September 29, 2005

VIA ELECTRONIC FILING

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

Re: *SBC/AT&T Merger and Verizon/MCI Merger, WC Docket Nos. 05-65 and 05-75*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, CompTel hereby gives notice that on September 28, 2005, its representatives met with Chairman Kevin J. Martin, Daniel Gonzalez, Chief of Staff, and Michelle Carey, Legal Advisor to Chairman Martin. In this meeting, CompTel urged the FCC to deny the above-referenced license transfer applications currently pending before the Commission. CompTel explained that, consistent with its Petitions to Deny these applications, the mergers in question would reduce competition for special access services (both channel terminations and interoffice transport) by reducing the amount of non-Bell metro transmission services available throughout the SBC and Verizon regions, and by foreclosing potential access revenue (from purchases by AT&T or MCI) from competitive wholesale carriers in the SBC and Verizon ILEC regions. Additionally, CompTel urged the Commission to deny the license transfer applications on the basis that they will eliminate the vigorous competition that currently characterizes the Internet backbone market by concentrating traffic in the hands of the two largest carriers.

While CompTel discouraged the Commission from approving the mergers and then trying to regulate the merged firms' enhanced abilities and incentives to eliminate competition in the special access and Internet backbone markets, CompTel did explain to the Commission the extensive scope of any merger conditions which would be required in order to attempt to regulate the enhanced market power of the post-merger firms. Regarding special access alone, the Commission would have to take a two-pronged approach by first eliminating the potential exercise of market power through immediate price regulation, including the elimination of "phase 2" pricing flexibility, the re-initialization of special access rates to reflect lower market risk (due to the elimination of major competitors) and lower overall cost of capital since rates were last examined, and the introduction of timely commercial arbitration as a means to resolve pricing and other special access-related disputes. Similar price-cap-style price regulation would also have to be imposed on all other inputs used by competitors, such as Section 271 checklist elements.

In addition to immediate price regulation of special access and other inputs, the Commission would have to take steps to ensure that competitive input markets are given every opportunity to flourish, as a way of "organically" replacing the enormous competitive capacity that will be lost through the elimination of AT&T and MCI.[1] In doing so, the FCC will have to explicitly proscribe exclusionary behavior by the merged firms, as well as impose affirmative obligations on the post-merger firms that will facilitate the development of competitive metro transport facilities. Examples of the types of competition-facilitating conditions the Commission will have to impose in order to allow the competitive transport market to eventually grow to replace the capacity being lost through the AT&T and MCI acquisitions would be: 1) allowing all SBC and Verizon wholesale customers to move circuits, without penalty, to competitive carriers despite existing contract tariff obligations; 2) preventing SBC and Verizon from imposing any minimum term or volume commitments in order to get the lowest discount rate; 3) preventing SBC and Verizon from providing additional discounts that are conditioned on a customer not dealing with a competitor; and 4) performance standards which require circuit grooms to be performed in a timely fashion, for any wholesale customer wishing to use its own fiber, competitive transport, or a more efficient serving configuration from the Bell. To get the minimum standards for volume and quality of circuit grooms, the Commission should use SBC and Verizon's self-certified "hot cut" commitment levels from the Triennial Review proceeding.[2]

The extensive requirements that would be necessary to try to regulate the enhanced market power of the post-merger firms, and replace the competitive traffic and capacity lost through the elimination of AT&T and MCI, would also demand rigorous and vigilant enforcement (making the efficacy of such conditions all the more speculative). Thus, while CompTel urged the Commission to consider the scope of the remedies that it would need to impose to mitigate the anticompetitive effects of these mergers, CompTel recommended that the Commission simply deny the above-referenced license transfers. Representing CompTel were Earl Comstock, CEO, and the undersigned attorney.

Sincerely,

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Jonathan D. Lee
Sr. Vice President,
Regulatory Affairs

[1] CompTel does not oppose other parties' requests for divestiture of certain AT&T and MCI business units if the Commission believes divestiture will, even partially, ameliorate the harms to competition resulting from these mergers. However, even if the Commission, or any other government agency, requires divestitures, the Commission will still have to adopt rules limiting the exclusionary behavior of the merged firms if such divestitures are to be successful.

[2] See, *e.g.*, SBC Presentation "SBC Hot Cuts: The Facts", CC Docket No. 01-338, December 17, 2002 (SBC can provision 650 hot cuts per day in its Ann Arbor, MI CO at average rate of $34 per hot cut); Letter from W. Scott Randolph, Verizon to Marlene H. Dortch, FCC, CC Docket No. 01-338, December 23, 2002 (Verizon handles tens of thousands of hot cuts per state, with a 5 day interval, and an average rate of $36 per hot cut).