July 17, 2006

The Honorable Emmett Sullivan
United States District Judge
United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

Re: US v. SBC No. 1:05CV02102 (EGS); US v. Verizon No. 1:05CV02103 (EGS)

Dear Judge Sullivan:

Teletruth, a national telephone and broadband customer alliance, would welcome the opportunity to provide expert testimony as a part of the court's evaluation of whether the Department of Justice (DOJ) Consent Decree addressing the anti-competitive effects of the SBC-AT&T and Verizon-MCI mergers appropriately serves the public interest.

Teletruth is the leading independent resource for data and analysis in disputes between telephone companies and customers. Teletruth has participated as a member of the FCC Consumer Advisory Committee, collaborated with the Small Business Administration's Office of Advocacy, and provided data that helped recover millions of dollars for customers in class action lawsuits.

Teletruth's filings on behalf of telephone customers over the last 10 years with the FCC, FTC, SEC, state attorney general offices, state PUC's establishes a clear record of expertise in matters before the court.

Teletruth filed a complaint with the Federal Trade Commission pertaining to the harms to competition and fiber optic deployments caused by the previous SBC and Verizon mergers. (Available at http://www.newnetworks.com/FTCcomplaintSBCVerizon.htm)

Teletruth believes there exists an inherent contradiction in representations of the SBC-AT&T and Verizon-MCI mergers in the complaints and consent decrees filed by the DOJ October 27, 2005.

The complaints note broad competition. For example - *"SBC and AT&T compete in the sale of wireline telecommunications services to retail and wholesale customers in the United States."* The complaints note particular concern about Local Private Lines. For example – *"the proposed merger is likely to substantially reduce competition for Local Private Lines and telecommunications services that rely on Local Private Lines to those buildings."* The DOJ believes the magnitude of these concerns provides sufficient justification to block the mergers. For example – *"that Defendants be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger dated January 30, 2005."*

However, the consent decrees identify de minimis interventions as the means restore competition. The consent decrees offer to facilitate competitor access to idle capacity at only 5% of the buildings (720 of 12,000+) served by the former AT&T and MCI. Even ignoring implementation flaws in the consent decree, the arrangements address restoration of competition

for $50mn or only one tenth of one percent of the $50bn in combined revenue associated with the former AT&T and MCI.

If the complaints properly contemplate threats to competition sufficient to block the mergers, the consent decrees do not address those threats. The Department of Justice needs to either make the case there exists a negligible threat to competition consistent with the decrees or offer a more effective remedy in the decrees consistent with the magnitude of concern identified in the complaint.

Teletruth's expert testimony will illuminate three flaws in the government's analysis of the mergers:

1) Failure to consider the long standing market allocation policy of SBC and Verizon - The Department of Justice improperly considers the two mergers in isolation. The SBC-AT&T analysis assumes MCI remains an active competitor as if the acquisition by Verizon did not happen. The Verizon-MCI analysis assumes AT&T remains an active competitor as if the acquisition by SBC did not happen. Yet, the respective CEO's of SBC and Verizon have stated plans to continue the policy of market allocation in all product lines except cellular in each and every meeting with financial analysts since the announcement of the deals. This means SBC and Verizon will not attempt to renew contracts associated with the former AT&T and MCI in each others regions . Government attorney, Claude Scott, slipped an admission of this problem into his presentation on July 12, 2006, but the assumption of AT&T and MCI's active participation in national markets remains an integral part of the government's analysis.

For example, removing MCI from the SBC-AT&T analysis at least **triples** the number of buildings that lose all competitive presence in SBC's region as a monopoly position can arise from a 3 to 1 scenerio (MCI, AT&T, SBC to just SBC), 2 to 1 via loss of MCI (MCI, SBC to just SBC), as well as, the original 2 to 1 scenario (AT&T, SBC to SBC.) If the DOJ wants to assume SBC and Verizon end the policy of market allocation, the issue must get addressed in the consent decrees. The failure of explicit attempts by the FCC to alter the market allocation policy of SBC and Verizon in previous settlement agreements illustrates the fact the mergers mean MCI and AT&T will retreat from national markets. The Supreme Court will take up the issue of market allocation by the Bells in the Fall 2006 in *Bell Atlantic v. Twombly*, 05-1126.

2) Failure to obtain independent confirmation of the data provided by the defendants - The government does not have an independent basis to verify data from SBC and Verizon that serve as a critical input to the competitive analysis. The repeated claims by AT&T attorney, Wilma Lewis, that the remedy addresses 100% of the anti-competitive injury presumes a degree of precision that does not exist. Teletruth can testify regarding the extensive record of problems with the quality of the record keeping by SBC and Verizon. FCC audits of SBC and Verizon property record claims over the years have never succeeded in demonstrating more than 80% accuracy. Teletruth has directly participated in successful litigation arising from flaws in Verizon's billing system. Even in the absence such a poor track record, the public cannot be expected to have confidence in a process driven by data supplied entirely by the defendants without appropriate safeguards and audits with respect to the accuracy of the underlying data.

3) Failure to assess the defendants performance with respect to previous consent decrees and settlements - The government's endorsement of the mergers does not provide any weight to the failure of Verizon and SBC to comply with the terms of previous consent decrees, FCC settlements, and legislative attempts to facilitate competition. Teletruth can testify about compliance problems arising from the acquisitions of Ameritech, Pacific Telesis, and SNET by SBC, and, similarly, the series of mergers that created Verizon. SBC failed to comply with settlement agreements that called for the company to compete outside its traditional region of operation as has Verizon. The record of misrepresentations predates the phase of consolidation that followed the Telecom Act of 1996 in the failure to pursue fiber optic deployments associated with government pricing concessions. The DOJ's decision to ignore the competitive impact of the mergers that created SBC and Verizon further damages creditability of the proceeding.

Teletruth has published a separate report on the harms created by the SBC-Ameritech-SNET-Pacific Telesis mergers. (Available at http://www.teletruth.org/docs/SBCMergerharms.pdf)

The Department of Justice appears intent on contradictory goals of winning the right to block the mergers and offering a settlement that the politically powerful parties will not oppose. The rationale in the consent decrees does not reach the threshold requirements of avoiding "a mockery of the judicial function" much less the more stringent public interest demonstration motivating the 2004 amendments to the Tunney Act.

Verizon's Deputy General Counsel, John Thorne, made representations during the July 12, 2006 hearing that the absence of consumer groups reflected satisfaction with the acquisition of MCI by Verizon. Teletruth finds no such satisfaction and asserts a more authoritative standing regarding customer interests than Mr. Thorne.

The public will not endorse a process where the Department of Justice assumes away the problem by ignoring the history of market allocation, the risk flawed data, and the competitive impact of the mergers that created SBC and Verizon. The aggressive joint attempt by the DOJ and the defendants to assert complain about the inconvenience of the process, limit the scope of inquiry, and hide behind assertions of confidentially reflects the vulnerability of their analysis.

Telecommunications directly accounts for 4% of the GDP and serves as an input to the entire economy. Serving the public interest means minimizing the risk of any expansion in SBC and Verizon's monopoly powers. There exists no dispute about benefits flowing from the breakup of the original AT&T by the Modified Final Judgment in 1982, so the public properly worries the recombination of these companies and lines of business will end those benefits.

Respectfully,

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