireless Corp., supra,* FCC 04-255, ¶ 96, n. 309 ("We note that the mobile telephony market is a growing and dynamic industry, and therefore HHIs and changes in HHIs may be less predictive as to whether the merger could result in anticompetitive behavior in a particular geographic market than they would if the market were stable."); *In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc*., 13 FCC Rcd 18,025, ¶ 17 (1998) (quoting Merger Guidelines § 1.521).

state, "Market shares will be calculated using the best indicator of firms' future competitive significance…. Physical capacity or reserves generally will be used if it is these measures that most effectively distinguish firms."[13] Supply is best measured by capacity, not by historical sales. Given the huge capacity of fiber optic special access facilities (they generally contain enough strands to serve at least six large customers),[14] and the largely substitutable nature of different providers' transmission services (transmission over a given type of fiber is an undifferentiated service[15]), the market functions essentially like a bid market in which the number of competitors, rather than their past sales or even the size of their pipes, is the most relevant measure. "Where all firms have, on a forward-looking basis, an equal likelihood of securing sales, the Agency will assign equal market shares."[16]

The Joint CLECs themselves effectively concede as much. They do not contend that wholesale or retail customers view special access-like services provided by a competitive access provider as different, in quality or any other material respect, than special access services provided by an incumbent carrier; rather, they focus on the number of suppliers of access at a given location. For example, they state that "[i]f one other CLEC were connected to an AT&T on-net building, then the merger would reduce the number of suppliers of wholesale local access to that building from three to two, which certainly raises the possibility of anticompetitive effects."[17] Their at least tacit agreement that special access services are undifferentiated shows that they agree that special access is sold in a bid market, in which shares are assigned based on the number of actual or potential competitors. That of course is precisely what Applicants have been saying and how our data submissions and competitive analysis have been focused.

The Joint CLECs' statement quoted above is telling in other ways as well. It sets the wrong competition-related standard for determining whether the license transfer is in the public interest; the standard is whether anticompetitive effects are likely, not whether they are possible.[18] In addition, when viewed on a building-by-building basis, the number of ***actual and***

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[13] Merger Guidelines § 1.41.

[14] AT&T's fiber facilities used to provide special access services have at least 24 strands of fiber, only 4 of which are used to serve a single customer.

[15] By contrast, "[d]ifferentiated products are products whose characteristics differ and which are viewed as imperfect substitutes by consumers. *See* Dennis W. Carlton & Jeffrey M. Perloff, MODERN INDUSTRIAL ORGANIZATION 281 (2d ed. 1991)." *In the Matter of General Motors Corp. and Hughes Electronics Corp., Transferors And The News Corp. Ltd, Transferee, For Authority to Transfer Control*, 19 FCC Rcd 473, ¶ 59, n.206 (2004).

[16] Merger Guidelines § 1.41 & n.15.

[17] Joint CLECs' August 31 Letter at 4. The Joint CLECs' focus on Type II as opposed to Type I access alone further demonstrates their view that special access services of a given bandwidth are undifferentiated.

[18] *See, e.g., AT&T Wireless Services, Inc. and Cingular Wireless Corp., supra,* FCC 04-255, ¶ 69 ("Ultimately, the Commission must assess ***whether it is likely*** that the merged firm

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likely potential suppliers of special access services, not the number of CLECs currently connected, is the relevant factor. The Joint CLECs completely ignore the issue of whether other CLECs would be likely to connect to that building if the price of special access services were to increase. CLECs with facilities nearby need to be included in the analysis.

Thus, notwithstanding the Joint CLECs' repeated harpings to the contrary, their market definition and market share arguments are nothing more than red herrings and seek to impose on the Applicants evidentiary burdens not required by Commission precedent.

2. The Joint CLECs' Attack on the Relevance of the Impairment Standard Is Illogical.

In their attempt to discount the relevance of potential entry, the Joint CLECs attack the Applicants' position that the impairment standard developed and applied in the *Triennial Review Remand* proceeding[19] is relevant to determining whether competition in special access services will be harmed by the transaction.[20] We have demonstrated elsewhere serious infirmities in their position.[21] In response, the Joint CLECs distort the impairment standard set forth in the *Triennial Review Order* and offer an analysis that is wholly illogical.

In the *Triennial Review Order,* the Commission rejected arguments that it should adopt the entry analysis of the Horizontal Merger Guidelines ("HMG") as the definitive test for determining impairment. Even as the Commission recognized "a substantial amount of commonality between the HMG's framework for assessing ease of entry and our analysis of entry barriers,"[22] the Commission concluded that the HMG entry analysis and the impairment

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could exercise market power in any particular market."), ¶ 95 ("we consider ***whether there is a substantial likelihood*** that the merger will result in anticompetitive effects, such as higher prices, reduced features in a given service plan, slower rollout of advanced network availability, or reduced incentives for innovation") (emphases added).

[19] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 ("*Triennial Review Order*"), *corrected by* Errata, 18 FCC Rcd 19020 (2003) ("*Triennial Review Order Errata*"), *vacated and remanded in part, affirmed in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir.) ("*USTA II*"), *cert. denied*, 125 S.Ct. 313, 316, 345 (2004), Order on Remand, FCC 04-230 (rel. Feb. 4, 2005) ("*Triennial Review Remand Order*" or "*TRRO*").

[20] Joint CLECs' August 31 Letter at 4-6.

[21] *E.g.,* SBC/AT&T *ex parte* letters of June 24, 2005 (at 9), August 1, 2005 (at 5).

[22] *Triennial Review Order* at ¶ 111.

analysis were not on all fours. Even so, a finding that CLECs are not impaired in their ability to deploy particular facilities in particular locations ***necessarily*** has a direct bearing on whether an ILEC could sustain supracompetitive prices for those same facilities in those locations. The HMG entry test looks at whether timely entry would occur in response to a small but significant and nontransitory price increase. The impairment test looks at whether entry is operationally feasible and economically viable ***even in the absence of any exercise of market power***.[23] If entry is viable even at prevailing prices, it should be a given that entry could and would occur in the event of a nontransitory significant rate increase. Any claim to the contrary simply defies logic.

The Joint CLECs further argue that the impairment standard is used by the Commission to determine whether entry by a reasonably efficient CLEC into ***retail telecommunications services that use wholesale special access services*** would be economic (*i.e.*, profitable), while the issue in the Merger Guidelines (and here) is whether timely entry into the provision of ***wholesale special access*** is sufficiently likely.[24] It is not true that the Commission's impairment standard is used to determine whether a reasonably efficient CLEC could economically offer retail, as opposed to wholesale, services. The Commission specifically held that "[i]n our impairment analysis, we examine both whether new entrants can provide retail services over non-incumbent facilities and whether new entrants can provide wholesale services over non-incumbent facilities."[25] But in any event, the distinction the Joint CLECs seek to draw is one without a difference. The inquiry under both the Commission's impairment standard and the entry standard of the Merger Guidelines is whether another CLEC could profitably deploy facilities over which telecommunications services that meet the demands of end-users could be provided. If those facilities can be deployed, a CLEC can use them to supply access services to itself (if it has an end-user customer in that building), to other retail competitors, or, given the multiple strands of fiber typically deployed, both.[26]

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[23] For example, in the *Triennial Review Remand Order,* the Commission determined impairment for high capacity loops and transport based on an assessment of whether the revenues available from construction of certain types of facilities in various locales justified the costs of deploying those facilities. *TRRO* ¶ 169 ("The proxies we have chosen appear from our record to be most likely to reveal … which areas are likely to offer concentrated revenue opportunities and support significant fiber deployment, and thus to permit construction of competitive high-capacity loops.").

[24] Joint CLECs' August 31 Letter at 5-6.

[25] *Triennial Review Order* at ¶ 101.

[26] Thus, the Joint CLECs' conclusion (at 5-6) that "[a] finding by the Commission that entry into the provision of a retail telecommunications service is economic at prevailing wholesale local access prices (so that the entrant is not impaired with respect to a LEC network element) certainly does not mean that entry into that retail market would be economic if the merger caused wholesale local access prices to increase" makes no sense. The merger would not likely cause access prices to increase at a given location if a reasonably efficient CLEC could profitably deploy its own facilities at that location.

3. The Contentions That the Applicants Must Submit an Econometric Analysis and That CLECs Have Submitted a Meaningful Analysis Are False.

The Joint CLECs state that, notwithstanding the substantial data the Applicants have provided,[27] the Applicants "have never provided econometric analyses of the price effects of the proposed merger on the local wholesale market" and "[c]onsequently, the Applicants have failed to meet their burden of proof."[28] Nowhere do the Joint CLECs provide any support for the proposition that an econometric analysis is a required element of transfer applicants' burden of proof, because of course there is none.[29] The comprehensive record the Applicants have created with their Applications, Public Interest Statement, Joint Opposition, Responses to the FCC's Information Requests, and in numerous letters (*see* note 2, above) are more than adequate to carry the Applicants' burden.

Indeed, these data stand in stark contrast to the "preliminary economic analysis" the Joint CLECs have provided. As we have elsewhere noted,[30] that analysis cannot be relied upon by the

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[27] The Joint CLECs characterize those data as "limited"; the Commission, in contrast, has recognized that the record in this docket is "voluminous," and no one can seriously contend that any party (or group of parties) has submitted more factual information than the Applicants. *See* FCC Public Notice, "180-Day Clock Stopped On Consideration Of Applications For Consent To Transfer Of Control Filed By SBC Communications Inc. And AT&T Corp.," WC Docket No. 05-65, DA 05-2426 (Sept. 7, 2005).

[28] Joint CLECs' August 31 Letter at 6.

[29] The Commission certainly did not establish a requirement for econometric price effect analyses in the *Western Wireless/ALLTEL Merger Order* upon which the Joint CLECs rely. *See Western Wireless/ALLTEL Merger Order* at ¶¶ 54-84. Nor have we found such a requirement in any other merger order. We have run a LEXIS search for cases in which the word "econometric" appeared along with either "transfer or assign." Only three cases were identified (the *News Corp./DirecTV*, *EchoStar/DirecTV*, and *AT&T/TCI* transfer proceedings). In the two cases in which transfer or assignment applications were granted, no econometric analysis had been submitted by the applicants. *In the Matter of General Motors Corp. and Hughes Electronics Corp., Transferors And The News Corp. Ltd, Transferee, For Authority to Transfer Control*, 19 FCC Rcd 473 (2004); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor To AT&T Corp., Transferee*, 14 FCC Rcd 3160 (1999). In designating the *DirecTV/EchoStar* application for hearing, the Commission stated only that it would need additional evidence, "either in the form of econometric demand analyses ***or other evidence*** of substitutability," to resolve a market definition issue. An econometric model was not required. *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, ¶ 114 (2002) (emphasis added).

[30] *See* Applicants' *ex parte* letters of July 7 (at 1-3), July 12 (at 9), and August 1, 2005 (at 2).

Commission because the underlying data have not been shared with the parties (or, we understand, the Commission) in any form and, therefore, the analysis is shielded from any meaningful scrutiny.

In any event, on its face the preliminary analysis is of no value whatsoever. The Joint CLECs would have the Commission accept the proposition that the removal of AT&T as a competitive access provider in SBC's ILEC territory, and MCI as a competitive access provider in Verizon's territory "would result in bid prices increasing from anywhere between 11% and 400% depending on the type of circuit."[31] While it is impossible to evaluate this result without the data (and without even knowing the model), the wide range of predicted effects strongly indicates poor quality or limited data and/or misspecified economic models. In either case, such results generally mean that small changes in the specification or the data can dramatically alter results. Indeed, the Commission has recognized that the manner in which those models are specified is critical to the credibility of the results.[32] Moreover, the suggestion that prices may increase as much as 400% (*e.g.*, from $1 to $5) as the result of elimination of a single competitor borders on the ridiculous, particularly in light of the undisputed record evidence that AT&T accounts for a small percentage of total wholesale dedicated access services supplied by competitive carriers nationwide and the fact that AT&T's special access prices are generally higher than those of other competitive access providers.[33]

4. The Joint CLECs' Contentions Regarding Coordinated Effects Are an Illusion.

Again, we will not repeat our prior submissions on why anticompetitive coordinated effects are unlikely to arise as a result of this transaction.[34] We will take the opportunity only to show that the discussion of this issue in the Joint CLECs' August 31 Letter is of no substance and is completely illogical.

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[31] *See* Joint CLECs' August 31 Letter at 7. Of course, the impact of eliminating MCI as a provider of special access in Verizon's ILEC territory is not relevant to this proceeding, and the Joint CLECs do not bother to provide an estimate of the results of their secret model and data with respect to this transaction alone.

[32] *Triennial Review Order* at ¶ 93 n.310 ("We recognize the credibility of econometric analytical techniques, such as regression analysis, when properly specified and conducted.").

[33] SBC/AT&T's *ex parte* letter of August 1, 2005, Appendix A at 1, 4-5.

In this regard, we again note that the Joint CLECs' statement that AT&T and MCI's quotes for special access are 35% to 90% below ILEC rack rates is meaningless as it ignores the amounts actually paid to ILECs by CLECs, which often reflect discounts from rack rates.

[34] *See, e.g.,* SBC/AT&T *ex parte* letters of May 17, 2005 at 4-6; June 1, 2005 at 2-4; June 24, 2005 at 11 & n.48; Joint Opposition at 150-60; Carlton/Sider Reply Decl., ¶¶ 74-88.

First, the Joint CLECs continue willfully to ignore the manner in which this transaction fundamentally changes the ability of SBC to compete effectively outside its ILEC territory. They claim to have demonstrated that "SBC has every incentive to retreat from wholesaling AT&T's current offerings out-of-region."[35] Yet, the bases for that statement (*e.g.*, the erroneous claim that SBC and Verizon have not competed against each other[36]) are entirely irrelevant because they ignore the impact of this transaction. SBC is acquiring AT&T's network facilities nationwide. The investment in those assets is sunk and those assets are generating significant revenue. Because the cost of actually operating those facilities, as compared to the sunk investment, is negligible, SBC's return on the incremental post-closing dollar would be far higher than necessary to warrant continuing to provide those services. And, moreover, if SBC did not provide them, others would, a fact providing another incentive for SBC to continue to offer those services.

The Joint CLECs then seek to pull a magician's trick. They offer a truism – a firm has an incentive to engage in tacit collusion if such collusion is more profitable than unbridled competition – and claim it is a "formula."[37] Then, they contend that that the Applicants could easily run that formula and the results would demonstrate that collusion is "many times" more profitable than competition. Therefore, it must be so.

In fact, however, the Joint CLECs are just holding an empty hat. They offer no data or model to implement their truism. As noted above, the assumptions and specifications of such a model are critical to determining its credibility, and small changes in those assumptions or specifications could alter the results considerably.

There is simply no reason for the Commission to believe that the post-merger SBC/AT&T and, if approved, Verizon/MCI will not compete aggressively nationwide. In fact, both SBC and Verizon are taking steps in that direction. SBC has entered into agreements with Covad Communications and Time Warner Telecom, contingent on the closing of this transaction, to acquire wholesale services outside of SBC's ILEC region.[38] And Verizon recently announced that it is expanding its MPLS network to cities nationwide.[39]

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35 Joint CLECs' August 31 Letter at 7.

36 *See, e.g.,* Carlton/Sider Reply Decl., ¶¶ 83-86.

37 It is interesting to observe that this formula is indented as if it were a quotation from a learned treatise, but no citation is offered.

38 *See* "SBC, AT&T Reach Service Agreements with Covad," May 5, 2005, *available at* http://www.covad.com/companyinfo/pressroom/pr_2005/050505_news.shtml (visited Sept. 12, 2005); "Time Warner Telecom, AT&T, SBC Extend Long-Term Service Agreement," June 1, 2005, *available at* http://www.tmcnet.com/usubmit/2005/Jun/1150304.htm (visited Sept. 12, 2005).

39 See "Verizon Expands Its Next-Generation IP Services Into New Markets, Adds Private Line Access and Lowers Rates for Most Customers," Aug. 25, 2005, *available at* http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=92806, (visited Sept.

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For the reasons set forth above, the Joint CLECs' August 31 Letter provides no basis to delay, deny, or condition the approval of the pending applications. Moreover, the Letter represents nothing more than an effort to mischaracterize the Commission's competitive analysis standard in an effort to impose in this proceeding evidentiary standards that have not heretofore been required of merger applicants and that will not meaningfully assist the Commission's analysis of this merger's competitive effects. The Commission should reject such an effort to rewrite its merger requirements.

Sincerely,

SBC Communications Inc.	AT&T Corp.
/s/ Gary L. Phillips	**/s/ Lawrence J. Lafaro**
Gary L. Phillips	Lawrence J. Lafaro
SBC Communications Inc.	AT&T Corp.
1401 I Street, N.W.	Room 3A 214
Suite 400	One AT&T Way
Washington, D.C. 20005	Bedminster, NJ 07921
Tel: (202) 326-8910	Tel: (908) 532-1850

cc: Chairman Kevin Martin
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Daniel Gonzalez
Michelle Carey
Russ Hanser
Jessica Rosenworcel
Scott Bergmann
Thomas Navin
Sam Feder
Julie Veach
Bill Dever
Marcus Maher

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12, 2005) ("Verizon now offers its MPLS-based VPN services in 109 markets, including the top 97 cities in new markets such as San Francisco and Milwaukee.").