



December 26, 2006

**EX PARTE**

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

Re: Ex Parte, WC Docket No. 06-74

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, COMPTEL hereby gives notice that on December 22, 2006, its representative had a conversation with Scott Bergmann, Legal Advisor to Commissioner Adelstein. COMPTEL explained that the proposed merger conditions proffered by AT&T on Friday, October 13<sup>th</sup> (as corrected by AT&T's October 16<sup>th</sup> Erratum) do little to mitigate the public interest harms previously identified by COMPTEL and others. COMPTEL reiterated its plea that the public interest is best served by the Commission rejecting the proposed license transfer applications.

However, COMPTEL also provided some further explanation of a few merger conditions COMPTEL had previously suggested that the Commission could adopt to ameliorate, but not eliminate the public interest harms that will likely result from the proposed merger. Specifically, COMPTEL described how certain of the merger conditions it had previously proposed were directly designed to address merger specific harms.

Wholesale Market Power—Special Access Market. The merger between AT&T and BellSouth will eliminate all existing and all potential wholesale metro transmission competition between the two largest wireline competitors in the BellSouth region. The elimination of this competition will result in both a near-term accretion in market power and a foreclosure of future competition in the market for wholesale metro transmission services. The Commission must address this problem through

disciplining prices immediately and through the elimination of artificial barriers to entry which have the effect of deterring entry by, and slowing the expansion of, alternative fiber providers. To address this problem COMPTEL suggested: 1) immediate special access price reductions—across the board—for all access customers, and 2) eliminating anticompetitive term and volume “bundled discount” contracts, which constructively—or sometimes even explicitly—raise the costs of customers who seek to use competitive access providers, and reduce the prospective revenues available to potential access market competitors.

Retail Pricing Power. COMPTEL also explained that the post-merger firm would have enhanced retail market power in the large business and carrier markets, which it could (if not regulated) use to harm competitors through selective “predatory” price discrimination against critical customers of its smaller competitors. COMPTEL has previously asked that the Commission address this potential problem by dismissing, or requiring AT&T to withdraw, AT&T’s petition for forbearance from all Title 2 regulation for its broadband services. This would ensure that the FCC maintains the regulatory authority needed to deal with the enhanced market power of the post-merger firm.

In the alternative, the Commission could rely to some degree on competition by wireline competitors to keep the market power of the post-merger firm in check. In addition to the elimination of the anticompetitive “bundled discount” contract tariff structure, this would require the Commission to clarify that each state has the authority to set prices for “delisted” network elements still required to be offered by Bell Operating Companies pursuant to Section 271. The Commission would further facilitate the development of “organic” competition to—over the long term—replace the elimination of potential competition by AT&T by eliminating any “use” restrictions on the ability of competitive carriers to use any network element (whether provided pursuant to Section 251 or Section 271), or combination thereof, to provide any service offered by the post-merger firm over the same facilities.

Representing COMPTEL was the undersigned attorney.

Sincerely,

/s/ Jonathan Lee  
General Counsel