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Consumers to Feds: Block Telecom Mega-Mergers Mergers would create telecom “hydra”

WASHINGTON, DC – Three leading consumer groups today urged the United States Department of Justice (DOJ) Antitrust Division and the Federal Communications Commission (FCC) to reject the merger applications of SBC/AT&T and Verizon/MCI, calling both deals irreparably anti-competitive and harmful to consumers. The argument was based on a detailed *ex parte* analysis of the merger applications that the groups simultaneously submitted to both agencies.

In light of the merger applicants’ long history of doublespeak – documented in a report entitled “Broken Promises and Stifled Competition: The Record of Baby Bell Mergers and Market Opening Behavior,” – Consumers Union (CU), the U.S. Public Interest Research Group (U.S. PIRG) and Consumer Federation of America (CFA) called on federal and state regulators and antitrust authorities to reject both applications, arguing that specific, effective and enforceable merger conditions cannot be devised.

“We urge regulators to consider both merger applications in the context of these companies’ documented track record of flagrant disregard of their own promises to compete, as well as their consistent self-serving, contradictory statements as to the existence of competition in the industry,” said Janee Briesemeister, CU Senior Policy Analyst. “While we do suggest some actions the Federal Communications Commission and the Department of Justice can take to blunt the mergers’ harmful impact on consumers and markets, we emphasize that the record of misleading actions and broken promises to regulators established by these companies bodes poorly for their future compliance with FCC and/or DOJ regulations. These deals present so many complex problems that enforcement of any merger conditions seems impossible.”

Mark Cooper, CFA Director of Research noted that, should the mergers be approved, the newly formed telecommunications giants will attain about a 90 percent market share in residential local wireline, 70 percent in long distance, and 40-50 percent in wireless. “After a decade of market opening, the two firms being acquired account for three-quarters of the competition in telephone markets. These are mergers between the number one and a number two or three sellers of retail local and long distance, residential and business service, as well as wholesale switching, transport and Internet backbone services.” As a result, Cooper concluded, “The remaining competitors would be minuscule in comparison, lacking the size and geographic reach to provide a competitive check on the two dominant firms. If approved, these mergers will destroy the already feeble competition for telecom facilities that are necessary to provide a wide range of services, including access to the high-speed Internet.”

“The FCC and the DOJ cannot bury their heads in the sand and ignore the destructive impact these simultaneous mergers would have on an already highly concentrated industry,” asserted Ed Mierzwinski, U.S. PIRG Consumer Program Director. “The merging parties offer regulators highly selective data purporting to show that telecommunications markets are competitive. However, the finding that local markets are open to competition was based on the survival of competitors that the merging companies have now swallowed up. In addition to profiting from an already highly concentrated marketplace, these phone

companies make matters worse by employing an anti-competitive ‘bundling’ tactic to ensure that Voice Over Internet Protocol (VoIP), offered by smaller competitors, can never effectively compete with their basic local voice services.”

“Should regulators somehow decide that the mergers could produce public benefits, they must act aggressively to repair the competitive damage that they would do to an already uneven playing field,” argued Cooper. “They must require the divestiture of all overlapping in-region assets of the acquired companies, and impose rigorous, specific conditions of non-discrimination for access to vertically integrated, in-region assets.”

“Any promises by these companies to adhere to such regulations would, however, be highly suspect,” said Briesemeister. “These corporations have consistently flip-flopped to support their immediate goals. The track record of the baby Bells since the passage of the Telecommunications Act of 1996 shows a persistent pattern of bad acts, broken promises and a failure to compete. There are only so many times the Bells may be allowed to cry wolf.”

Examples of recent incumbent contradictions include:

- Recently, Verizon was citing AT&T and MCI as vigorous competitors because that supported their arguments for deregulation. As Ivan Seidenberg, CEO of Verizon, put it in October 2004, “My view is we are both serving lots of overlap in the same market.”

Now, Verizon says the opposite: “The combination of Verizon’s and MCI’s complementary assets and expertise will strongly promote the public interest. At the level of network assets, the two companies are an almost perfect fit...”

- Arguing to eliminate the availability of unbundled network elements for enterprise customers, SBC has declared, “It is difficult to see how the Commission could find any [competitive] impairment at all – for any customers, anywhere, at any capacity – without access to ILEC dedicated transport and high-capacity loops or subloops, including dark fiber.”

Now, seeking to acquire the largest, unaffiliated supplier of such services, SBC changes its tune: “We have come to realize that acquisition of a firm that has the strengths and resources we lack is far more prudent than incurring the massive investment and time that would be required to develop them independently.”

The report, “Broken Promises and Stifled Competition: The Record of Baby Bell Mergers and Market Opening Behavior” may be found at:

http://www.hearusnow.org/fileadmin/sitecontent/BELLmerger_6-16-05.pdf

An Executive Summary of the report may be found at:

http://www.hearusnow.org/fileadmin/sitecontent/bellmergerexecsum_6-16-05.pdf

Since 1968, the CONSUMER FEDERATION OF AMERICA (CFA) has provided consumers a well-reasoned and articulate voice in decisions that affect their lives. Day in and out, CFA’s professional staff gathers facts, analyzes issues, and disseminates information to the public, policymakers, and rest of the consumer movement. The size and diversity of its membership -- some 300 nonprofit organizations from throughout the nation with a combined membership exceeding 50 million people -- enables CFA to speak for virtually all consumers. In particular, CFA looks out for those who have the greatest needs, especially the least affluent.

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