**CONSUMER FEDERATION OF AMERICA**
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# BROKEN PROMISES AND STRANGLED COMPETITION:

### THE RECORD OF BABY BELL MERGER AND MARKET OPENING BEHAVIOR

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## EXECUTIVE SUMMARY

### THE ANTICOMPETITIVE IMPACT OF THE TELECOM MEGA-MERGERS

The wave of proposed mergers in the telecommunications industry — SBC attempting to gobble up AT&T, and Verizon trying to swallow MCI — mark the ultimate demise of any hope for consumers getting more choices and lower prices for local, long distance, wireless, and the new Internet-based services exploding on the market.

Evidence submitted to regulators across the country proves the pending mega-mergers of telephone giants SBC/AT&T, and Verizon/MCI will have a devastating impact on the nation's residential customers. Taken together, the merger protests submitted by consumer groups show beyond a shadow of a doubt that the mergers are anticompetitive and will impose substantial harm on consumers. The harm posed by these mergers goes well beyond local and long distance markets that are already highly concentrated. More importantly, the mergers will destroy the feeble competition in markets for the telecommunications facilities that are necessary to provide a wide range of telecommunications services, including access to the Internet.

These mergers would create super-Regional Bell Operating Companies (RBOCs) that monopolize the in-region public switched telephone network and "mega-Peer Internet backbone" providers that dominate access to the Internet for end-users. After a decade of market opening, the two firms being acquired account for about three quarters of the competitive presence in telephone markets. The four companies in question comprise the number one, two or three largest providers of local and long distance service, network access,

switching and transport services. The remaining competitors in the telecommunications business would be minuscule in comparison, lacking the size and geographic reach to provide a competitive check on the two dominant firms.

Illogical promises of greater concentration bringing greater competition should be flatly rejected by regulators. The track record of the RBOCs since the passage of the Telecommunications Act of 1996 shows a persistent pattern of bad acts, broken promises and the failure to compete. Intermodal competitors—such as Voice over Internet Protocol and wireless—have all been recently been examined and correctly dismissed as substitutes for retail services by both the Federal Communications Commission (FCC) and the Department of Justice (DOJ). That RBOCs' dismal competitive track record, combined with the dearth of competitive alternatives and the dramatic increase in market power that the mega-companies would possess post-merger, demand the conclusion that anti-competitive and anti-consumer behavior would sharply increase post-merger.

**THE MERGERS SHOULD BE REJECTED, OR SUBJECT TO BOTH DIVESTITURE OF OVERLAPPING IN-REGION ASSETS AND MANDATED NON DISCRIMINATORY ACCESS TO INTEGRATED ASSETS**

Both mergers should be rejected. The companies being acquired were economically viable and vigorously competitive across a number of service and geographic markets. AT&T and MCI were also in the process of developing business models to compete in response to recent decisions by the Federal Communications Commission that eliminated the main avenue of local mass-market competition – unbundled network element platforms (UNE-P). Actual and potential competition will be eliminated by these two mergers on a scale that has never, heretofore, been allowed to take place.

Should regulators decide that the mergers could produce public benefits, they must act aggressively to repair the competitive damage that they would do. Given the massive overlap of competitive assets, the track record of bad behavior by the acquiring companies, and the failure of past penalties to dissuade the RBOCs from anti-competitive actions, regulators must require the divestiture of <u>all</u> overlapping in-region assets of the acquired companies. They should also impose rigorous, specific, enforceable conditions of non-discrimination for access to vertically integrated, in-region assets. Specifically:

- Wherever the two firms rank in the top four providers of in-region products within properly defined product and geographic markets, divestiture of all acquired assets related to that product should be required.

- Where the acquired firms is a leading supplier (top four rank) of a network facility that provides vertical leverage against in-region competitors, enforceable conditions to prevent anti-competitive discrimination and price squeeze should be imposed.