



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 23, 2006, its representatives, and representatives of Time Warner Telecom, had a conversation with Scott Bergmann, Legal Advisor to Commissioner Adelstein, and Scott Deutchman and Bruce Gottlieb, Legal Advisors to Commissioner Capps. In this meeting, COMPTEL and Time Warner Telecom described the many anticompetitive effects related to AT&T's use of so-called "bundled discounts" or "first dollar" discounts in its special access contract tariffs. COMPTEL and Time Warner Telecom further explained why the Commission must adopt specific merger conditions related to the special access market that address the harms to competition in the wholesale metro transmission market that will inexorably result from the proposed merger between AT&T and BellSouth.

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, Time Warner Telecom and COMPTEL suggested: 1) immediate special access price reductions—across the

board—for all access customers, including purchasers of Ethernet transmission services, and 2) eliminating, over time, the application of 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.

COMPTEL followed up this conversation by providing the FCC with the attached materials to better explain AT&T’s use of contract tariffs to retard access market competition. One document is an excerpt from COMPTEL’s Comments to the Department of Justice, regarding the inadequacy of the DOJ’s proposed consent decrees with AT&T and Verizon to address the harms to competition resulting from their mergers with SBC and MCI, respectively. Another document is the Reply Declaration of Joseph Farrell in Support of the Reply Comments of COMPTEL, Global Crossing, and NuVox Communications in WC Docket No. 05-25.

Representing Time Warner Telecom were Thomas Jones of Wilkie Farr & Gallagher, and Don Shepard of Time Warner Telecom. Representing COMPTEL were Earl Comstock and the undersigned attorney.

Sincerely,

/s/ Jonathan Lee  
General Counsel