



October 27th, 2005

Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, D.C. 20580

RE: Request for Immediate Investigation Pertaining to Commercial Speech
Violations of Previous SBC and Verizon Mergers and Harms to Customers.

SBC = Southwestern Bell, Pacific Telesis, Ameritech and SNET
Verizon = Bell Atlantic, NYNEX and GTE

Teletruth files this Complaint with the FTC, claiming that the previous Bell mergers were based on a massive, 10-year pattern of misrepresentation, as well as untruthful and outright fraudulent statements made to customers.

Included in our analysis of misrepresentation by SBC (Southwestern Bell-Ameritech-Pacific Telesis-SNET merger) is a comprehensive description of the harm to fiber optic deployments in America, as well as local, long distance, Internet and broadband competition and its impact to the economy. To read this document, (Word file) see:
<http://www.teletruth.org/docs/POSTSBCMergers.doc>

This issue also pertains to Verizon and we can supply data to substantiate that claim.

Complaint:

How many misleading, deceptive or fraudulent statements does it take to become a case of fraud? Are corporations allowed to say or do anything to change state and federal laws? Is it not illegal for corporations to make commercial speech that is false, misleading or deceptive, designed to increase the companies' sales and profits or receive beneficial mergers or relaxed regulation?

The materials we present to the FTC are specific. They are statements made by Verizon and SBC to the public about the phone companies' intentions for fiber optic deployments in multiple states, as well as their need to compete with each other as the reason for the previous mergers. As we will show, there has been a decade of miss-statements as well as probable fraud and collusion.



1) Verizon and SBC Made False Statements to Every State It Controlled Regarding Commitments to Roll Out Fiber Optic Deployments From 1993-2005

We now know that the companies that comprise Verizon and SBC lied to over 26 states about their commitments to roll out fiber optic deployments from 1993-2005. These misleading and fraudulent statements were made to alter state laws that gave the phone companies billions of dollars per state in excess profits and tax perks.

As an example, Verizon in 2004 claims it was just beginning to roll out a new fiber optic technology; however, starting in 1992, the company made claims that it was rewiring whole states with fiber-to-the-home by 2000, as told by other statements below, made a decade earlier:

Verizon May, 2004

- **Verizon, May 19, 2004** "Verizon has begun installing in Keller a new technology known as fiber to the premises (FTTP), which uses fiber-optic cable and optical electronics to directly link homes and businesses to Verizon's network. The fiber-optic connections will replace traditional copper-wire links.... Although the use of fiber-optic technology is common throughout the telecom industry, Verizon is the first company to begin using it to directly connect homes and businesses to the network on a widespread scale.
- **Verizon, May 19, 2004** "FTTP is moving from field trials and the lab to the real world, and it's happening in Keller first," Verizon Network Services Group President Paul Lacouture said at a news conference with city officials here today.In short, we are building a new network that will make us the broadband leader in the 21st century... Overall, Verizon plans to pass about 1 million homes in parts of nine states with this new technology by the end of the year."

Bell Atlantic, 1993-1996

- **Bell Atlantic 1993 Annual Report** "First, we announced our intention to lead the country in the deployment of the information highway... We will spend \$11 billion over the next five years to rapidly build full-service networks capable of providing these services within the Bell Atlantic Region... We expect Bell Atlantic's enhanced network will be ready to serve 8.75 million homes by the end of the year 2000. By the end of 1998, we plan to wire the top 20 markets... These investments will help establish Bell Atlantic as a world leader..."
- **Bell Atlantic Press Release, July 1996.** "The company plans to add digital video broadcast capabilities to this "fiber-to-the-curb," switched broadband network by the third quarter of 1997... Bell Atlantic plans to begin its network upgrade in Philadelphia and southeastern Pennsylvania later this year.... Ultimately, Bell



Atlantic expects to serve most of the 12 million homes and small businesses across the mid-Atlantic region with switched broadband networks."

The last two quotes by Bell Atlantic (pre Verizon), are just a few of literally thousands of statements, filings, testimony, state commission orders, state legislature decisions, all to change state and federal laws to give these companies more money -- money that was supposed to be spent on fiber optic-to-the-home upgrades that did not happen.

For example, the fiber optic deployment schedule from Bell Atlantic, NJ, as told by the Order in 1993 from the state Board of Public Utilities (BPU) to change state law, called for speeds of 45mps or faster. Using simple math, by 2005, about 65% of that state should have already been wired with fiber optic services at high speed.

<http://www.newnetworks.com/OpportunityNewJerseyFiber.htm>

The NYNEX Massachusetts, FCC video dialtone application was for fiber optics and coax, 400-800 channels, and completed by 2010.

"NYNEX proposes to deploy hybrid fiber optic and coaxial (HFC) broadband networks that will provide advanced voice, data, and video services, including interactive video entertainment, multimedia education, and health care services. ...The allocation plan provides for the offering of 21 analog channels, and, depending on compression rates, between 400 and 800 digital channels. ...NYNEX plans to deploy this type of network to the majority of its customers by the year 2010."

This is NOT DSL. DSL is a bait and switch of massive proportions since it a) goes over the old copper wiring, b) did not require changes to state laws, since DSL was considered inferior technology in 1992, and c) its speed is at least 1/50 of the 1992 commitments.

This is not fiber somewhere in the ether of the network. This is directly to the customers' premises.

In our analysis of SBC et al, it is also clear that in almost every state the phone companies had made extensive commitments to build out networks, even though it could not be built at the time. We note that these commitments did vary by state.

Pacific Telesis's deployment plans, as stated in their 1994 Fact Book, shows major deployments in every city, from San Diego and Los Angeles, to San Francisco and Silicon Valley: <http://www.newnetworks.com/cabroadbandpacbell.htm>



This timeline of Pacific Bell's California First Plan, created by the San Diego Tribune, clearly shows how SBC closed down whatever was being built:

<http://www.newnetworks.com/californiabroadband.html>

By 2002, over \$33.6 billion should have been spent by SBC's companies for fiber optic cable deployment in over 12.5 million households in 13 states. Pacific Bell promised deployment in 5.5 million households and to spend \$16 billion by 2000; Ameritech promised 6 million households at over \$6.6 billion by 2000 (in just 3 states); SNET promised \$4.5 billion for just Connecticut. Texas was to commit \$1.5 billion to wire schools, libraries and government agencies with fiber optics, all by 2000. NOTE: By year-end 2000, there were less than a million DSL lines.

Verizon-Bell Atlantic-NYNEX-GTE was to spend at least \$16 billion and have 17.5 million homes wired by 2000.

Collusion? Make no mistake; this was not a soft sell. The companies spent over \$1 billion on TELE-TV and Americast --- TELE-TV consisted of Bell Atlantic, NYNEX and Pacific Telesis, Americast was SBC, Ameritech, BellSouth, GTE, SNET (and Disney). These companies also spent millions per state, from research reports and 'experts', to lobbyists and co-opted consumer groups, funded by the Bell companies.

The SBC and Verizon Merger Hatchet

While some of the companies made an attempt to deliver some fiber product (SNET and Ameritech rolled out cable services, though these were never close to what was committed to) it still provided cable competition. More to the point, SBC and Verizon pulled the plug on every fiber based deployment in all 26+ states, as well as the GTE territories, even though state laws had been changed, and extra profits were being accrued to build these networks. In fact, when the ink was dry on the merger, SBC and Verizon closed down the fiber optic plans. This is a summary of some of SBC's properties and promises. The company's tax writeoffs for video show they never spent most of money. (Sources: Bell Annual Reports. Money is in "billions")

The SBC Hatchet of Fiber Optic Deployments

	Money	Households	Merger	Shutdown	Cable
Pacific Telesis	\$16.0	5,500,000	1997	1997	a few
Ameritech (3states)	\$6.6	6,000,000	1999	2000	304,000
SNET	\$4.5	1,000,000	1998	2000	31,000
SBC, Texas	\$1.5				0
Pronto	\$6.0			DSL	767,000
Total	\$33.6	12,500,000			



2) Residential and Business Competition With Each Other Was the Reason For the SBC and Verizon Mergers

In the case of competition, both SBC and Verizon claimed that they would be competing with each other if the mergers went through. Numerous documents go on for hundreds of pages about this point. (From testimony by James S. Kahan, Senior VP SBC.)

"SBC/Ameritech would not undertake this merger without National-Local strategy....In the absence of the merger with Ameritech, the National-Local strategy will not work. The problem is not primarily that SDB on a stand-alone basis, is incapable of raising the capital necessary to fund the national a-local strategy. The more important constraints are a) customer base, b) personnel and earnings dilution and market reactions."

And SBC-Ameritech was to be in 30 cities by 2002:

"Out-of-Region Competition: "In accordance with this condition, we will offer local exchange services in 30 new markets across the country. We are required by the FCC to enter these 30 markets as a provider of local services to business and residential customers by April 2002. Failure to meet the FCC condition requirement could result in a payment of up to \$40 million for each market. Entrance into these new markets did not have a material effect on our results of operations or financial position."

The FCC agreed to this merger because the Bell company committed to competing outside its regions in 30 of the largest US cities, offering both business and residential customers local phone service. The claim was that this would stimulate nationwide competition as well. The FCC writes:

"This will ensure that residential consumers and business customers outside of SBC/Ameritech's territory benefit from facilities-based competitive service by a major incumbent LEC. This condition effectively requires SBC and Ameritech to redeem their promise that their merger will form the basis for a new, powerful, truly nationwide multi-purpose competitive telecommunications carrier. We also anticipate that this condition will stimulate competitive entry into the SBC/Ameritech region by the affected incumbent LECs."

In investigating SBC's Annual Reports, it is now clear that the company stopped going into the other markets as committed when the ink was dry on the agreement, and used



the money to enter the long distance market in their own regions. They also cut short any new fiber optic commitment, such as Project Pronto.

3) The Role of the Regulators

The FTC may argue that the regulators, the FCC and the state commissions, are the ones who were responsible for holding the companies accountable to their commitments.

We consider this a fraud case, a case of collusion and a violation of Commercial Speech. These companies can do or say virtually anything and then skirt the real issue. What the public was told over and over, proved to be false. The public statements in toto violate every version of commercial speech laws.

How could All of the phone companies give the same bad business and economic models that all pointed to their success? All of them received billions of dollars per-state for services they never rendered. We now know that it was all not real, but instead, a phantom fiber optic highway.

This was not simply hyping "vaporware" (a new product that may or may not exist being offered by a competitive concern); this was on a grand scale of larceny involving funding for essential infrastructure, and changing state laws to give the companies the right to print money. How many statements does it take to go from a company's overzealous speculations about the future products to fraud? Is it fraud when you present thousands of statements with actual product descriptions, deployment schedules, vendor-deals, and state law manipulations to make billions more?

Since Verizon and SBC also assumed the assets and liabilities of the merged companies, then they too, were responsible for failed deployments.

Regarding competing outside of the regions as the primary reason for the merger and the verbiage or lack thereof in the FCC's merger conditions, customers were directly harmed because they would never have agreed to the mergers if they knew the truth – *We need to get larger to control the local wireline market in our own regions and also go into long distance to make more profits. We have no intention of competing, and we lied about our fiber optic deployments.*

Laughable Merger Conditions. According to SBC's information, the company was only responsible for "at least 3 customers" per city they were to enter. The FCC neglected to hold the phone companies accountable for the fact that they were also supposed to be "offering service, whether by resale, unbundled elements or facilities, to all business and all residential customers within the entire service area of the incumbent RBOC."



4) The Harms?

Foremost, there is a harm to the entire economy via overcharging customers an estimated \$2000 a household.

NOTE: In the next few weeks, New Networks Institute will release more documentation that shows clearly the phone companies' plans were to make more money, enter long distance, and not deliver on fiber optic broadband.

Market Control. We contend that because of the previous mergers, these two companies now control 70% of the entire US wireline telecommunication market and the Digital Future of over 26+ states. This represents over 200 million US citizens. As of this date, the companies have virtually no overlap – neither company has made any serious attempt to compete, especially for residential competition.

It is clear that allowing the phone companies into long distance before competition was stable has also had a detrimental impact on competitors, especially AT&T and MCI. These companies are being bought by the incumbents because AT&T, MCI and the other competitors have been frozen out of the entire local service and DSL markets due to what we consider to be 'bell-friendly' FCC rulings. The Internet Service Providers and other competitors have also been driven off these networks through anti-competitive behavior and documented predatory pricing.

In short, these mergers have consolidated the world into one, non-competing Bell company. --- It should be called Verizon-SBC.

The Largest Bait and Switch in History. We estimate that phone companies overcharged customers by over \$205 billion dollars in higher phone rates and tax breaks for fiber optic services that could not be built as advertised. That comes to over \$2000 per household.

By 2005, 86 million households should have been rewired. Instead, after each merger Verizon and SBC cut fiber optic deployment plans in 26 states. By 2000, *all* of the Bells combined had less than 1.8 million DSL customers, even though 50 million households should have been rewired by 2000.

The companies used the money to primarily enter long distance, DSL and spent the money overseas as well as on perks to the executives.



Harm to the Economy. This broadband failure has cost the American economy over \$5 trillion in new growth or \$500 billion annually. America lost an entire generation of new growth and technology because these networks failed to show up when scheduled.

The Rest of the World Is Laughing At Us. We're now 12th - 16th in the world in broadband. The networks that should have shown up would have made us comparable to other countries. Unfortunately, we allowed the contractors to not deliver.

Harm to Competition on Every Level -- The networks that we paid for through higher phone rates were supposed to be open to all competitors. This fact appears in every merger condition and every state commitment. Who gave the phone companies (which are utilities) exclusive rights to publicly-funded networks?

Reports continue to demonstrate the phone companies desire to block competitive programming, Voice over the Internet (VOIP), limit file-sharing, and many other harms. A recent Wall Street Journal article, October 21, 2005

"Wireless phone companies like Verizon Wireless and Vodafone Group PLC stipulate in their subscription contracts that customers can't use the company's high-speed Web-access networks for Internet calling -- or may prohibit usage in the future. Several cable companies are using technology to cap the speed at which some of their customers can swap videos. A number of equipment companies are selling software and other products designed to block and monitor Internet applications such as phone calls, video and photo downloads."

Verizon FIOS and SBC Lightspeed? More of a Ruse? We hear that these companies are now, a decade later, starting to roll out new services. Verizon has FIOS and SBC has Lightspeed. They are not what were paid for by customers, and they may never materialize as anything more than a way to get the next series of mergers to come to fruition. The services are also slower and less capable than what was promised in 1993, and are closed-in systems, not open to competition.

Also, the equipment still does not work as discussed. SBC claims it has just finished its trials for its service and Verizon's IPTV, the video programming, is not yet working and available. Again, hype-ware for their current mergers.

More to the point, if you order a Mercedes Benz and pay for it in 1994, and if someone finally gives you a Yugo in 2006, would you not sue the company? Is a decade to wait for something you paid for reasonable?



Other Financial Perks of the Fiber Optic and Merger Deregulation: (From the Upcoming Data)

- \$92 billion that did not go into the ground. Today, the phone companies are spending less than they spent in 1984 on new construction.
- \$23 billion in savings annually --- The companies have cut 65% of staff, when you compare 1984 staffing levels to today.
- \$111 billion in excess tax deductions --- The companies have been writing off more than they are spending on new construction.
- 170% Higher return-on-equity above other Business Week Utilities because of this fiber optic promises,
- 158% higher profit margins than the Business Week "Utilities" or other "Industries".

5) Commercial Speech Violations and Deceptive Practices.

Commercial Speech Violations vs Free Speech. This is not about the first amendment. This is about Mega corporations who are making false and misleading statements that are NOT protected under any part of the Constitution.

The FTC wrote, September 20, 2002, (FTC Staff Provides the FDA with Comments On First Amendment Commercial Speech Doctrine)

"The commercial speech doctrine recognizes the importance of consumer access to truthful and accurate information. On the other hand, inaccurate or misleading claims have no protection under the First Amendment and need to be purged from the marketplace to protect and enhance the value of the free flow of truthful information. In practice, consumer protection agencies often must choose between the risk of allowing commercial speech that might prove to be false or misleading and the risk of banning commercial speech that might prove to be true."

The Elements of Cases of Deception and How They Apply.

Using "FTC Policy Statement On Deception", (Appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984), October 14, 1983)

"Certain elements undergird all deception cases. First, there must be a representation, omission or practice that is likely to mislead the consumer. Practices that have been found misleading or deceptive in specific cases include false oral or written representations, misleading price claims, sales of hazardous or systematically defective products or services without adequate



disclosures, use of bait and switch techniques, failure to perform promised services, and failure to meet warranty obligations.”

In the cases involving the missing state fiber optic deployments, we now know that the service couldn't be built, we know what the customer was told was untruthful, we know when the services were to be delivered and we know that they were given an 'inferior' product to what was promised (DSL) or no delivery at all in the form of fiber optic lines – a bait and switch. There were thousands of false oral and written representations.

We also know that the direct harm was that customers paid higher phone rates and there was a loss of revenue to the government in the form of higher taxes that should have been paid by the phone companies.

“Second, we examine the practice from the perspective of a consumer acting reasonably in the circumstances. If the representation or practice affects or is directed primarily to a particular group, the Commission examines reasonableness from the perspective of that group.”

In this case, the benefits to customers for these mergers were stated over and over again. Customers would be given new services and there would be extensive new competition in multiple states. In both cases, we have thousands of statements that would make any reasonable person believe that the companies should merge because of the benefits. In aggregate, the entire American citizenry was fooled.

And the benefits were a digital chicken in every pot, the revamping of the world as we know it, job creation, healthcare, schools, libraries, government agencies would all be transformed. "Opportunity New Jersey" (a Bell Atlantic state) proclaimed in 1991 that the Info Highway was "essential for job creation in that state", would "advance the public agenda for excellence in education" and "improve quality of care and cost reduction in the healthcare industry".

“Third, the representation, omission, or practice must be a "material" one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service. If so, the practice is material, and consumer injury is likely, because consumers are likely to have chosen differently but for the deception. In many instances, materiality, and hence injury, can be presumed from the nature of the practice. In other instances, evidence of materiality may be necessary.”

The public would never have allowed the phone companies to become deregulated had they known the truth about being charged more for services they never received; but the



real material harms are the harms to the entire economy. Material evidence is the entire lack of Bell competition. Material evidence is that the two largest competitors, AT&T and MCI, are now being bought by the companies who didn't compete. Material harm can be documented by the fact that America is not first in broadband but 12-16th, even though we were first in creating the World Wide Web. Also, numerous Bell company sponsored reports claim that broadband would grow the economy by \$500 billion annually. Did America lose a decade of growth, or \$5 trillion dollars from these missing upgrades? The Telecom, Internet and economic crash of 2000 may have not been so dramatic had this occurred. Finally, material harm is obviously not only use of a fiber optic service by a consumer, but also the money collected in the form of higher phone rates, including every service, and including the Universal Service Fund.

The FTC wrote; "A failure to perform services promised under a warranty or by contract can also be deceptive."

We do make a distinction here. We argue that the promises for fiberizing America were not only done as 'contracts' with the state commissions, or in the specific merger conditions. .

Most importantly, the public trust and the public interest have been harmed. Customers were told a tale that was not truthful. The changes in state law and the mergers were allowed because of these untruthful statements. The fine print of a contract may allow the companies to not have damages through the public service commissions or FCC, but this is about what the customer was told and what the outcome was – not in the customer's best interests.

Cautionary Language vs Fraud.

When SBC announced Project Lightspeed, ("SBC Communications to Detail Plans for new IP-Based Advanced Television, Data and Voice Network", November 11th, 2004), the company's release had the following caveats.

"Cautionary Language Concerning Forward-Looking Statements
Information set forth in this news release contains financial estimates and other forward-looking statements that are subject to risks and uncertainties, and actual results may differ materially. A discussion of factors that may affect future results is contained in SBC's filings with the Securities and Exchange Commission. SBC disclaims any obligation to update or revise statements contained in this news release based on new information or otherwise."



This is good because, as time progressed, the company had to rewrite their plans on delivery. IPTV was to launch late 2005, and now it looks like late 2006-2007:

- November 11, 2004 "IP TV launch expected in late 2005"
- October 10, 2005 "initial controlled market entry in late 2005 or early 2006".
- October 18, 2005 "introducing services enabled by the IMS platform in late 2006 or early 2007."

The announced expenditures went from \$5.5 billion for 2005, announced in 2004 to \$4 billion for 2005, even though the company has had significant profits every quarter 2005:

- November 11, 2004 "2005 overall capital expenditures ---\$5 billion to \$5.5 billion
- August 19th 2005 "SBC's \$4 billion IPTV investment" (USA Today)

SBC is still claiming 18 million households by 2007.

- November 11, 2004 "18 million households by 2007"
- August 19th 2005 "...by 2007 to wire 18 million homes"

As we have pointed out, that comes to 6 million homes a year, at a cost of \$222.22 per household.

We know this is tied to requests to do get deregulation. This release pertains to testimony in front of an U.S. House Energy & Commerce Committee hearing about the future of new technology. The headline says it all.

"IP-Based TV Will Revolutionize Entertainment: Company Calls for "Light-Touch" Regulatory Approach to Ensure Consumers Receive New Technology Quickly," April 20, 2005

A cautionary message should be that *after the AT&T merger we'll drop all of our plans, claiming changes in the market, is what we expect*. These proposed networks are also to change all of the cable franchise laws, block municipalities from competing with the phone companies using Wifi, wireless or fiber optics, and other anti-competitive issues, such as blocking VOIP, or other services. SBC can say --- *'See, we're doing our part. Now block the others.'*

Cautionary changes, or even business delays are NOT what we have here. This is a concerted effort, occurring in multiple states with multiple phone companies, all of whom promised fiber to the home and competition, and it never showed up; however these



companies were able to merge, become vastly larger, and prosper with excessive profits for the utility.

We consider the deception of the Bells to overwhelm any protections a 'cautionary statement' may give.

We have a great deal more data and stand ready to work with the FTC. Teletruth is a nationwide customer alliance and was a member of the FCC Consumer Advisory Committee (2003-2004.)

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