IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. SBC Communications, Inc. and AT&T Corp., Defendants, The Alliance for Competition in Telecommunications and COMPTEL, *Amicus-Curiae.*	)	Civil Action No.: 1:05CV02102 (EGS)
UNITED STATES OF AMERICA, Plaintiff, v. Verizon Communications Inc. and MCI, Inc., Defendants, The Alliance for Competition in Telecommunications and COMPTEL, *Amicus-Curiae.*	)	Civil Action No.: 1:05CV02103 (EGS)

ACTEL'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO THE UNITED STATES' MOTION FOR ENTRY OF FINAL JUDGMENTS

As directed by the Court on May 10, 2006, and pursuant to the Minute Order of that date, the Alliance for Competition in Telecommunications ("ACTel") submits this memorandum with attached exhibits and declarations to supplement its principal memorandum of May 4, 2006. ACTel's May 4 memorandum was directed to opposing the Department of Justice's ("DOJ" or "the Government") Motion for Entry of Final Judgments and ACTel continues to rely on that memorandum and attached Wilkie Declaration as its primary submission. This supplemental memorandum is intended to bring additional arguments, authorities and citations to the Court's attention. Of particular importance is the attached declaration of one of the bidders for the divested "indefeasible rights of use" ("IRUs"), explaining that the divestiture of these assets will in no way replace the competition lost by the mergers at issue, even with respect to the divested circuits themselves. *See* Nicklas Decl., attached as Exhibit 1.

I. THIS COURT UNDERSTANDS ITS TUNNEY ACT OBLIGATIONS.

ACTel's May 4 memorandum made two points. The first was that the 2004 Amendments to the Tunney Act rejected a strictly circumscribed role for the Court and instead required the Court to consider, in the words of the amended statute, "competition in the relevant market." The Court's comments at the May 10 hearing demonstrate that the Court has clearly in mind the Congressional criticism of prior District of Columbia Circuit Tunney Act cases and Congress' new direction to Tunney Act courts in the future.

We see no need, therefore, to belabor this part of our argument further, except to note that the assertion of Verizon's counsel at the May 10 hearing, that this Court is without power to rule against the Proposed Final Judgment absent a showing of what amounts to improper conduct by