Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
AT&T Inc. and BellSouth Corporation	)	WC Docket No. 06-74
Application for Transfer of Control	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 29, 2006 **Released:** March 26, 2007

By the Commission: Chairman Martin and Commissioner Tate issuing a joint statement; Commissioners Copps and Adelstein concurring and issuing separate statements; Commissioner McDowell not participating.

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I. INTRODUCTION

1. AT&T Inc. (AT&T) and BellSouth Corporation (BellSouth) (collectively, the Applicants) have filed a series of applications[1] pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Communications Act or Act)[2] and section 2 of the Cable Landing License Act[3] in connection

[1] *See Commission Seeks Comment on Application For Consent to Transfer of Control Filed By AT&T Inc. and BellSouth Corp*., Public Notice, WC Docket No. 06-74, DA 06-904 (rel. Apr. 19, 2006) (*Public Notice*).

[2] 47 U.S.C. §§ 214, 310(d).

[3] 47 U.S.C. § 35; *see generally* An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act).

with their proposed merger. This merger would combine two regional Bell Operating Companies (BOCs). AT&T and BellSouth offer competing services in certain communications markets, and BellSouth supplies wholesale inputs relied upon by AT&T and other competitors in various retail markets. Thus, the proposed merger requires us to examine its effects on competition – which are both horizontal and vertical in nature – in a wide range of significant communications markets.

2. In accordance with the terms of sections 214(a) and 310(d), we must determine whether the Applicants have demonstrated that the proposed transfers would serve the public interest, convenience, and necessity.[4] Based on the record before us, and as discussed more fully below, we find that the transaction meets this standard. After analyzing the record, we conclude that this merger may reduce from two to one the number of competitors with direct connections to a handful of buildings where other competitive entry is unlikely. We further find, however, that AT&T's voluntary commitment to divest at least eight fiber strands in the form of ten-year IRUs for these two-to-one buildings where entry is unlikely adequately remedies these potential harms.[5] Moreover, to the extent that the merger increases concentration in those or other relevant markets, we find that the public interest benefits of the merger outweigh any potential public interest harms.

II. EXECUTIVE SUMMARY

3. As discussed below, our analysis of the competitive effects of the merger, which focuses on the following key services, finds that the merger is not likely, with one exception, to result in anticompetitive effects in relevant markets.

- **Special access competition.** The record indicates that, in a small number of buildings in the BellSouth in-region territory where AT&T and BellSouth are the only carriers with direct connections, and where other competitive entry is unlikely, the merger is likely to have an anticompetitive effect on the market for Type I wholesale special access services. We further find, however, AT&T's voluntary commitment to divest at least eight fiber strands in the form of ten-year IRUs for these two-to-one buildings where entry is unlikely adequately remedies these potential harms. With respect to Type II wholesale special access services, we find that a sufficient number of other competitors with similar types of local facilities will remain post-merger to help mitigate the loss of AT&T as a competitor in BellSouth's region.

- **Retail enterprise competition.** We find that the merger will not likely have anticompetitive effects for enterprise customers, even though we find that the Applicants currently compete

[4] *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18292, para. 2 (2005) (*SBC/AT&T Order*); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18435, para. 2 (2005) (*Verizon/MCI Order*); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, File Nos. 0002031766, *et al.*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13976, para. 20 (2005) (*Sprint/Nextel Order*); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, 19987, para. 2 (1997) (*Bell Atlantic/NYNEX Order*); *Merger of MCI Communications Corp. and British Telecommunications PLC*, GN Docket No. 96-245, Memorandum Opinion and Order, 12 FCC Rcd 15351, 15353, para. 2 (1997) (*BT/MCI Order*).

[5] *See* Appendix F.

against each other with respect to certain types of enterprise services and some classes of enterprise customers. We find that competition for medium and large enterprise customers should remain strong after the merger because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services and because there will remain a significant number of carriers competing in the market. With respect to small enterprise customers, we recognize that AT&T continues its withdrawal from that market in BellSouth's region, and we conclude, after examining the record, that it is not exerting significant competitive pressure with respect to those customers.

- **Mass market voice competition.** We conclude that the merger will not likely have anticompetitive effects on mass market voice services. We find that neither BellSouth nor AT&T is a significant present or potential participant in this market outside of their respective regions. Consequently, we find that neither party was exerting significant competitive pressure on the other in their respective in-region territories. Moreover, we note the rapid growth of intermodal competitors – particularly cable telephony providers (whether circuit-switched or voice over IP (VoIP)) – as an increasingly significant competitive force in this market, and we anticipate that such competitors likely will play an increasingly important role with respect to future mass market competition.

- **Mass market Internet competition.** We find that the merger is not likely to result in anticompetitive effects for mass market high-speed Internet access services. Specifically, we conclude that there are no horizontal effects as a result of the proposed merger for this service because neither BellSouth nor AT&T provides any significant level of Internet access service outside of its respective region. We also conclude that, while the merger may result in some vertical integration, the record does not support commenters' conclusions that the merged entity will have the incentive to act anticompetitively in the mass market high-speed Internet access services market.

- **Internet backbone competition.** Based on the record, we are persuaded that the merger is not likely to result in anticompetitive effects in the Internet backbone market. We find that the Tier 1 backbone market is not likely to tip to monopoly or duopoly, based either on market share or on other factors, such as changes in relative traffic volumes or through targeted de-peering or degraded interconnection. Rather, we expect a number of Tier 1 backbones to remain as competitive alternatives to the merged entity. We also are not persuaded that the merger will increase the Applicants' incentive and/or ability to raise rivals' costs. Given the level of competition we expect to remain in the Tier 1 backbone market, we are not persuaded that such actions would be viable.

- **International competition.** We find that the merger is not likely to result in anticompetitive effects for international services provided to mass market, enterprise, or global telecommunications services customers. Additionally, we find that the merger is not likely to result in anticompetitive effects in the international transport, facilities-based IMTS, or international private line markets.

4. We further conclude that significant public interest benefits are likely to result from this transaction. These benefits, which are likely to flow to consumers, relate to: accelerated broadband deployment; enhancements to Multichannel Video Programming Distributor (MVPD) and programming competition; national security, disaster recovery, and government services; unification of Cingular's ownership; efficiencies related to vertical integration; economies of scope and scale; and cost savings.

5. Accordingly, based on the record, we find that the merger of BellSouth with AT&T is in the public interest and we grant the applications for transfer of control.

III. BACKGROUND

A. Description of the Applicants

1. BellSouth Corp.

6. BellSouth is a publicly traded Georgia corporation with its principal executive offices located in Atlanta, Georgia.[6] BellSouth is the largest communications service provider in the southeastern U.S., serving substantial portions of the population within Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.[7] It has three operating segments: the Communications Group, Wireless, and the Advertising & Publishing Group.[8]

7. *Communications Group.* Through its wholly-owned subsidiary, BellSouth Telecommunications, Inc., BellSouth provides wireline communications services, including local exchange, network access, intraLATA long distance services, and Internet services.[9] BellSouth Long Distance, Inc., BellSouth's long distance subsidiary, provides long distance services to residential and small business customers in BellSouth's region, long distance services to enterprise customers headquartered in BellSouth's region, and wholesale long distance service primarily to Cingular Wireless LLC (Cingular).[10] BellSouth served approximately 20 million access lines and almost 2.9 million digital subscriber line (DSL) customers (retail and wholesale) at the end of 2005.[11] BellSouth operates a regional Internet backbone in its primary service area.[12]

8. To mass market customers, BellSouth provides advanced voice, data, Internet, and networking solutions in addition to traditional local and long distance voice services.[13] To large business and government customers, BellSouth provides both standard and highly specialized communications services and products, including voice, data, Internet access, private networks, high-speed data equipment, and conferencing services. BellSouth also provides interconnection services to other carriers.[14]

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[6] BellSouth Corporation, SEC Form 10-K at 3 (filed Mar. 1, 2006), *available at* http://www.sec.gov/Archives/edgar/data/732713/000095014406001613/g98697e10vk.htm (BellSouth 2005 Form 10-K).

[7] *Id.* at 4.

[8] *Id.* at 3.

[9] AT&T/BellSouth Application, App. A at A-2.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at A-3.

[14] *Id.*

9. *Wireless.* BellSouth's wireless business consists of a 40 percent ownership (and 50 percent management) interest in Cingular.[15] BellSouth markets many of its services, including local and long distance, DSL, and satellite television, along with Cingular wireless service, as bundled offerings.[16]

10. *Advertising & Publishing Group.* BellSouth also is one of the leading publishers of telephone directories in the U.S.[17] BellSouth's Advertising & Publishing Group publishes more than 500 directories and distributes approximately 65 million copies to residences, businesses and government agencies in the Southeast.[18]

2. AT&T Inc.

11. AT&T is a holding company incorporated under the laws of Delaware and has its principal executive offices in San Antonio, Texas.[19] AT&T offers services and products to residential consumers in the U.S. and to business customers and other providers of telecommunications services in the U.S. and in 240 countries.[20] The services and products that AT&T offers vary by market, but they include: local exchange services, wireless communications, long distance services, data/broadband and Internet services, telecommunications equipment, managed networking, wholesale transport services, and directory advertising and publishing.[21] In addition, AT&T has investments in communications companies with operations in 14 countries.[22]

12. SBC Communications Inc. (SBC) was formed as one of several regional holding companies created to hold pre-divestiture AT&T Corp.'s (*i.e.*, "legacy AT&T's") local telephone companies.[23] Originally, SBC primarily operated in five southwestern states, but it expanded its incumbent local exchange operations to 13 states through mergers with Pacific Telesis Group, Southern New England

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[15] *Id.*

[16] BellSouth 2005 Form 10-K at 5. BellSouth has been a selling agent for DirecTV® service since August 2004. *Id.*

[17] AT&T/BellSouth Application, App. A at A-3.

[18] BellSouth 2005 Form 10-K at 11.

[19] AT&T Inc., SEC Form 10-K at 1 (filed Mar. 1, 2006), *available at* http://www.sec.gov/Archives/edgar/data/732717/000073271706000008/form10k2005.htm (AT&T 2005 Form 10-K).

[20] *Id.*

[21] *Id.* In 2004, AT&T began offering satellite television services through an agreement with EchoStar. This agreement was amended in September 2005 to an agency agreement under which AT&T continues marketing co-branded AT&T DISH Network satellite television service but receives only commission revenues when signing up future customers. *Id.*

[22] *Id.* at 7. These investments include companies that provide local and long distance telephone services, wireless communications, voice messaging, data services, Internet access, telecommunications equipment, and directory publishing.

[23] *Id.* at 1.

Telecommunications Corporation, and Ameritech Corporation in 1997, 1998 and 1999, respectively.[24] On November 18, 2005, one of SBC's subsidiaries merged with AT&T Corp., creating one of the world's largest telecommunications providers, and retaining the AT&T name.[25]

13. AT&T provides wireline telecommunications services, including local, long distance voice, switched access, and data and messaging services, on both retail and wholesale bases.[26] AT&T serves 49.4 million access lines, which are predominantly concentrated in its 13-state region.[27] AT&T offers long distance and international long distance service nationwide, as well as wholesale switched access service to other service providers.[28] AT&T also sells data equipment and provides various data services, such as private lines, switched and dedicated transport, Internet access, network integration, and business voice applications over IP-based networks.[29] AT&T's Internet offerings include basic dial-up access service, dedicated access, web hosting, e-mail, local radio frequency Internet access (commonly known as "Wi-Fi"), and high-speed access, such as DSL services.[30] AT&T also holds a 60 percent economic interest and 50 percent voting interest in Cingular.[31] Through Cingular, AT&T provides wireless services to 54.1 million customers nationwide.[32] AT&T markets many of its services, including local and long distance, DSL, and satellite television, along with Cingular wireless service, as bundled offerings.[33]

B. Description of the Transaction

14. On March 4, 2006, AT&T entered into an Agreement and Plan of Merger (Merger Agreement) with ABC Consolidation Corp., a Georgia corporation and wholly-owned subsidiary of AT&T (Merger

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[24] *Id. See also Applications of Pacific Telesis Group, Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Pacific Telesis Group and its Subsidiaries*, Report No. LB-96-32, Memorandum Opinion and Order, 12 FCC Rcd 2624 (1997) (*SBC/PacTel Order*); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-25, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21306, para. 29 (1998) (*SBC/SNET Order*); *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer of Control*, Memorandum Opinion and Order, CC Docket No. 98-141, 14 FCC Rcd 14712, 14737, para. 48 (1999) (*SBC/Ameritech Order*).

[25] AT&T 2005 Form 10-K at 1; *SBC/AT&T Order*, 20 FCC Rcd 18290 (2005).

[26] SBC 2005 Form 10-K at 4.

[27] AT&T/BellSouth Application, App. A at A-1.

[28] SBC 2005 Form 10-K at 4. Long distance services, as well as a number of other services, are offered both by legacy AT&T and legacy SBC entities pending completion of the companies' integration. *See id.* at 5-6.

[29] *Id.* at 4-6. Network integration services include installation of business data systems, local area networking, and other data networking offerings. *Id.* at 5.

[30] *Id.* at 5. AT&T has approximately seven million digital subscriber lines (DSL) in service. AT&T/BellSouth Application, App. A at A-2.

[31] AT&T/BellSouth Application, App. A at A-4.

[32] *Id.*

[33] AT&T Inc., 2005 Annual Report at 10, 22 (Feb. 16, 2006), *available at* http://www.sbc.com/Investor/ATT_Annual/pdf/05ATTar_Complete.pdf (AT&T 2005 Annual Report).

Sub), and BellSouth.[34] The Merger Agreement provides that Merger Sub will merge with and into BellSouth, with BellSouth continuing as the surviving corporation and as a wholly-owned subsidiary of AT&T.[35] Pursuant to the Merger Agreement, each share of common stock of BellSouth issued and outstanding immediately prior to the effective time of the merger will be converted into and become exchangeable for 1.325 common shares of AT&T.[36] BellSouth will continue to own the stock of its subsidiaries, and BellSouth and its subsidiaries will continue to hold all of the FCC authorizations that they hold prior to the merger.[37] AT&T will become the new parent of BellSouth, resulting in the indirect transfer of control of the Commission licenses and authorizations.[38] The transaction also will result in AT&T obtaining affirmative control of Cingular's Commission licenses and authorizations.[39]

15. The Applicants contend that approval of the proposed transaction is in the public interest. They assert that the merger will produce numerous public interest benefits, including: accelerated broadband deployment;[40] causing Cingular to become a more innovative and efficient competitor through unification of Cingular's ownership;[41] enhancement of MVPD and programming competition in BellSouth's territory by virtue of AT&T's head start in that business;[42] improvement in services to government customers and strengthening of national security by virtue of the merged entity's network integration and an increased geographical footprint;[43] improved disaster response capabilities;[44] and vertical integration efficiencies flowing from the integration of BellSouth's local exchange network with AT&T's long distance network.[45] Finally, the Applicants assert that the merger will increase innovation and investment in the telecommunications industry, as the companies will have greater incentives to invest in research and development.[46]

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[34] AT&T Inc., SEC Form 8-K at 1 (filed Mar. 4, 2006) *available at* http://www.sec.gov/Archives/edgar/data/732713/000095012306002631/y18291ge8vk.htm.

[35] *Id.*

[36] *Id.*

[37] AT&T/BellSouth Application at 3.

[38] *Id.*

[39] *Id.* at 127.

[40] *See* Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory, AT&T, to Kevin Martin, Chairman, FCC, WC Docket No. 06-74 at 2-3 (filed Oct. 13, 2006); *see also* Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 4-5 (filed Oct. 27, 2006).

[41] AT&T/BellSouth Application at 6-20.

[42] *Id.* at 20-26.

[43] *Id.* at 28-32.

[44] *Id.* at 32-40.

[45] *Id.* at 40-46.

[46] *Id.* at 46-51.

16. The Applicants also contend that the merger will not reduce competition. The Applicants assert that there "will be virtually no increase in horizontal concentration in any relevant market."[47] They argue that the proposed merger will "not change the structure of the wireless marketplace and thus will have no adverse effect on competition" in that market.[48] They contend that AT&T is not a major competitor in any relevant market in BellSouth's region,[49] and that BellSouth lacks the resources to compete effectively out of its region.[50] They also contend that there are numerous other competitors in each market segment in which both Applicants compete.[51] The Applicants further argue that no harm will flow from the increased geographic scope of the merged entity because "market conditions that were central to the Commission's conclusions in prior merger orders no longer exist."[52] Finally, the Applicants argue that the proposed transaction does not raise "benchmarking-related concerns" identified in prior Commission orders.[53]

C. Applications and Review Process

1. Commission Review

17. On March 31, 2006, BellSouth and AT&T jointly filed a series of applications seeking Commission approval of the transfer of control to AT&T of licenses and authorizations held directly and indirectly by BellSouth, as well as the transfer of control of Cingular and its various subsidiaries and affiliates.[54] On April 19, 2006, the Wireline Competition Bureau released a Public Notice seeking public

[47] *Id.* at 54.

[48] *Id.* at 6.

[49] *See, e.g., id.* at 55, 63, 83, 105.

[50] *See, e.g., id.* at 63,106.

[51] *See, e.g., id.* at 55, 63, 82, 99.

[52] *Id.* at 116.

[53] *Id.* at 121. These and other concerns are discussed *infra* Part V.I.

[54] Pursuant to section 214 of the Communications Act, AT&T and BellSouth filed applications seeking Commission approval to transfer to AT&T control of domestic and international section 214 authorizations held by BellSouth and its subsidiaries. 47 U.S.C. § 214. The Applicants also filed an application for consent to transfer control of BellSouth's interests in submarine cable landing licenses to AT&T pursuant to section 2 of the Cable Landing License Act. 47 U.S.C. § 35. Pursuant to section 310(d) of the Communications Act, AT&T and BellSouth filed applications seeking Commission approval to transfer to AT&T control of wireless and satellite earth station licenses and authorizations held by BellSouth, various BellSouth subsidiaries, and Cingular, and filed an application for Commission approval to transfer control of Experimental Radio Service Licenses from BellSouth to AT&T. 47 U.S.C. § 310(d); *see also* Appendix B (listing licenses and authorizations subject to transfer of control). The Applicants assert that the transfer of control of the vast majority of Cingular's licenses and authorizations will be non-substantial (*i.e., pro forma*) in nature and that the Commission's rules and precedents require only post-consummation notification rather than advance consent for the proposed transaction. AT&T/BellSouth Application at 127-32. Nevertheless, the Applicants have filed applications seeking advance consent out of "an abundance of caution." *Id.* at 130.

comment on the proposed transaction.[55] More than 25 parties filed petitions to deny the applications or formal comments supporting or opposing grant of the applications.[56] On June 23, 2006, the Wireline Competition Bureau and International Bureau requested additional information from the Applicants.[57] The Applicants' responses to the Information Request, along with their responses to additional Commission requests, are included in the record. On October 13, 2006, the Commission released a public notice seeking comment on certain proposals made by AT&T in a supplemental filing.[58] More than 41 parties filed comments in response to the *Voluntary Conditions Public Notice*.[59]

2. Department of Justice Review

18. The Department of Justice's (DOJ's) Antitrust Division reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen competition.[60] The Antitrust Division's review is limited solely to an examination of the potential competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between AT&T and BellSouth and on October 11, 2006 announced the closing of its investigation without further action.[61]

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[55] *Public Notice*. The *Public Notice* set due dates of June 5, 2006 for the filing of Comments and Petitions to Deny and June 20, 2006 for Responses and Oppositions. *Id.* The Wireline Competition Bureau (Bureau) adopted protective orders under which third parties would be allowed to review confidential or proprietary documents. *See AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74, Order, 21 FCC Rcd 5215 (2006) (*First Protective Order*); *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74, Order, 21 FCC Rcd 7282 (2006) (*Second Protective Order*).

[56] The parties that filed formal pleadings in this proceeding are listed in Appendix A. In addition to those formal pleadings, we have received thousands of informal comments and *ex parte* submissions. All pleadings and comments are available on the Commission's Electronic Comment Filing System (ECFS) website at www.fcc.gov/cgb/ecfs/.

[57] *See* Letter from Thomas J. Navin, Chief, Wireline Competition Bureau, FCC, to Wayne Watts, Senior Vice President and Associate General Counsel, AT&T, Inc., and James G. Harralson, Vice President and Associate General Counsel, BellSouth Corporation, WC Docket No. 06-74 (June 23, 2006) (Information Request).

[58] *See Commission Seeks Comment on Proposals Submitted By AT&T Inc. and BellSouth Corp*., Public Notice, WC Docket No. 06-74, 21 FCC Rcd 11490 (2006), as amended by *Commission Seeks Comment on Proposals Submitted By AT&T Inc. and BellSouth Corp*., Public Notice, WC Docket No. 06-74, Erratum (rel. Oct. 16, 2006) (*Voluntary Conditions Public Notice*).

[59] The parties that filed comments in response to the *Voluntary Conditions Public Notice* are listed separately in Appendix A. Comments filed on the *Voluntary Conditions Public Notice* are cited herein as "Conditions Comments."

[60] 15 U.S.C. § 18.

[61] *See* Press Release, DOJ, Statement by Assistant Attorney General Thomas O. Barnett Regarding the Closing of the Investigation of AT&T's Acquisition of Bellsouth (Oct. 11, 2006), *available at* http://www.usdoj.gov/atr/public/press_releases/2006/218904.htm.

IV. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

19. Pursuant to sections 214(a) and 310(d) of the Communications Act,[62] and sections 34 through 39 of the Cable Landing License Act,[63] the Commission must determine whether the proposed transfer of control to AT&T of licenses and authorizations held and controlled by BellSouth and Cingular will serve the public interest, convenience, and necessity.[64] In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test, weighing any potential public interest harms of the proposed transaction against the potential public interest benefits.[65] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[66] If

[62] 47 U.S.C. §§ 214(a), 310(d).

[63] 47 U.S.C. §§ 34-39. The Cable Landing License Act provides that approval of a license application may be granted "upon such terms as shall be necessary to assure just and reasonable rates and service. . . ." 47 U.S.C. § 35. The Commission does not conduct a separate public interest analysis under this statute. *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18300 n.59; *Verizon/MCI Order*, 20 FCC Rcd at 18442 n.58; *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025 (1998) (*WorldCom/MCI Order*).

[64] 47 U.S.C. § 310(d) requires that we consider the applications for transfer of Title III licenses (wireless licenses and earth station authorizations in this case) under the same standard as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18300 n.60; *Verizon/MCI Order*, 20 FCC Rcd at 18443 n.59; *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13062-63, para. 17 (2005) (*Alltel/Western Wireless Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21542, para. 40 (2004) (*Cingular/AT&T Wireless Order*); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd 473, 485, para. 18 (2004) (*News Corp./Hughes Order*). Thus, we must examine the Applicants' qualifications to hold licenses. *See* discussion *infra* Part V.J (AT&T's Qualifications to Acquire Control of BellSouth's and Cingular's Licenses).

[65] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18300, para. 16; *Verizon/MCI Order*, 20 FCC Rcd at 18443, para. 16; *Sprint/Nextel Order*, 20 FCC Rcd at 13976, para. 20; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-43, para. 40; *News Corp./Hughes Order*, 19 FCC Rcd at 483, para. 15; *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14046, paras. 20, 22 (2002) (*Bell Atlantic/GTE Order*); *Applications of VoiceStream Wireless Corporation and Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9789, para. 17 (2001) (*Deutsche Telekom/VoiceStream Order*); *SBC/Ameritech Order*, 14 FCC Rcd at 14737-38, para. 48; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19987, para. 2.

[66] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18300, para. 16; *Verizon/MCI Order*, 20 FCC Rcd at 18443, para. 16; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-44, para. 40 (citing, *e.g., News Corp./Hughes Order*, 19 FCC Rcd at 483, para. 15; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23255, para. 26 (2002) (*AT&T/Comcast Order*); *Application*

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we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we may designate the application for hearing.[67]

20. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"[68] which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.[69] Our public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.[70] In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.[71]

21. In determining the competitive effects of the merger, our analysis is informed by, but not limited to, traditional antitrust principles.[72] The Commission and the DOJ each have independent authority to

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of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee), CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar/DirecTV Order*)).

[67] We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications. *See ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979). We may, however, do so if we find that a hearing would be in the public interest. However, with respect to the applications to transfer licenses subject to Title III of the Act, if we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, section 309(e) of the Act requires that we designate the application for hearing. 47 U.S.C. § 309(e); *see EchoStar/DirecTV Order*, 17 FCC Rcd at 20574, para. 25; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-44, para. 40.

[68] *See SBC/AT&T Order*, 20 FCC Rcd at 18301, para. 17; *Verizon/MCI Order*, 20 FCC Rcd at 18443, para. 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, para. 41 (citing, *e.g.*, *News Corp./Hughes Order*, 19 FCC Rcd at 483-84, para. 16; *AT&T/Comcast Order*, 17 FCC Rcd at 23255, para. 27; *EchoStar/DirecTV Order*, 17 FCC Rcd at 20575, para. 26).

[69] *See* 47 U.S.C. § 157 nt. (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996) (1996 Act), 254, 332(c)(7)); 1996 Act, Preamble; *SBC/AT&T Order*, 20 FCC Rcd at 18301, para. 17; *Verizon/MCI Order*, 20 FCC Rcd at 18443-44, para. 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, para. 41; *see also WorldCom/MCI Order*, 13 FCC Rcd at 18030-31, para. 9; *2000 Biennial Regulatory Review, Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order, 16 FCC Rcd 22668, 22696, para. 55 (2001) (citing 47 U.S.C. §§ 301, 303, 309(j), 310(d)); *cf.* 47 U.S.C. §§ 521(4), 532(a).

[70] *See SBC/AT&T Order*, 20 FCC Rcd at 18301, para. 17; *Verizon/MCI Order*, 20 FCC Rcd at 18443-44, para. 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, para. 41 (citing, *e.g.*, *AT&T/Comcast Order*, 17 FCC Rcd at 23255, para. 27; *WorldCom/MCI Order*, 13 FCC Rcd at 18030-31, para. 9).

[71] *See SBC/AT&T Order*, 20 FCC Rcd at 18301-02, para. 17; *Verizon/MCI Order*, 20 FCC Rcd at 18444, para. 17; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544, para. 41.

[72] *See, e.g.*, *SBC/AT&T Order*, 20 FCC Rcd at 18302, para. 18; *Verizon/MCI Order*, 20 FCC Rcd at 18444, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 42; *News Corp./Hughes Order*, 19 FCC Rcd at 484, para. 17; *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14046, para. 23; *WorldCom/MCI Order*, 13 FCC Rcd at 18033, para. 13.

examine telecommunications mergers, but the standards governing the Commission's review differ from those of the DOJ.[73] As stated above, the DOJ reviews mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that are likely to lessen competition substantially in any line of commerce.[74] The Commission, on the other hand, as stated above, is charged with determining whether the transfer of control serves the broader public interest. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players.[75] In addition to considering whether the merger will reduce existing competition, therefore, we also must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition.[76] We also recognize that the same consequences of a proposed merger that are beneficial in one sense may be harmful in another. For instance, combining assets may allow the merged entity to reduce transaction costs and offer new products, but it may also create or enhance market power, increase barriers to entry by potential competitors, and/or create opportunities to disadvantage rivals in anticompetitive ways.[77]

22. The Commission has the authority to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.[78] Indeed, our public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest.[79] Despite broad

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[73] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18302, para. 18; *Verizon/MCI Order*, 20 FCC Rcd at 18444, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 42; *News Corp./Hughes Order*, 19 FCC Rcd at 484, para. 17; *see also Satellite Business Systems*, 62 FCC 2d 997, 1088 (1977), *aff'd sub nom. United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

[74] 15 U.S.C. § 18.

[75] *See SBC/AT&T Order*, 20 FCC Rcd at 18302, para. 18; *Verizon/MCI Order*, 20 FCC Rcd at 18444, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 42; *AT&T/Comcast Order*, 17 FCC Rcd at 23256, para. 28.

[76] *See generally SBC/AT&T Order*, 20 FCC Rcd at 18302, para. 18; *Verizon/MCI Order*, 20 FCC Rcd at 18444, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 42.

[77] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18302, para. 18; *Verizon/MCI Order*, 20 FCC Rcd at 18445, para. 18; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, Memorandum Opinion and Order, 16 FCC Rcd 6547, 6550, 6553, paras. 5, 15 (2001) (*AOL/Time Warner Order*); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 42.

[78] *See* 47 U.S.C. § 303(r); 47 U.S.C. § 214(c); s*ee generally SBC/AT&T Order*, 20 FCC Rcd at 18302, para. 19; *Verizon/MCI Order*, 20 FCC Rcd at 18445, para. 19; *Alltel/Western Wireless Order*, 20 FCC Rcd at 13065-66, para. 21 (conditioning approval on the divestiture of operating units in specified markets); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21545-46, para. 43 (same); *see also WorldCom/MCI Order*, 13 FCC Rcd at 18032, para. 10 (conditioning approval on the divesture of MCI's Internet assets).

[79] 47 U.S.C. § 303(r); *see, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18303, para. 19; *Verizon/MCI Order*, 20 FCC Rcd at 18445, para. 19; *Alltel/Western Wireless Order*, 20 FCC Rcd at 13065-66, para. 21; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21545-46, para. 43; *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14047, para. 24; *WorldCom/MCI Order*, 13 FCC Rcd at 18032, para. 10; *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S.

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authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms)[80] and that are related to the Commission's responsibilities under the Communications Act and related statutes.[81]

V. POTENTIAL PUBLIC INTEREST HARMS

A. Analytical Framework

23. In this section, we consider the potential public interest harms, including potential harms to competition, arising from the merger. Because AT&T and BellSouth currently compete with respect to a variety of services and groups of customers, we must consider the potential horizontal effects of this merger.[82] In addition, because both AT&T and BellSouth provide critical inputs, particularly special access services, to various communications markets, we need to consider the potential vertical effects of the merger – specifically, whether the merged entity will have an increased incentive or ability to injure competitors by raising the cost of, or discriminating in the provision of, inputs sold to competitors.[83]

24. With respect to the horizontal effects, consistent with Commission precedent, we first perform a structural analysis of the merger to examine whether it is likely to result in anticompetitive effects.[84] We begin by defining the relevant product markets[85] and relevant geographic markets.[86] We next identify

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775 (1978); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989).

[80] *See SBC/AT&T Order*, 20 FCC Rcd at 18303, para. 19; *Verizon/MCI Order*, 20 FCC Rcd at 18445, para. 19; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 43; *News Corp./Hughes Order*, 19 FCC Rcd at 534, para. 131.

[81] *See SBC/AT&T Order*, 20 FCC Rcd at 18303, para. 19; *Verizon/MCI Order*, 20 FCC Rcd at 18445, para. 19; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21544-45, para. 43.

[82] A merger is said to be horizontal when the merging firms sell products that are in the same relevant markets and are therefore viewed as reasonable substitutes by purchasers of the products. *News Corp./Hughes Order*, 19 FCC Rcd at 507, para. 69.

[83] *Id*. at 508, para. 71. A merger is said to be vertical when one of the merging firms sells products in an upstream input market while the other merging firm sells products in a downstream output market. *See id.* at 507-08, paras. 70-71.

[84] Structural merger analysis, as the name suggests, considers structural characteristics of the merging firms and the relevant markets, such as market shares and entry conditions, to make predictions about the likely competitive effects of a proposed merger.

[85] A relevant product market has been defined as the smallest group of competing products for which a hypothetical monopoly provider of the products would profitably impose at least a "'small but significant and nontransitory' increase in price." Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, (Apr. 2, 1992, revised Apr. 8, 1997) §§ 1.11, 1.12 (*DOJ/FTC Guidelines*); *see also EchoStar/DirecTV Order*, 17 FCC Rcd at 20605-6, para. 106.

[86] A relevant geographic market has been defined "as the region where a hypothetical monopolist that is the only producer of the relevant product in the region would profitably impose at least a 'small but significant and nontransitory' increase in the price of the relevant product, assuming that the prices of all products provided
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market participants and examine market concentration and how concentration will change as a result of the merger. We also consider whether entry conditions are such that new competitors could likely enter and defeat any attempted post-merger price increase.

25. If our structural analysis suggests that the merger may have anticompetitive effects, we must then examine in more detail whether and how the merger might affect competitive behavior. In performing this behavioral analysis, we consider whether the merger is likely to have anticompetitive effects either through unilateral actions of the merged entity or through coordinated interaction among firms competing in the relevant market.[87]

26. With regard to potential vertical effects, we will examine how the merger affects the Applicants' incentives and ability to discriminate in provisioning inputs to competitors. In particular, we will consider the effect of the merger on the merged entity's incentives and ability to discriminate in the provision of special access services.

B. Wholesale Special Access Competition

27. In this section, we consider the effects of the proposed merger on the provisioning and pricing of wholesale special access services.[88] As discussed below, wholesale special access service is a critical input for: competitive LECs in providing services to their retail enterprise customers, wireless and competitive LECs in connecting their networks to other carriers, long distance carriers seeking to connect customers to their long distance networks, and entities seeking to connect with Internet backbones.[89]

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elsewhere do not change." *EchoStar/DirecTV Order*, 17 FCC Rcd at 20609, para. 117 (citing *DOJ/FTC Guidelines* § 1.21).

[87] *Id.* at 20619, para. 151. As the Commission explained in the *EchoStar/DirecTV Order*:

> Unilateral effects arise when the merging firm finds it profitable to alter its behavior following the merger. Examples of unilateral effects include a merging firm's raising its price or reducing the quantity it supplies. Coordinated effects, in contrast, arise when competing firms, recognizing their interdependence, take actions "that are profitable for each of them only as a result of the accommodating reactions of others." Because coordinated effects generally are more likely the smaller the number of firms in a market, mergers may significantly increase the likelihood of coordinated effects by reducing the number of firms. Examples include explicit collusion, tacit collusion, and price leadership.

Id. at 20619, para. 152 (footnotes omitted).

[88] The Commission previously has defined special access as a dedicated transmission link between two places. *See Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 1997, para. 7 (2005) (*Special Access NPRM*); *see also SBC/AT&T Order*, 20 FCC Rcd at 18304, para. 24; *Verizon/MCI Order*, 20 FCC Rcd at 18447, para. 24. We recognize that different companies may offer dedicated loop and transport links between two points under tariffs and contracts that bear proprietary names. *See, e.g.*, AT&T/BellSouth Application, Declaration of Robert W. Bickerstaff (AT&T/BellSouth Bickerstaff Decl.) at para. 11 (listing by name several of BellSouth's special access discount programs). For simplicity, we will use the term "special access" to refer to all services provided by any carrier that involves such dedicated links.

[89] *See infra* Part V.C (Retail Enterprise Competition); Part V.D (Mass Market Telecommunications Competition); Part V.E (Mass Market High-Speed Internet Access Competition) and Part V.F (Internet Backbone Competition); *see also* Cbeyond *et al*. Comments at 61-62; T-Mobile Reply at 3 (stating that T-Mobile's provision of wireless

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Firms needing dedicated transmission links essentially have three choices: to deploy their own facilities, to buy special access service from incumbent LECs, or to purchase such service from a competing special access provider. As discussed below, we find that AT&T provides special access services in competition with BellSouth's special access services in BellSouth's in-region territory.[90] We further find that AT&T is currently the sole carrier, besides BellSouth, with a direct wireline connection to a number of buildings in BellSouth's region, so that the merger will reduce the number of competitors with direct connections to those particular buildings from two to one. We further find that competitive entry is unlikely in a small number of these buildings and that, as a result, the merger may result in anticompetitive effects with respect to that subset of buildings. AT&T has, however, voluntarily committed to divest IRUs to those buildings,[91] which we find adequately remedies the potential harms.

1. Relevant Markets

a. Relevant Product Markets

28. As previously indicated, special access is a dedicated transmission link between two locations, most often provisioned via high-capacity circuits. Such services are used for various purposes, such as directly connecting tenants of commercial buildings to a competing carrier's network or connecting different facilities of the same firm. Both voice and data may be carried using special access services. The facilities used to provide special access service typically consist of three different segments: (1) an entrance facility, which connects the purchasing carrier's point of presence (POP) to the nearest wire center, carrier hotel, or similar location ("entrance facility"); (2) local transport; and (3) a "last mile" connection or local loop, also known as a channel termination, which runs from the transport facility to the end-user customer.

29. The Commission previously has found that there are at least two separate relevant product markets for special access services: "Type I" special access services, which are offered wholly over a carrier's own facilities, and "Type II" special access services, which are offered using a combination of the carrier's own facilities for two of the segments and the special access services of another carrier for the third segment.[92] The Commission has also previously found that many purchasers of wholesale

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services, which allows customers to "cut the cord," depends on T-Mobile's ability to obtain services and facilities from incumbent LECs such as AT&T and BellSouth); Global Crossing Comments at 3 (stating that Global Crossing "relies heavily on AT&T and BellSouth's 'last mile' special access facilities to reach end-user customers" and that a significant portion of Global Crossing's national special access purchases will be directed to the merged entity); Letter from Thomas Jones and Jonathan Lechter, Counsel for TWTC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. at 4, 10 (filed Aug. 8, 2006) (TWTC Aug. 8 *Ex Parte* Letter) (stating that numerous classes of providers "must rely completely or almost completely upon RBOC last mile facilities to provide enterprise class services to businesses"); PAETEC Comments at ii (stating that PAETEC does not rely on UNEs and relies on incumbent LEC provided special access services for 95% of its last mile connections to end users).

[90] By "in-region," we mean the franchise areas where BellSouth is the incumbent LEC. Thus, "out-of-region" refers to all other regions in the U.S.

[91] *See* Appendix F.

[92] *See SBC/AT&T Order*, 20 FCC Rcd at 18305, para. 26; *Verizon/MCI Order*, 20 FCC Rcd at 18448, para. 26; *see also* TWTC Petition at 7-8. Several commenters claim that there are "essentially no intermodal competitors in this market." *See* TWTC Petition at 3; *see also* Consumer Federation *et al.* Reply at 32; MSV LLC Comments at 6. While we recognize that cable operators generally may not use hybrid-fiber coax to provide special access services, the record evidence suggests that, to the extent cable operators are providing competitive special access services,
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special access services view Type I services as substantially superior to Type II services, due to differences in performance, reliability, security, and price, and that these differences are sufficiently large that Type I special access services fall into a separate relevant product market from Type II.[93]

30. We also recognize that the services provided over different segments of special access (*e.g.*, channel terminations and local transport) constitute separate relevant product markets, which may be subject to varying levels of competition.[94] In the competitive analysis section below, we will discuss the competitiveness of the different special access services.

b. Relevant Geographic Markets

31. Consistent with Commission precedent and the record before us, we conclude that the relevant geographic market for wholesale special access services is a particular customer's location, since it would be prohibitively expensive for an enterprise customer to move its office location in order to avoid a "small but significant and nontransitory" increase in the price of special access service.[95] In order to simplify its analysis, however, the Commission has traditionally aggregated or grouped customers facing similar competitive choices, and we will do so in our discussion below to the extent appropriate.[96]

32. In addition, however, we will consider the potential effect of the merger on BellSouth's special access prices, which generally are set on a wider geographic basis. Because BellSouth has gained Phase II pricing flexibility for its special access services in some metropolitan statistical areas (MSAs),[97] but not

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they do so using fiber facilities. *See* TWTC Aug. 8 *Ex Parte* Letter, Attach. at 9, 11-12 (explaining that cable modem service does not provide the level of service quality that most businesses require and that to provide such services cable operators largely rely on fiber facilities, citing a fiber-based service announced by Charter Communications).

[93] *See SBC/AT&T Order*, 20 FCC Rcd at 18306, para. 26 n.89; *Verizon/MCI Order*, 20 FCC Rcd at 18448, para. 26 n.88. *See also* TWTC Petition at 7 (recognizing that Type I and II special access services are in separate product markets because "[a] carrier providing services solely over its own facilities can deliver higher quality service than a carrier that must rely on a combination of its own facilities and those of another carrier" and stating that TWTC purchases almost exclusively Type I service).

[94] Consistent with the *SBC/AT&T* and *Verizon/MCI* decisions, we find that, in general, different capacity circuits are likely to constitute separate relevant product markets as well. *See SBC/AT&T Order*, 20 FCC Rcd at 18306, para. 27 n.90; *Verizon/MCI Order*, 20 FCC Rcd at 18448-49, para. 27 n.89. However, for the reasons given in those orders, we do not find it necessary to analyze separate product markets for different capacities of special access services. *See SBC/AT&T Order*, 20 FCC Rcd at 18306, para. 27 n.90; *Verizon/MCI Order*, 20 FCC Rcd at 18448-49, para. 27 n.89.

[95] *See, e.g.*, *SBC/AT&T Order*, 20 FCC Rcd at 18307, para. 28; *Verizon/MCI Order*, 20 FCC Rcd at 18449-50, para. 28. Our geographic market definition is consistent with the arguments made by certain commenters. *See, e.g.*, Ad Hoc Telecom Users Reply at 19 ("From a customer's perspective, a CLEC either has facilities serving a particular building or it does not, regardless of the fiber capacity passing the building by."); TWTC Petition at 8-9.

[96] *See SBC/AT&T Order*, 20 FCC Rcd at 18306, para. 27 n.90; *Verizon/MCI Order*, 20 FCC Rcd at 18448-49, para. 27 n.89.

[97] *See, e.g.*, *BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-20, Memorandum Opinion and Order, 15 FCC Rcd 24588 (CCB 2000) *aff'd*, *BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CC Docket No. 01-22, Memorandum Opinion and Order, 16 FCC Rcd 18174 (2001); *BellSouth Petition for Pricing Flexibility for Special Access and*
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others, BellSouth's rates for special access may vary from MSA to MSA.[98] Accordingly, we will also examine on an MSA basis how the merger is likely to affect BellSouth's special access prices.

c. Market Participants

33. BellSouth can access all or virtually all of the buildings and transport routes in its territory. Although the record is not clear as to the exact extent that other competitive LECs compete in the special access market in BellSouth's territory, it is clear that, in addition to AT&T, **[REDACTED]**[99] provide wholesale Type I, and in some cases Type II, special access services.[100] The record does not, however, clearly indicate the extent to which individual buildings are served by one or more of these competitive LECs.[101]

2. Competitive Analysis

34. Consistent with the analysis adopted in the *SBC/AT&T Order* and the *Verizon/MCI Order*, we separate our discussion of the competitive effects of the merger into the effects on the in-region special

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Dedicated Transport Services, WCB/Pricing No. 02-24, Memorandum Opinion and Order, 17 FCC Rcd 23725 (2002).

[98] *See* AT&T/BellSouth Application at 61 n.179 (stating that in areas where BellSouth has been granted pricing flexibility, customers of BellSouth's TAP tariff have the option of negotiating more individualized contract tariffs than are available to other similarly situated customers). We recognize that BellSouth also offers various volume and term discount plans which offer percentage discounts off the tariffed rate. Some discounts are based on a carrier's total spend over a larger geographic market while other discounts may vary from MSA to MSA. *See* AT&T/BellSouth Bickerstaff Decl. at para. 11 (describing certain BellSouth tariffs).

[99] In this Order, "REDACTED" indicates that confidential or proprietary information that is subject to a Protective Order in this proceeding has been redacted from the public version of this Order. *See First Protective Order*, 21 FCC Rcd 5215; *Second Protective Order*, 21 FCC Rcd 7282. The unredacted text is included in the confidential version of this Order, which is available upon request only to those parties who have executed and filed with the Commission signed acknowledgments of the protective orders. Qualified persons who have not yet signed the required acknowledgments may do so in order to obtain the confidential version of this Order. Note that in some cases where both a confidential unredacted version and a redacted public version of a document were filed, the page number was inconsistent between the two documents. With respect to such documents, all citations are to the redacted version, unless otherwise specified.

[100] *See* Letter from Gary L. Phillips, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. 2 at 6-24 (filed Sept. 1, 2006) (AT&T Sept. 1 *Ex Parte* Letter). In addition to the entities specifically enumerated above, the record indicates that a number of other competitive LECs provide voice and data services in BellSouth's region. *See id.* (listing all the competitive LECs known to AT&T that provide fiber to buildings where AT&T has direct fiber connections); AT&T/BellSouth Application at 57 n.164 (listing 20 fiber-based competitive LECs providing service in Atlanta); AT&T/BellSouth Bickerstaff Decl. at paras. 5-9 (listing various special access competitors), AT&T/BellSouth Application, App. B at B-15 to B-30 (listing and describing the services offered by numerous competitive LECs operating in BellSouth's region).

[101] To clarify, the record contains information about buildings served by one or more competitive LECs where AT&T also serves the same building. *See* Letter from Gary L. Phillips, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. 2 (filed Sept. 20, 2006) (AT&T Sept. 20 *Ex Parte* Letter) (revised supplemental exhibit 14.b.4). The record does not, however, clearly indicate which other individual buildings are served by one or more competitive LECs but not AT&T in the remainder of BellSouth's territory.

access markets, both horizontal and vertical, and the effects on out-of-region special access markets. We begin by considering whether the merger is likely to result in a meaningful reduction in competition or increase in price for special access services to particular locations.

35. As an initial matter, the record demonstrates that BellSouth offers no wholesale Type I or Type II special access services in AT&T's in-region territory or any other area outside of BellSouth's in-region territory. Thus, the merger is unlikely to result in any anticompetitive effects in special access markets in AT&T's in-region territory.[102] We therefore limit our analysis only to whether the merger is likely to result in unilateral anticompetitive effects in the provision of wholesale special access services in BellSouth's in-region territory.

36. As discussed below, we find that, with respect to Type I special access, AT&T has direct connections to approximately 317 buildings in BellSouth territory.[103] The Applicants submitted a detailed building analysis,[104] which analysis identifies AT&T-connected buildings that: (1) are vacant or have AT&T (or an AT&T affiliate) as the sole tenant; (2) are currently served by other competitive LECs with direct connections; and (3) have demand and cost characteristics such that entry would be likely should the merged entity attempt to raise prices after the merger.[105] Based on our evaluation of these submissions, we find that there are 31 buildings within BellSouth's territory where AT&T is currently the sole carrier with a direct wireline connection to the building (besides BellSouth), and where entry by other facilities-based carriers is unlikely.[106] AT&T has, however, voluntarily committed to divest IRUs to those 31 buildings and, for the reasons given below, we accept that commitment.[107]

37. With respect to Type II special access services, we conclude that the ability of remaining carriers in the market to offer competitive special access services through a combination of their own transport facilities with an incumbent LEC's special access or high-capacity unbundled loops, or a competing

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[102] Therefore, we disagree with the argument of Cbeyond *et al*. that the loss of BellSouth as a competitor in AT&T's region is likely to have anticompetitive effects. *See* Cbeyond *et al*. Aug. 22 *Ex Parte* Letter at 10-11; *see also* Letter from Denise N. Smith, Counsel for Cbeyond *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. at 22 (filed Aug. 31, 2006) (Cbeyond *et al*. Aug. 31 *Ex Parte* Letter) (arguing that BellSouth had plans to enter AT&T's market and compete for special access services); Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 4-5 (filed Sept. 14, 2006) (AT&T/BellSouth Sept. 14 *Ex Parte* Letter) (disputing Cbeyond *et al.*'s interpretation of the BellSouth documents cited in the Cbeyond *et al*. Aug. 31 *Ex Parte* Letter).

[103] *See infra* para. 44.

[104] *See* Letter from Gary L. Phillips, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 28, 2006) (AT&T Sept. 28 *Ex Parte* Letter). According to the Applicants, the analysis set forth in the AT&T Sept. 28 *Ex Parte* Letter expands upon and corrects earlier analyses that they submitted. *See* AT&T Sept. 20 *Ex Parte* Letter; AT&T Sept. 1 *Ex Parte* Letter; AT&T/BellSouth Application, Declaration of Dennis W. Carlton and Hal S. Sider (AT&T/BellSouth Carlton/Sider Decl.) at paras. 108-09; AT&T/BellSouth Reply, Declaration of Dennis W. Carlton and Hal S. Sider (AT&T/BellSouth Carlton/Sider Reply Decl.) at paras. 19-20; *see also* AT&T Info. Req., Exh. 12.2, 14.a.5, 14.b (providing lit building lists).

[105] *See* AT&T Sept. 1 *Ex Parte* Letter at 3-7.

[106] *See infra* para. 44.

[107] *See* Appendix F.

carrier's loop facilities, alleviates concerns about the loss of AT&T as a provider of Type II special access services to particular buildings in BellSouth's in-region territory. Further, because AT&T provides such a relatively small amount of wholesale Type II special access services within BellSouth's region, and because other competitive providers should be able to move in quickly to fill any void left by AT&T, we conclude that the merger is unlikely to result in an increase in the price of Type II services within BellSouth's region.

38. We next consider whether the merger is likely to result in anticompetitive effects in the provision of wholesale special access services by increasing the incentives of AT&T and Verizon to engage in mutual forbearance within each other's territories. We conclude that the merger will not result in competitive harm in Verizon's territory. We find that a variety of actual and potential competing providers will remain post-merger to fill any void left by AT&T if the merged entity does not continue to offer wholesale special access services in Verizon's territory.

39. Finally, we consider possible vertical effects of the merger. BellSouth already is a vertically integrated company. We conclude that the merger is not likely to increase significantly the Applicants' incentives to discriminate against rivals, including with respect to services provided to Cingular's rivals. To the extent that the Applicants, prior to the merger, had any incentive or ability to raise rivals' costs or discriminate in the provision of wholesale special access services, those issues are better addressed in pending general rulemaking proceedings.

a. Horizontal Effects

40. *Unilateral Effects*. Certain commenters claim that the present merger likely would result in increased wholesale special access prices at specific buildings where AT&T currently is offering Type I and Type II special access services.[108] The record suggests that the merger will result in a reduction in the number of competitors offering Type I services in buildings where AT&T is currently connected via its own facilities, and that, of those buildings, there is a small number where AT&T is the sole carrier with a direct connection (besides BellSouth) and where entry is unlikely.[109] The elimination of AT&T as a

[108] *See, e.g.*, Cbeyond *et al*. Comments at 74 ("In those cases where only AT&T and BellSouth have deployed facilities to a particular building, the merged firm would obviously obtain a monopoly over local transmission serving that building. It is hard to conceive of a clearer example of competitive harm caused by a merger."); Consumer Federation *et al*. Petition, Declaration of Mark N. Cooper and Trevor Roycroft (Consumer Federation *et al.* Cooper/Roycroft Decl.) at 40-44; COMPTEL Petition at 8; TWTC Petition at 20-23 (urging the Commission to conclude that the merger would result in harm to consumer welfare in any case where, post-merger, fewer than four competitors supply fiber to a building); Sprint Nextel Comments at 11-12. *See also* Cbeyond *et al*. Comments at 66 (arguing that the "loss of AT&T as a reseller of BellSouth local transmission inputs would itself likely seriously harm competition" for wholesale special access services because other competitors would be unlikely to obtain the level of volume and term discounts "AT&T likely receives today off BellSouth's month-to-month tariffed prices," making other competitors less likely to resell such tariffed services and thus they would not "pose as significant a competitive threat as AT&T").

[109] The Applicants' experts estimate that there are 219,000 commercial buildings in BellSouth's region with more than ten DS0 line equivalents. *See* AT&T/BellSouth Carlton/Sider Decl. at para. 112. The Applicants conclude that AT&T provides Type I service to fewer than 350 buildings in BellSouth's region as a whole – less than 0.2%. *See* AT&T Sept. 28 *Ex Parte* Letter, Attach. 10. The Applicants present much of their quantifiable data in the following 11 metropolitan areas: Atlanta, GA; Birmingham, AL; Charlotte, NC; Chattanooga, TN; Greensboro, NC; Jacksonville, FL; Knoxville, TN; Miami, FL; Nashville, TN; Orlando, FL; and Raleigh-Durham, NC. *See* AT&T Sept. 28 *Ex Parte* Letter, Attach. 10; AT&T/BellSouth Carlton/Sider Decl. at para. 103 n.118; *see also*

(continued….)

provider of Type I special access services to these buildings poses a potential competitive harm. AT&T has, however, voluntarily committed to divest IRUs to these buildings and we find that it is in the public interest to accept that commitment. With respect to Type II special access services, we find that the merger is not likely to result in anticompetitive effects in the provision of Type II services. Competing carriers can use their existing collocation facilities in the relevant wire center (or contract with a competitor that has such collocation facilities) and can purchase special access circuits or UNE loops to provide Type II services.

41. *Type I Services*. In the *SBC/AT&T Order* and the *Verizon/MCI Order*, the Commission found that the proposed mergers posed a potential anticompetitive harm in buildings where AT&T was the sole carrier besides SBC in SBC's territory or MCI was the sole carrier besides Verizon in Verizon's territory and where entry by other competitive LECs was unlikely.[110] The Commission further found, however, that divestitures ordered by the DOJ as part of its consent decrees with the merging parties adequately remedied those harms.[111]

42. In the DOJ/AT&T/Verizon Consent Decrees, the DOJ found potential competitive harm and ordered divestitures only in buildings where "AT&T and SBC or MCI and Verizon, respectively, were capable of supplying local private lines before the merger and no other competitive LEC was likely to connect the building to its network."[112] In identifying buildings where divestiture was required, the DOJ began by identifying buildings in the SBC and Verizon territories where the merger would reduce the number of competitors with direct connections (or laterals) from two to one.[113] Adopting criteria used by individual competitive LECs in deciding whether it was economic to build, the DOJ then developed "screens" to identify whether competitive entry was likely at each two-to-one building.[114] The DOJ then

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AT&T/BellSouth Reply at 14 ("AT&T operates local fiber networks in only 11 BellSouth metropolitan areas."). Our use of the term "MSA" in this Order refers to these 11 metropolitan areas, the boundaries of which are not necessarily coterminous with the boundaries of the Metropolitan Statistical Areas as defined by the Office of Management and Budget.

[110] *See SBC/AT&T Order*, 20 FCC Rcd at 18308, para. 32; *Verizon/MCI Order*, 20 FCC Rcd at 18451, para. 32.

[111] Proposed Final Judgment, United States v. SBC Communications Inc. and AT&T Corp., Civil Action No. 1:05CV02102 (D.D.C. filed Oct. 27, 2005) (DOJ-SBC/AT&T Consent Decree); Proposed Final Judgment, United States v. Verizon Communications Inc. and MCI, Inc., Civil Action No. 1:05CV02103 (D.D.C. filed Oct. 27, 2005) (DOJ-Verizon/MCI Consent Decree). The DOJ-SBC/AT&T Consent Decree and the DOJ-Verizon/MCI Consent Decree are hereinafter referred to together as the "DOJ/AT&T/Verizon Consent Decrees." The DOJ/AT&T/Verizon Consent Decrees currently is under review pursuant to 15 U.S.C. § 16 (the Tunney Act) in the U.S. District Court for the District of Columbia. We agree with AT&T that it would be inappropriate to delay our consideration of this merger during the pendency of the Tunney Act proceeding. *See* Letter from Gary L. Phillips, AT&T Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 24, 2006).

[112] *See* Decl. of W. Robert Majure at 14, United States v. SBC Communications, Inc. and AT&T Corp., Civil Action No. 1:05CV02102 at 14, n.17 (D.D.C. Aug. 7, 2006) (public redacted version) (DOJ Majure Decl.); *see also* DOJ/AT&T/Verizon Consent Decrees, App. A (listing divestiture assets).

[113] Dept. of Justice Submission in Response to the Court's Minute Order of July 25, 2006, United States v. SBC Communications Inc. and AT&T Corp., Civil Action No. 1:05CV02103 at 8 (D.D.C. Aug. 9, 2006) (public redacted version) (DOJ Aug. 9 Submission); DOJ Majure Decl. at paras. 13-14.

[114] DOJ's screens were based on estimates of "revenue opportunity (based on current traffic being generated in the building adjusted for special circumstances) and the distance to the closest CLEC fiber," which represented the

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required divestiture of at least eight fiber strands in the form of ten-year IRUs for those two-to-one buildings where entry was found to be unlikely.[115]

43. In various filings, Applicants assert that AT&T's presence in BellSouth's region is significantly smaller than was legacy AT&T's presence in SBC's region and that "the impact of this merger on potential wholesale special access competition is truly *de minimus* and does not warrant the conditions agreed to in the SBC/AT&T and Verizon/MCI merger[s]."[116] In further support of their contention that divestitures and other conditions are unwarranted, the Applicants filed detailed data that identify the buildings in BellSouth's region where AT&T has direct connections.[117]

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likely cost of construction. DOJ Majure Decl. at para. 14. More specifically, the DOJ used the following "demand/distance" screens to eliminate from the list of potentially problematic buildings those where the demand was at or above a minimum threshold and where a competing carrier had fiber facilities within the corresponding distance:

Minimum Demand	Distance
2 DS3s	0.1 mile
1 OC-12	0.25 mile
Over OC-48	1 mile

Id. at n.17. In addition, the DOJ eliminated certain buildings where there was unlikely to be competition in the future, such as where the only customer in the building was AT&T or one of its affiliates. *Id.*

[115] DOJ Aug. 9 Submission at 10-11, 13.

[116] *See* AT&T/BellSouth Reply at ii-iii. The Applicants further contend that the number of buildings that raise competitive concerns under the criteria DOJ used in the SBC/AT&T merger proceeding is less than 10% of the buildings subject to similar concerns in the earlier proceedings. *Id.* at 13-17; AT&T Sept. 1 *Ex Parte* Letter at 7-13; AT&T Sept. 20 *Ex Parte* Letter at 3; *see also* AT&T/BellSouth Application at 56-59 (asserting that: AT&T's annual wholesale local private line sales in the BellSouth region are less than the monthly sales legacy AT&T provided in SBC's region; AT&T sells less than 1% of the billions of dollars of total wholesale special access services sold annually in BellSouth's region; and AT&T's sales are less than one tenth the amount that AT&T pays to the other competitive LECs that sell wholesale special access services to AT&T in BellSouth's region); AT&T/BellSouth Carlton/Sider Decl. at paras. 103-12.

[117] *See* AT&T Sept. 28 *Ex Parte* Letter; AT&T Sept. 20 *Ex Parte* Letter; AT&T Sept. 1 *Ex Parte* Letter; AT&T/BellSouth Carlton/Sider Decl. at paras. 103-12; AT&T/BellSouth Carlton/Sider Reply Decl. at paras. 19-26. *See also* AT&T Info. Req., Exh. 12.2, 14.a.5, 14.b. We primarily rely on the Applicants' most recent data submissions because the Applicants have continued to investigate building-specific issues and to refine their data submissions throughout this proceeding.

44. In their most recent submission, the Applicants present an updated, detailed building analysis.[118] This analysis indicates that AT&T has a direct connection to 317 buildings in BellSouth's in-region territory.[119] The Applicants first eliminate 44 buildings, which "merely house 'network' connections, are vacant buildings, or have AT&T (or an AT&T affiliate) as the sole tenant,"[120] leaving a total of 273 buildings. The Applicants next subtract buildings where other competitive LECs have direct connections,

[118] The Applicants' initial building list indicated that AT&T had Type I connections to 355 buildings in BellSouth's territory. *See* AT&T Sept. 1 *Ex Parte* Letter at 2, Attach. 1. In addition, AT&T initially identified twelve other buildings to which AT&T had a Type I connection in its response to the Information Request, which buildings were not included in the initial list because they "were added (or planned to be added) to AT&T's building database after AT&T pulled the data for its response to Specification 14.b." *See* AT&T Sept. 20 *Ex Parte* Letter at 1; AT&T Info. Req., Exh. 14.a.5. The Applicants suggest that four of the 12 buildings originally listed in AT&T Info. Req., Exh. 14.a.5 should be added to the building list because they are buildings "at which both AT&T and BellSouth actually have local fiber connections." *See* AT&T Sept. 28 *Ex Parte* Letter at n.3. The Applicants further suggest that the eight remaining buildings originally listed in AT&T Info. Req., Exh. 14.a.5 should not be added to the building list because: two actually are located in Sprint, not BellSouth, incumbent franchise areas; three were listed in AT&T Info. Req., Exh. 14.a.5. due to a database error, and in fact are not served by AT&T local fiber; and three are served by AT&T local fiber but are not connected to BellSouth's local networks. *Id.* We agree that we should exclude from our analysis of Type I special access services buildings that are not located in BellSouth's franchise areas and where AT&T has no facilities. We decline, however, to exclude from our competitive analysis buildings where AT&T has a fiber connection simply because BellSouth currently does not have a connection. BellSouth, as the incumbent LEC in its in-region territory, both has a ubiquitous network and is subject to certain "carrier of last resort" obligations. While the record is unclear as to the exact nature of such "carrier of last resort" obligations under relevant state law, we are unwilling, without more, to conclude that BellSouth would not be willing or required to build out facilities to such buildings upon request. Finally, we note that two buildings originally were listed as "No Longer Active" in AT&T Info. Req., Exh. 14.a.5, and concur with AT&T's suggestion that one be included in AT&T's list of 359 buildings and one excluded because it is not served by AT&T local fiber. *See* AT&T Info. Req., Exh. 14.a.5; AT&T Sept. 28 *Ex Parte* Letter at n.3. We therefore begin our analysis with an initial list of 362 buildings of potential competitive concern, and note that our numbers, as a result, vary at times from those contained in the AT&T Sept. 28 *Ex Parte* Letter and previous submissions.

[119] AT&T states that 31 buildings should be removed from the initial list of 362 buildings of potential competitive concern because they were duplicate entries. *See* AT&T Sept. 1 *Ex Parte* Letter at 2; AT&T Sept. 28 *Ex Parte* Letter, Attach. 2 (identifying duplicate buildings). AT&T further states that it has no facilities to 14 of the remaining 331 buildings, and no lit fiber to two additional buildings. *See* AT&T Sept. 28 *Ex Parte* Letter at 2-3, Attach. 3 (identifying 14 buildings with no AT&T fiber connection and two "buildings where AT&T's local fiber connection has not been cut, but where AT&T has no customer, no service and no electronics . . ."). We agree that we should exclude from our analysis of Type I special access services buildings where AT&T has no facilities. We reject, however, AT&T's suggestion that buildings to which it has a direct fiber connection but which are not "lit" are, for that reason alone, not of potential competitive concern. Accordingly, contrary to AT&T's suggestion, we do not drop from our analysis the two buildings identified in Attach. 3 of the AT&T Sept. 28 *Ex Parte* Letter as "buildings with no AT&T electronics installed." *See* AT&T Sept. 28 *Ex Parte* Letter, Attach. 3. With that exception, we otherwise agree that these 45 buildings (*i.e.*, 31 duplicate entries and 14 buildings with no facilities) should be dropped because it is not appropriate to treat them as AT&T buildings in BellSouth's in-region territory. We therefore find, based on the record evidence, that AT&T has direct connections to 317 buildings in BellSouth's region.

[120] *See* AT&T Sept. 1 *Ex Parte* Letter at 3-4 (explaining why these 44 buildings raise no competitive concerns); AT&T Sept. 28 *Ex Parte* Letter, Attach. 4 (identifying the 44 buildings).

reducing the list of potentially problematic buildings to 72.[121] The Applicants then apply the demand/distance screens used by the DOJ in the DOJ/AT&T/Verizon Consent Decrees to eliminate buildings where competitive LEC entry is likely.[122] Application of these screens leaves only 31 buildings where AT&T is the only competitive LEC with a direct connection and where entry is unlikely.

45. With respect to these 31 buildings, the Applicants argue that divestiture or conditions are unwarranted. Specifically, the Applicants argue that anticompetitive effects are unlikely because: (1) AT&T does not provide any wholesale services to any of these buildings; (2) fixed wireless is a low-cost alternative to AT&T's fiber; (3) under the Commission's impairment test, DS1 and DS3 UNE loops remain available in the wire centers that serve these buildings; and (4) BellSouth prices special access on at least an MSA basis, and the elimination of AT&T as a competing provider of Type I special access to 31 buildings spread over nine metropolitan areas in five states is unlikely to have a significant effect on BellSouth's pricing in any MSA.[123] Applicants further argue that one building has OC-96 or greater demand and is less than two miles from the existing local fiber of other competitive LECs.[124]

46. We find that the Applicants' use of the various screens to eliminate particular buildings as being of no competitive concern, as described above, is, for the most part, both reasonable and consistent with the approach the DOJ adopted in the DOJ/AT&T/Verizon Consent Decrees. Specifically, we find it appropriate to eliminate those buildings where: (1) the listing is duplicative or AT&T lacks a direct connection; (2) there are other competitive LECs with direct connections (*i.e.*, those buildings that will not suffer a two-to-one reduction); (3) the building is vacant or the sole customer is AT&T or one of its affiliates; or (4) entry by a competitive LEC is likely under the DOJ's demand/distance screens.

47. We are not persuaded, however, by the Applicants' arguments that six of the buildings should be deemed to be of no competitive concern because: (1) three are not connected to BellSouth's local networks; (2) two are not served by "lit" fiber; and (3) one has OC-96 or greater demand and is located less than two miles from the existing local fiber of other competitive LECs.[125] Elimination of buildings on such grounds is not dictated by the approach the DOJ adopted in the DOJ/AT&T/Verizon Consent Decrees, and the Applicants have failed to provide record evidence sufficient to justify eliminating these six buildings. We therefore find that there are a total of 31 buildings in BellSouth's in-region territory where AT&T is the only competitive LEC with a direct connection and where entry is unlikely.[126]

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[121] *See* AT&T Sept. 1 *Ex Parte* Letter at 4-5 (explaining why these buildings raise no competitive concerns); AT&T Sept. 28 *Ex Parte* Letter, Attach. 5 (identifying the 201 buildings eliminated).

[122] *See* AT&T Sept. 1 *Ex Parte* Letter at 5-7 (explaining why these buildings raise no competitive concerns); AT&T Sept. 28 *Ex Parte* Letter, Attach. 6, Attach. 7, Attach. 8 (identifying 41 buildings captured by the demand/distance screens).

[123] *See* AT&T Sept. 1 *Ex Parte* Letter at 7-9; AT&T Sept. 20 *Ex Parte* Letter at 3.

[124] *See* AT&T Sept. 20 *Ex Parte* Letter at 2.

[125] *See supra* notes 112-13; AT&T Sept. 20 *Ex Parte* Letter at 2.

[126] Of these 31 buildings, ten are located in Miami, seven in Atlanta, seven in Nashville, and two in Knoxville. Birmingham, Charlotte, Chattanooga, Jacksonville and Orlando each have one such building. *See* AT&T Sept. 28 *Ex Parte* Letter at n.3, Attach. 3, Attach. 9 (identifying 26 buildings in Attachment 9, two buildings in **[REDACTED]** as "buildings with no AT&T electronics installed") in Attachment 3, and three buildings in **[REDACTED]** "not connected to BellSouth's local networks" in n.3).

48. We also do not accept the Applicants' arguments that divestiture or conditions are unwarranted with respect to the remaining 31 buildings. In particular, we do not agree that, just because AT&T currently is not providing wholesale Type I special access services to a particular building, AT&T would not do so in the future, absent the merger. Second, while we agree that fixed wireless offers the potential of being a cost-effective substitute for fiber as a last-mile connection to commercial buildings, we recognize that fixed wireless connections are not always technically or economically feasible (*e.g.*, a particular building may not be well positioned relative to a wireless provider's transmission equipment), and Applicants have failed to demonstrate that fixed wireless connections are feasible at all of the 31 buildings. Finally, even if DS1 and DS3 UNE loops are available in the wire centers associated with the 31 buildings, those UNEs may not be adequate substitutes for AT&T's existing fiber connections. For example, a carrier that might have sought to purchase an AT&T Type I special access circuit absent the merger might not qualify to lease UNEs due to UNE use restrictions or demand levels.

49. We conclude that elimination of AT&T as a provider of Type I special access services at those 31 buildings may lead to an increase in the wholesale cost of special access at those buildings, and, ultimately, to higher retail prices for customers located in those buildings. AT&T has, however, offered a voluntary commitment to divest at least eight fiber strands in the form of ten-year IRUs for these 31 two-to-one buildings where entry is unlikely.[127] We note that this divestiture commitment, which is consistent with the DOJ's actions in the SBC/AT&T and Verizon/MCI mergers and,[128] consistent with our analysis in the *SBC/AT&T Order* and the *Verizon/MCI Order*, adequately remedies these potential harms. Accordingly, we accept AT&T's commitment.

50. *Type II.* In buildings in BellSouth's in-region territory where a competitive LEC is not directly connected to a building via its own facilities and where customer demand may not justify the construction of competitive facilities (such as where demand is less than the OCn level), competing carriers can combine their own transport facilities with special access loops or, where available, high-capacity loop UNEs purchased from BellSouth[129] (*i.e.*, Type II offerings). More specifically, competitors can use their existing collocation facilities in the relevant wire center, or they can contract with a competitor that has such collocation facilities. They can then use these collocation facilities to interconnect special access loops or UNEs to their own transport facilities.[130]

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[127] *See* Appendix F.

[128] *See supra* para. 42.

[129] While DS1 and DS3 UNEs are not available solely for the provision of long distance or mobile wireless services, they are available for the provision of local exchange and exchange access services, subject to specific demand limitations. *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533 at 2551-58, paras. 34-40 (*Triennial Review Remand Order*). Carriers that obtain UNEs for the provision of local exchange or exchange access services may also provide other services using those UNEs as well. 47 C.F.R. § 51.309(d).

[130] We decline Access Point *et al.*'s request that we prohibit the merged entity from recalculating its business line density for purposes of determining UNE availability in BellSouth's territory. *See* Access Point *et al.* Petition at 68-69 (stating that "CLECs could be harmed if UNEs were to become less available because of changes in wire center business line counts insofar as lines that AT&T obtained from BellSouth as special access are excluded from current line counts, but would be recounted as BellSouth lines"). We do not believe that the merger is likely to have any effect on business line density counts. The Commission's rules define "business line" for purposes of determining UNE availability as "an incumbent LEC-owned switched access line used to serve a business customer, whether by

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51. We find that existing competitive collocations and the threat of competitive entry through collocation allow for special access competition in BellSouth's in-region wire centers where AT&T competes today. Indeed, in the 11 MSAs in BellSouth's territory where AT&T currently has local facilities, the Applicants indicate that AT&T has collocations in only **[REDACTED]** wire centers, compared to the total of over **[REDACTED]** collocations by other competing carriers in those same BellSouth wire centers in which AT&T has collocations.[131] Thus, other competing carriers collectively have over **[REDACTED]** times the number of BellSouth wire center collocations compared with AT&T. In addition, there are over **[REDACTED]** other competing carriers that collectively have between **[REDACTED]** collocations, with an average of **[REDACTED]** collocations, in each of the 11 BellSouth MSAs where AT&T has local network facilities.[132] In none of these 11 MSAs do competitors have less than **[REDACTED]** times as many collocations as AT&T, and in seven of these MSAs competitors have between **[REDACTED]** times as many collocations as AT&T.[133] Moreover, of the **[REDACTED]** wire centers in the 11 MSAs in BellSouth's territory in which AT&T has collocations other competing carriers are collocated in **[REDACTED]**, and **[REDACTED]** of these wire centers have at least **[REDACTED]** other competitive LECs with fiber-based collocations.[134] Even in those wire centers where AT&T currently is the only collocated carrier, competitors after the merger are likely to have incentives to construct substitute collocations.[135] The extensive local fiber networks already deployed by other

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the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC." 47 C.F.R. § 51.5; *see also Triennial Review Remand Order*, 20 FCC Rcd at 2677, App. B (adopting the definition of "business line"). While the Commission's rules specifically exclude from the definition of "business line" non-switched special access lines, the rule includes "only those access lines connecting end-user customers with incumbent LEC end-offices for switched services." *See* 47 C.F.R. § 51.5(1)-(2). Thus, we expect that any AT&T special access lines that currently are excluded from BellSouth's business line density calculations would also be excluded under the Commission's rules post-merger. Even if that were not the case, we would not grant Access Point *et al.*'s request. The Commission's aim when it defined "business line density" for purposes of determining UNE availability was to permit all parties to rely on an "objective set of data that incumbent LECs already have created for other purposes" and to create a proxy that "fairly represents the business opportunities in a wire center." *See Triennial Review Remand Order*, 20 FCC Rcd at 2595, para. 105; *see also* 47 C.F.R. § 51.5 (stating that "business line" includes the "sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements"). We believe that adopting a merger condition that would depart from the Commission's rules in BellSouth's territory and exclude from the definition of "business line" for the merged entity all special access lines currently provided by AT&T would not serve the Commission's regulatory goals as set forth in the *Triennial Review Remand Order*.

[131] There are minor differences in the collocation data supplied by AT&T and BellSouth. In the analysis above, we rely on the data supplied by AT&T for its own collocations, and on data supplied by BellSouth for competitive LEC collocations. *See* AT&T Info. Req., Exh. 14.a.4; BellSouth Info. Req., Exh. 13.b, 13.c.

[132] *See* AT&T Info. Req., Exh. 14.a.4; BellSouth Info. Req., Exh. 13.b, 13.c.

[133] *See* AT&T Info. Req., Exh. 14.a.4; BellSouth Info. Req., Exh. 13.b, 13.c.

[134] *See* AT&T Info. Req., Exh. 14.a.4; BellSouth Info. Req., Exh. 13.b, 13.c.; *see also* AT&T/BellSouth Carlton/Sider Reply Decl. at para. 26; AT&T/BellSouth Reply at 25.

[135] We therefore deny PAETEC's request that we require Applicants to divest transport routes to any wire center where AT&T is the only competitive LEC that is collocated at that wire center. *See* PAETEC Comments at 8.

competitors in BellSouth's territory indicate that these competitors are likely to find it feasible to construct additional collocations.[136]

52. Commenters claim that AT&T has two unique advantages, and a third significant advantage, in supplying Type II special access services to other competing carriers in BellSouth's in-region territory: (1) AT&T obtains greater special access discounts from BellSouth for the loop portion of the circuit;[137] (2) AT&T has a more extensive fiber network and therefore can reach more commercial buildings;[138] and (3) AT&T, as an incumbent LEC that provides service in a contiguous territory, is better situated than

[136] *See, e.g.*, Letter from Gary L. Phillips, Gen. Atty. and Asst. Gen. Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-34, Attach. (filed Aug. 22, 2006) (providing maps of competitive fiber deployment in BellSouth's territory) (AT&T Aug. 22 *Ex Parte* Letter). *See* AT&T Aug. 22 *Ex Parte* Letter, Attach. (providing maps of competitive fiber deployment in BellSouth's territory). As we have found in both the special access and UNE contexts, the presence of fiber-based collocators is a good proxy for sunk investment in fiber rings, which we find competitors are able to use in conjunction with special access or, where available, UNEs in the provision of Type II offerings. *See, e.g.*, *Triennial Review Remand Order*, 20 FCC Rcd at 2589-95, 2625-26, paras. 96-105, 167 (discussing the inferences drawn from fiber-based collocations for purposes of our UNE rules); *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14265-69, paras. 81-86 (1999) (*Pricing Flexibility Order*) (describing the correlation between fiber-based collocation and sunk investment in competitive transport facilities). We note, consistent with the *SBC/AT&T Order* and the *Verizon/MCI Order*, we recognize that one must take care in interpreting such maps, and here we simply use the maps to supplement the quantifiable collocation data and to identify the existence of competitive LEC facilities in the MSA. *See SBC/AT&T Order*, 20 FCC Rcd at 18313 n.127; *Verizon/MCI Order*, 20 FCC Rcd at 18455-56 n.123. The Ad Hoc Telecommunications Users Committee submitted into the record a GAO study which, it argues, demonstrates that there is a lack of competition in the special access market and that prices for special access services in MSAs where pricing flexibility has been granted are higher than prices in other areas. *See* Letter from Colleen Boothby, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 2, Attach. (filed Dec. 1, 2006); U.S. General Accountability Office, FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services, GAO-07-80 (Nov. 2006), *available at* http://www.gao.gov/new.items/d0780.pdf; *but see* Letter from Gary L. Phillips, AT&T Inc. and Bennett L. Ross, BellSouth Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket 06-74 (filed Dec. 7, 2006) (arguing that the Ad Hoc Telecommunications Users Committee has misinterpreted the GAO study). The issue under consideration here, however, is whether the merger between AT&T and BellSouth is likely to result in anticompetitive effects in the special access market in BellSouth's in-region territory. In this regard, after analyzing the record, we conclude that this merger may reduce from two to one the number of competitors with direct connections to a handful of buildings where other competitive entry is unlikely. We further find, however, that AT&T's voluntary commitment to divest at least eight fiber strands in the form of ten-year IRUs for these two-to-one buildings where entry is unlikely adequately remedies these potential merger-specific harms.

[137] *See, e.g.*, Cbeyond *et al*. Comments at 65-66, 75-76.

[138] *See, e.g.*, Ad Hoc Telecom Users Reply at 21-22 (arguing that "AT&T stands out as having, by a wide margin, the most broadly deployed alternative special access capabilities, both nationwide and in the BellSouth region"); Cbeyond *et al*. Comments at 63-65; MSV LLC Reply at 6 ("Even if AT&T's facilities are not nearly as extensive as BellSouth's within the latter's territory, its size and resources make it a meaningful check on the rates charged by BellSouth.").

most competitive LECs to serve business customers with multiple locations.[139] We do not find these arguments persuasive.[140]

53. First, there is no evidence that AT&T has access to a discount plan that is not available to other providers. The Applicants assert, and opponents do not rebut, that BellSouth's volume and term discount plans, under which AT&T takes BellSouth special access circuits, are also available to other competitive LECs.[141] Indeed, these plans are made available to others pursuant to contract tariffs or generally available tariffs. Moreover, BellSouth provides special access discounts in a variety of ways with differing conditions in different states and regions, including discounts available even to those carriers that might not qualify for the precise discount plan used by AT&T.[142] Indeed, the Applicants note that in 2005, two smaller competitors received a larger overall percentage discount off the tariffed rate in the BellSouth region than AT&T.[143] Finally, we note that regardless of whether competitors are able to negotiate significant discounts, where competitive duplication of the last-mile facility is not economic, competing carriers will be able to rely on high-capacity loop and transport UNEs priced at Total Element Long Run Incremental Cost (TELRIC) where they are available.[144]

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[139] *See, e.g.*, TWTC Comments at 17-19 ("As the largest telecommunications company in the nation with ILEC territories adjacent to BellSouth, AT&T is the competitor that is best-positioned (or one of the two best-positioned along with Verizon) to overcome the substantial entry barriers associated with deploying local transmission facilities in the BellSouth region. AT&T can take advantage of its enormous scale and scope economies to extend its existing local transmission facilities in the BellSouth region. AT&T also is almost uniquely positioned to win business customers in the BellSouth territory because of the combination of its (1) significant existing network assets in that territory, (2) position as an ILEC in a contiguous region, (3) community of interest among businesses with multiple locations."); EarthLink Comments at 18-21; Cbeyond *et al*. Comments at 5-6, 33; Letter from Brad E. Mutschelknaus, Counsel to NuVox Communications *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 4-5 (filed Sept. 28, 2006).

[140] We also are not persuaded by commenters' general arguments that the merger will result in a reduction of special access competition. *See, e.g.*, Consumer Federation *et al*. Reply at 31-39 (reciting general concerns that merger will reduce competition in the special access services markets due in part to the size of the merged entity, but not providing specific evidence of how such harms would result); MSV LLC Reply at 4 (making general claims that AT&T has been a source of competition in BellSouth's territory); Ad Hoc Telecom Users Reply at 13-14 (arguing that the merger will result in anticompetitive effects).

[141] *See* AT&T/BellSouth Bickerstaff Decl. at paras. 11-12 (stating that BellSouth offers special access discount plans that are generally available).

[142] BellSouth provides special access services under tariffed rates as well as through individual contracts, as BellSouth has gained pricing flexibility in certain MSAs. Various volume and term discounts may apply to individual purchases or for all purchases in particular regions. Other discounts are dependent on maintaining minimum purchasing levels over several years. *See, e.g.*, AT&T/BellSouth Application at 61-62; AT&T/BellSouth Bickerstaff Decl. at para. 11 (describing BellSouth's ACT, TPP, TAP and other volume and term discount plans); BellSouth Info. Req. at 24-25. While it is not always clear how much each buyer pays, it is clear that the simple tariff rate sometimes used by commenters for comparing prices is not adequate for that purpose. *See* AT&T/BellSouth Reply at 32 (stating that "special access customers can choose from among many existing and differing discount plans or negotiate their own individualized contract tariff arrangements").

[143] *See* AT&T/BellSouth Reply at 26 n.95.

[144] In addition, we note that the Commission has found that "the availability of UNEs is itself a check on special access pricing." *Triennial Review Remand Order*, 20 FCC Rcd at 2574, para. 65.

54. Second, the Applicants submit evidence that a number of facilities-based competitive carriers with fiber rings other than AT&T are operating in the 11 MSAs where AT&T provides special access in BellSouth's region.[145] In fact, the Applicants have submitted evidence that AT&T accounts for only 24 percent of the competitive network fiber miles deployed for the 11 overlap areas, and that individual competitive LECs other than AT&T have deployed more fiber miles than AT&T in every overlap metropolitan area other than Atlanta and Miami.[146] The data regarding the number of competitive LEC building connections shows similar competitive deployment.[147] We conclude, therefore, that there are other existing competitors with local fiber networks that reasonably could provide Type II wholesale special access service in MSAs where AT&T now operates local facilities. We note that our findings here

[145] *See, e.g.*, Letter from Gary L. Phillips, Gen. Atty. and Asst. Gen. Counsel, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-34, Attach. (filed Aug. 22, 2006) (AT&T Aug. 22 *Ex Parte* Letter) (showing maps of competitive LEC deployment, including fiber rings). We therefore are not persuaded by commenters' claims to the contrary. *See, e.g.*, Ad Hoc Telecom Users Reply at 21-22 (arguing that "AT&T stands out as having, by a wide margin, the most broadly deployed alternative special access capabilities, both nationwide and in the BellSouth region"); Cbeyond *et al*. Comments at 63-65; MSV LLC Reply at 6 ("Even if AT&T's facilities are not nearly as extensive as BellSouth's within the latter's territory, its size and resources make it a meaningful check on the rates charged by BellSouth.").

[146] *See* AT&T/BellSouth Carlton/Sider Decl. at para. 106. The Applicants further contend that, in five of the metropolitan areas, at least two other competitive LECs have deployed more fiber than AT&T. *See id*. We therefore are not persuaded by claims that AT&T has deployed such an extensive amount of fiber in BellSouth's region that its merger with BellSouth will undermine the current level of competition for wholesale special access in BellSouth's region. *See* Cbeyond *et al*. Comments at 60-65. *See also* Letter from Brad Mutschelknaus *et al*., Counsel for Cbeyond *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 5 (filed Aug. 22, 2006) (Cbeyond *et al*. Aug. 22 *Ex Parte* Letter) (claiming that "AT&T is the single most important existing competitor to BellSouth"); *see also* Cbeyond *et al.* Aug. 31 *Ex Parte* Letter, Attach. at 4. Nor are we persuaded that the potential loss of AT&T as a purchaser of wholesale special access services will harm competition in BellSouth's region. *See, e.g., id*. at 7 (claiming that AT&T post-merger likely will stop purchasing services from other competitive LECs in the BellSouth region "who depend on AT&T as an anchor customer of their own wholesale offerings"); Sprint Nextel Comments at 12. Cbeyond *et al*. do not provide evidentiary support for their contention that competitive LECs rely on AT&T as an "anchor customer." In addition, as discussed above, the record demonstrates ample facilities-based competition for wholesale special access services. Indeed, as the Applicants demonstrate, even the documents which Cbeyond *et al.* cite are in accord with the record evidence of wholesale special access competition in BellSouth's region. *See* AT&T/BellSouth Sept. 1 Special Access *Ex Parte* Letter at 3-4, 7-8; *see also* Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 2-3 (filed Sept. 14, 2006) (AT&T/BellSouth Sept. 14 *Ex Parte* Letter). Moreover, the submission of an e-mail discussion between BellSouth employees does not convince us that BellSouth has an "intent to undercut the ability of competitive carriers to provide meaningful price competition to BellSouth special access services." Cbeyond *et al*. Aug. 22 *Ex Parte* Letter at 7-8. Not only are isolated "smoking gun" documents common in a transaction of this size, but the e-mail cited by Cbeyond *et al.* was written by a single BellSouth employee, which minimizes the probative weight of this evidence. *See* AT&T/BellSouth Sept. 1 Special Access *Ex Parte* Letter at 5 n.24.

[147] *See* AT&T/BellSouth Carlton/Sider Decl. at para. 106 (asserting that "in each of the overlap metropolitan areas other than Miami, there is at least one CLEC other than AT&T that has more building connections than AT&T" and that, in seven of the overlap metropolitan areas, there are at least two such competitive carriers).

are consistent with the findings underlying the Commission's high-capacity loop impairment analysis in the *Triennial Review Remand Order*.[148]

55. Third, we are not persuaded that AT&T's status as an incumbent LEC in a contiguous territory gives it such advantages over competitive LECs when competing out-of-region that we should prevent AT&T from acquiring BellSouth.[149] When competitive LECs seek to enter a new special access market, they generally concentrate their efforts in high density areas where the revenue opportunities are the greatest – such as locations where enterprise customers are located.[150] The record evidence indicates that, to the extent incumbent LECs compete out-of-region, their entry strategy is similar.[151] In addition, the

[148] *See SBC/AT&T Order*, 20 FCC Rcd at 18313-14, para. 45*; Verizon/MCI Order*, 20 FCC Rcd at 18456, para. 45 (explaining how this analysis is consistent with the Commission's impairment analysis in the *Triennial Review Remand Order*).

[149] We are not persuaded by commenters' arguments that AT&T possesses significant advantages in overcoming the entry barriers associated with deploying special access facilities in BellSouth's region as compared with other competitive LECs. *See, e.g.*, TWTC Comments at 17-19. TWTC supports its argument by claiming that, in prior orders, the Commission recognized the advantages that adjacent incumbent LECs have as potential competitors. *See* TWTC Comments at 18-19. In the precedent upon which TWTC relies, however, the Commission reaches the more limited conclusion that there are instances in which incumbent LECs could be better situated than certain other competitors to provide competition out-of-region in limited situations. *See, e.g.*, *SBC/Ameritech Order*, 14 FCC Rcd at 14757, para. 92 (concluding that "SBC and Ameritech have the capabilities and incentives to expand into the mass market for local exchange and exchange access services in geographic markets adjacent to their own regions or ones in which they have a cellular presence"). In fact, for wholesale special access services, the Commission recognized that "competitive LECs have been most successful in the market for specialized services such as special access and local private line services, which are provided to business customers." *See SBC/Ameritech Order*, 14 FCC Rcd at 14726-27, para. 25. We find no persuasive evidence that would lead us to conclude that competitive LECs and other new entrants generally are less likely to be successful in entering new special access markets than an incumbent LEC in an adjacent territory. *See, e.g.*, AT&T/BellSouth Kahan Decl. at paras. 5-12 (outlining the evolution of competition in the telecommunications industry); AT&T/BellSouth Boniface Decl. at para. 27. Similarly, we disagree with the argument of Cbeyond *et al.* that the loss of BellSouth as a competitor in AT&T's region is likely to have anticompetitive effects. *See* Cbeyond *et al.* Aug. 22 *Ex Parte* Letter at 10-11. We find the record does not support a finding that BellSouth is a substantial source of actual or potential competition for wholesale special access services in AT&T's region.

[150] *See, e.g.*, AT&T/BellSouth Application, App. B at B-15 to B-30 (describing the services offered by numerous competitive LECs operating both in and out of BellSouth's region); *see also Triennial Review Remand Order*, 20 FCC Rcd at 2618-19, para. 154 (stating that when competitive LECs are deciding whether and where to build their own facilities, they "target areas that offer the greatest demand for high-capacity offerings (*i.e.*, that maximize potential revenues) and that are close to their current fiber rings (*i.e.*, that minimize the costs of deployment). The evidence in the record shows that the highest concentration of competitive LEC deployment of loops in the central business districts of large metropolitan areas is near where competitors have already deployed fiber rings.")

[151] We note, for example, that the 11 metropolitan areas where AT&T operates local fiber networks in BellSouth's territory are not contiguous to AT&T's in-region territory. *See supra* note 109 (listing the 11 metropolitan areas in BellSouth's territory where AT&T operates local fiber networks). We recognize that a significant portion of AT&T's out-of-region network facilities that are used to provide special access services in BellSouth's region are legacy AT&T facilities, and thus their construction was not influenced by any contiguity with legacy SBC's in-region territory – a point which tends to underscore that incumbent LECs do not possess special advantages in providing special access services out-of-region compared with competitive LECs. In any event, even after the acquisition of legacy AT&T's facilities in BellSouth's region, AT&T has only a limited competitive presence in the market for special access services in this territory. *See, e.g.*, T-Mobile Comments at 6 (stating that it has only been

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economic barriers that prevent competitive LECs from providing service over their own facilities also apply to an incumbent LEC competing out-of-region, and, as revealed by the record evidence discussed above, an incumbent LEC competing out-of-region does not obtain more favorable discounts, nor more favorable collocation arrangements, than other competitive LECs.[152] Thus, we conclude that AT&T's status as an incumbent LEC in a contiguous territory does not give it any unique advantages when competing out-of-region against other competitive LECs.

56. In summary, we find that, within BellSouth's region, other competing carriers collectively have more fiber and many more collocations than does AT&T. In those MSAs where AT&T has local facilities in the BellSouth region, AT&T represents less than **[REDACTED]** percent of the competitive collocations. Moreover, the record clearly shows that AT&T's collocations are located exclusively in MSAs with many other competitive collocations.[153] Therefore, we conclude that the elimination of AT&T as a provider of Type II wholesale special access services should not have an appreciable effect on the price or availability of Type II wholesale special access services.[154]

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to a "very limited extent that AT&T has been a competitive provider of special access services in BellSouth's service area"); *see also supra* para. 54.

[152] *See supra* paras. 51-53.

[153] As noted above, in every BellSouth MSA in which AT&T operates local fiber networks, competitors have at least **[REDACTED]** as many collocations as AT&T in that MSA. *See supra* para. 51.

[154] Several commenters contend that the merger will increase AT&T and BellSouth's use of volume and term commitment contracts, and that this will have anticompetitive effects. *See, e.g.*, COMPTEL Comments at 11-13 (arguing that the merger will allow AT&T to offer such volume and term contracts for special access services over a larger area and "the combined entity post merger will be able to demand that customers commit to purchase even greater volumes of special access services where potential competition may exist"); MSV LLC Comments at 12; Cbeyond *et al*. Reply at 10-11 ("Further exacerbating the inherent high cost and other barriers to market entry is the fact that the Applicants have taken steps to effectively shrink the potential special access customer base by requiring special access customers to enter into long term and exclusionary contracts for special access services."). We are not persuaded that the merger will increase AT&T's incentive and/or ability to use volume and term discounts for anticompetitive purposes. Commenters have presented no reason why the merger should increase AT&T's incentive to use such contracts or impose unreasonable terms and conditions, nor have they presented any convincing reason why, after the merger, AT&T will have an increased ability to use such contracts for anticompetitive purposes. Moreover, the divestitures upon which this order is conditioned are sufficient to address any potential anticompetitive effects in the markets for Type I special access services and, as noted elsewhere in this section, we find that the merger should not result in anticompetitive effects for Type II special access services. Nor is the merger likely to result in an appreciable increase in the MSA-wide prices that BellSouth charges for special access services. To the extent commenters allege that volume and term contracts of the type used by AT&T and BellSouth are anticompetitive in general, this is not a merger-specific harm, but rather is an issue that has been raised, and is better addressed, in the Commission's pending special access rulemaking. *See generally Special Access NPRM*, 20 FCC Rcd 1994. We decline to adopt a "fresh look" condition for special access services for the same reasons. *See, e.g.*, Letter from Karen Reidy, VP, Regulatory Affairs, COMPTEL, *et al*., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 22, 2006) (COMPTEL Sept. 22 Special Access *Ex Parte* Letter); Letter from Philip J. Macres and Patrick J. Donovan, Counsel for Access Point *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Sept. 28, 2006) (Access Point *et al.* Sept. 28 *Ex Parte* Letter); Letter from John J. Heitmann, Counsel for ScanSource, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 28, 2006) (ScanSource Sept. 28 *Ex Parte* Letter) (providing examples of purported "fresh look" requirements adopted by the Commission); *see also* Letter from Gary L. Phillips, Gen. Atty and Asst. Gen.
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57. *MSA-wide effects*. To the extent that the elimination of AT&T as a competitor in the Type I wholesale special access market causes competitive harm, this also could result in increases in the MSA-wide prices that BellSouth sets for its own special access services.[155] As discussed above, we find that the merger will eliminate AT&T as a provider of Type I special access services in 31 buildings where AT&T is the sole carrier with a direct connection besides BellSouth and where entry by competitive LECs is unlikely.[156] AT&T's voluntary commitment to divest IRUs to those 31 buildings, which we accept, is sufficient to address any concerns regarding MSA-wide prices in the merged entity's territory.

58. *Coordinated Effects.* We also are not persuaded by opponents' arguments that the merger will increase the likelihood of coordinated interaction.[157] It is generally recognized that the likelihood of coordinated effects depends on a number of factors, including the ease with which firms can reach tacit agreement, the incentive of firms to cheat, and the ability of the remaining firms to detect and punish such cheating.[158] Carriers that purchase wholesale special access services, whether Type I or Type II, are sophisticated customers that often rely on a competitive bid process or negotiate individual contracts, and that enter into long-term contracts.[159] Moreover, as noted above, there will remain numerous competitors that are able to provide Type II wholesale special access services. We find that these factors make it unlikely that the merger will lead to tacit collusion or other coordinated effects in the relevant special access markets in BellSouth's region.[160]

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Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 3, 2006) (AT&T Oct. 3 *Ex Parte* Letter) (disputing the conclusions of the ScanSource Sept. 28 *Ex Parte* Letter).

[155] As previously discussed, each building represents a separate relevant geographic market, and competitors frequently charge different prices for special access services to different buildings. To the extent that BellSouth has received Phase II pricing flexibility, but nevertheless sets special access prices that are geographically averaged over an entire MSA, we would expect that BellSouth would set a geographically uniform price that maximizes its profits given competitive conditions that vary from building to building. If competition is reduced at a significant number of buildings, this is likely to cause BellSouth to raise its MSA-wide price. *See, e.g.*, TWTC Comments at 8-10 (need to take into account MSA-wide effects, stating that incumbent LECs "generally price their special access offerings on an MSA-wide basis").

[156] *See supra* para. 44.

[157] *See, e.g.*, COMPTEL Comments at 13-16 (arguing that merger will increase incentives to collude because the number of region-wide special access providers in the combined territory will drop from three to two); EarthLink Comments at 21-25 (stating that "the post-merger AT&T and Verizon would be able much more easily to coordinate pricing strategies designed to thwart competition"); Consumer Federation *et al*. Reply at 27-28.

[158] *See, e.g.*, JEAN TIROLE, THE THEORY OF INDUSTRIAL ORGANIZATION 239 (1988); GEORGE STIGLER, "A Theory of Oligopoly," in THE ORGANIZATION OF INDUSTRY 39 (1968); ALEXIS JACQUEMIN AND MARGARET E. SLADE, "Cartels, Collusion, and Horizontal Merger," in THE HANDBOOK OF INDUSTRIAL ORGANIZATION 415 (1989).

[159] *See, e.g.*, AT&T/BellSouth Reply, Declaration of Ronald Pate and Kevin Graulich (AT&T/BellSouth Pate/Graulich Reply Decl.) at paras. 23-27 (discussing the performance measures in BellSouth's special access tariffs and the service level agreements found in certain of BellSouth's contract tariffs); AT&T/BellSouth Reply, Declaration of Ronald A. Watkins and Brett Kissel (AT&T/BellSouth Watkins/Kissel Reply Decl.) Attach. 4 (setting forth a special access tariff of an AT&T affiliate); Letter from John J. Heitmann, Counsel for ScanSource, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Sept. 22, 2006) (ScanSource Sept. 22 *Ex Parte* Letter) (setting forth ScanSource's processes and criteria for purchasing telecommunications services).

[160] *See DOJ/FTC Guidelines* § 2.12.

59. *Mutual Forbearance.* Ad Hoc Telecom Users argue that if the present merger is consummated, the merged entity and Verizon will be more likely to "mutually forbear" from competing against each other in the provision of wholesale special access services in the other's service territory.[161] While we recognize that mutual forbearance is possible in theory, we reject commenters' allegations that this merger is likely to result in anticompetitive effects in Verizon's region. As an initial matter, AT&T has invested billions in its nationwide network, including facilities in Verizon's region. In light of this investment, it is reasonable to expect AT&T to have strong incentives to utilize fully its assets in Verizon's territory.[162] More significantly, however, we find no record evidence to suggest that the competitive conditions in Verizon's territory are significantly different than the competitive conditions in BellSouth's territory. Thus, just as there are numerous competitors with local facilities that will continue to provide competing special access services post-merger in BellSouth's territory, we have no reason to doubt that there similarly will be numerous competitors with local facilities in Verizon's territory that will provide competing special access services post-merger.[163] Thus, we conclude that, even if AT&T/BellSouth forbears from offering competing special access services in Verizon's region, competitive alternatives will remain for those locations where AT&T offered competing special access services.

b. Vertical Effects

60. We disagree with the argument of certain commenters that the merger will increase the Applicants' incentive and/or ability to raise rivals' costs or engage in a price squeeze.[164] As an initial

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[161] *See, e.g.*, Ad Hoc Telecom Users Reply at 13 (arguing that AT&T and Verizon will be each other's single largest special access customers, and that each company "will confront a strong incentive to stay mainly within its own footprint, since any out-of-region activity will necessarily involve large out-of-pocket cash payments to the other for access services").

[162] *See SBC/AT&T Order*, 20 FCC Rcd at 18319, para. 54; *see also* AT&T/BellSouth Reply at 26; AT&T/BellSouth Carlton/Sider Reply Decl. at paras. 107-08.

[163] *See supra* note 100.

[164] *See* Cbeyond *et al*. Comments at 60-62, 77-78 (alleging that merger will give BellSouth greater ability and incentive to discriminate against rivals due to increased concentration in the market for loops and transport); Ad Hoc Telecom Users Reply at 13-14; COMPTEL Comments at 9-11, 15; Sprint Nextel Comments at 6-9; TWTC Petition at 34-46; TWTC Petition App. A, Declaration of Graham Taylor at paras. 32-33 (TWTC Taylor Decl.); Consumer Federation *et al.* Cooper/Roycroft Decl. at 40-44; Global Crossing Comments at 3-5. We are not persuaded by Cbeyond *et al.*'s claims that AT&T's decision to increase the price of certain retail services in certain markets subsequent to the SBC/AT&T merger demonstrates an intent or ability to raise wholesale special access prices. *See* Cbeyond *et al*. Reply at 11-12. As the Applicants point out, evidence of retail price increases is of limited relevance to possible increases in wholesale prices. *See* Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 3 (filed July 31, 2006) (AT&T/BellSouth July 31 Special Access *Ex Parte* Letter) (stating that competitive LECs generally purchase wholesale special access services for their business needs rather than retail services, and that, even when competitive LECs purchase retail services at a discount for resale, they generally do so at a fixed discount from retail rates, mitigating the competitive disadvantage competitive LECs might otherwise suffer from increased retail prices). Cbeyond *et al*. also specifically argue that AT&T has the intention to raise wholesale prices to the extent possible. *See* Cbeyond *et al*. Aug. 22 *Ex Parte* Letter at 3-6. We do not find Cbeyond *et al.*'s evidence, which primarily is based on statements from several analysts and AT&T's own general comments about special access prices, dispositive on this point, and their claim is not supported by other record evidence. *See generally* AT&T/BellSouth Sept. 1 Special Access *Ex Parte* Letter at 1-5 (responding to Cbeyond *et al*.'s arguments); *see also*

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matter, where UNEs are available, they provide an alternative for special access service and might serve to constrain, at least to some extent, special access price increases and other raising rivals' costs strategies.[165] For areas where UNEs are not available, we note that competing carriers have invested heavily in the 11 MSAs where AT&T has local facilities.[166] As described above, we have analyzed the likely impacts of this merger with regard to the provision of special access services and have found that AT&T's voluntary commitment to divest at least eight fiber strands in the form of ten-year IRUs for 31 two-to-one buildings where entry is unlikely is sufficient to address any potential anticompetitive effects.[167] Like other incumbent LECs, BellSouth already is a vertically integrated provider of telecommunications services, including wireless services.[168] The merger therefore is not likely to impact significantly the Applicants' incentives regarding discrimination.[169] As we have found previously, "[t]o

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AT&T/BellSouth July 31 Special Access *Ex Parte* Letter at 2 (asserting that "AT&T's in-region wholesale special access prices have not increased since the [SBC/AT&T] merger, nor could they" due to the merger conditions that are still in effect). We similarly find the evidence of Global Crossing unconvincing. *See* Letter from Paul Kouroupas, Vice President, Regulatory Affairs, Global Crossing North America, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 27, 2006) (Global Crossing Oct. 27 *Ex Parte* Letter); *see also* Letter from Gary L. Phillips, AT&T Inc., and Bennett L. Ross, BellSouth Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Nov. 13, 2006). As explained in this paragraph below, the issue of special access prices is better addressed in our pending rulemakings on this topic.

[165] *See Triennial Review Remand Order*, 20 FCC Rcd at 2625-33, paras. 167-181 (discussing the general criteria used to determine whether UNE DS1 and DS3 loops must be made available); *id*. at 2570-75, paras. 62-65 (discussing the potential for UNEs to act as a constraint, to some extent, on special access prices).

[166] *See supra* note 100. While exact fiber route miles for the competitive LECs are not available for the 11 MSAs where AT&T has local fiber facilities, it appears that a number of competitive LECs have substantial fiber facilities in those MSAs, some even greater than AT&T's. *See supra* note 136, para. 54.

[167] *See* Appendix F.

[168] *See, e.g.*, AT&T/BellSouth Application, App. A at A-2 to A-4 (describing BellSouth's lines of business); AT&T/BellSouth Reply at 28 (noting that incumbent LECs "have been vertically integrated wireless service providers since those services were first offered). Our conclusion is not altered by Applicants' contention that BellSouth is the "only RBOC without long-distance facilities of national scope." AT&T/BellSouth Application at 5. BellSouth has regional long distance facilities. *See, e.g.*, AT&T/BellSouth Application at 93-94 (citing Commission precedent).

[169] *SBC/AT&T Order*, 20 FCC Rcd at 18319-20, para. 55*; Verizon/MCI Order*, 20 FCC Rcd at 18461, para. 54. This conclusion applies with particular force with respect to Cingular, which Applicants currently jointly wholly own and control. Various commenters allege that AT&T and BellSouth are already major suppliers of special access services to wireless carriers and that the merger would increase the incentives of the Applicants to discriminate against Cingular's wireless rivals because the combined company would realize the full extent of any benefits of such conduct. *See, e.g.*, T-Mobile Reply at 5-6; MSV LLC Reply at 1-2, 6 (arguing that, without regulatory oversight, the merged entity will be able to offer Cingular discounts that are not available to other wireless carriers, making it "almost impossible for independent wireless carriers to compete on an equal footing with Cingular"); Sprint Nextel Comments at 9-12 (arguing that Applicants' post-merger incentives to impose rate increases on transit services will increase); Cbeyond *et al*. Reply at 7-8. As previously noted, however, Applicants already jointly wholly own Cingular, and apparently already provide the vast majority of Cingular's wireless competitors' special access circuits in the Applicants' territories. Thus, the Applicants already would obtain the full benefit of any increase in Cingular's profits that would result from raising rivals' costs, and currently would each individually keep 100% of any increased profits obtained by charging competing wireless carriers higher special access prices in their in-region territories.

the extent that certain incumbent LECs have the incentive and ability under our existing rules to discriminate against competitors" using special access inputs, "such a concern is more appropriately addressed in our existing rulemaking proceedings on special access performance metrics and special access pricing."[170] A voluminous record on industry-wide special access pricing issues (along with specific pricing information) has been submitted to the Commission in one of these proceedings.[171] By addressing these issues in the context of a rulemaking, we will be able to develop a comprehensive approach based on a full record that applies to all similarly-situated incumbent LECs.[172]

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[170] *SBC/AT&T Order*, 20 FCC Rcd at 18320, para. 55*; Verizon/MCI Order*, 20 FCC Rcd at 18462, para. 55; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21592, para. 183. Similar issues also are raised in the pending proceeding dealing with the sunset of BOC section 272 requirements. *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) (*Section 272 FNPRM*); *see also* 47 U.S.C. § 272(e)(1). *See also* T-Mobile Reply at 4 (acknowledging the relevance of the pending special access rulemaking to the issues T-Mobile raises and urging the Commission to complete this rulemaking); PAETEC Comments at 5 (similar). Relatedly, due to commitments AT&T has made in connection with the Commission's section 271 proceedings, as well as pursuant to various special access tariffs and contracts, AT&T has committed to certain performance guarantees and files certain special access performance measures with the Commission, better enabling the Commission to detect and remedy non-price discrimination against AT&T's competitors. AT&T/BellSouth Watkins/Kissel Reply Decl. at paras. 27-41; *id*. at paras. 67-75 (discussing external section 272 audits of AT&T's special access performance); *see also* AT&T/BellSouth Pate/Graulich Reply Decl. at paras. 23-27, 38-42 (providing similar information as pertains to BellSouth). AT&T also remains subject to special access-related conditions set forth in the *SBC/AT&T Order*. *See SBC/AT&T Order*, 20 FCC Rcd at 18412-13.

[171] *Special Access NPRM*, 20 FCC Rcd at 1994 (special access comments filed June 13, 2005 and reply comments filed July 29, 2005).

[172] *See SBC/AT&T Order*, 20 FCC Rcd at 18320, para. 55; *Verizon/MCI Order*, 20 FCC Rcd at 18462, para. 55; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21592, para. 183; *see also Alltel/Western Wireless Order*, 20 FCC Rcd at 13091-92, 13093, paras. 104, 109; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23257, para. 30 (2002) (*AT&T/Comcast Order*). For these same reasons, we reject calls for the Commission to provide for "final offer" or "baseball style" arbitration of special access disputes as a condition of the merger. *See, e.g.*, Global Crossing Comments at 8-14; Letter from Brad E. Mutschelknaus *et al.*, Counsel for Competitive Carriers of the South, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 14, 2006) (Competitive Carriers Sept. 14 *Ex Parte* Letter); Letter from Brad E. Mutschelknaus and Edward A. Yorkgitis, Jr., Counsel for XO Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 18, 2006); Global Crossing Oct. 27 *Ex Parte* Letter; Letter from Paul Kouroupas, Vice President, Regulatory Affairs, Global Crossing North America, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Nov. 28, 2006) (Global Crossing Nov. 28 *Ex Parte* Letter); *see also* Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 1, 3-4 (filed Sept. 15, 2006) (AT&T/BellSouth Sept. 15 *Ex Parte* Letter) (arguing that Global Crossing's proposed arbitration condition is more appropriately raised in the ongoing special access rulemaking proceedings); Letter from Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 20, 2006) (similar, regarding the arguments set forth in the Competitive Carriers Sept. 14 *Ex Parte* Letter); Letter from Gary L. Phillips, AT&T Inc., and Bennett L. Ross, BellSouth Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 7, 2006) (disputing arguments set forth in the Global Crossing Nov. 28 *Ex Parte* Letter); Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory, AT&T Services, Inc. and James G. Harralson, Vice President and Associate General Counsel, BellSouth Corp., to Kevin J. Martin, Chairman, FCC *et al.*, WC Docket No. 06-74 (filed Dec. 4, 2006). We similarly reject the claims of commenters seeking special access conditions or raising concerns unrelated to the merger, many of which are the

(continued….)

c. Proposed Remedies

61. We also have considered, but decline to accept, a number of other proposed conditions relating to wholesale special access service various parties ask us to impose.[173] Commenters have proposed far too many possible remedies for alleged harms to address the merits of each proposal individually. We instead address any alleged merger-specific harms that give rise to commenters' proposals throughout this Order.[174]

C. Retail Enterprise Competition

62. In this section, we analyze the potential competitive effects of the proposed merger on retail enterprise services. We find that the Applicants compete against each other with respect to certain types of enterprise services and some classes of enterprise customers, and that the merger will lead to increased concentration in certain relevant markets. We conclude, however, that the merger is not likely to result in anticompetitive effects for enterprise customers. We find that competition for medium and large enterprise customers should remain strong after the merger because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services, including in particular high-capacity communications services, and because there will remain a significant number of carriers competing in the market. With respect to small enterprise customers, we recognize that AT&T continues its withdrawal from this customer segment, and we conclude, after examining the record, that it is not exerting significant competitive pressure outside its in-region territory with respect to those customers.

(Continued from previous page)
subject of pending rulemaking proceedings. *See, e.g.*, ACCESS Comments at 3 (contending that BellSouth lowered its average retail rates to an amount less than the wholesale rates ACCESS agreed to pay under its current commercial agreement and asking the Commission to adopt a pricing formula or cap).

[173] *See, e.g.*, COMPTEL Sept. 22 Special Access *Ex Parte* Letter, Attach.; Letter from Karen Reidy, VP, Regulatory Affairs, COMPTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Sept. 22, 2006) (COMPTEL Sept. 22 UNE *Ex Parte* Letter); Letter from Karen Reidy, Vice President, Regulatory Affairs, COMPTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 4, 2006) (clarifying the COMPTEL Sept. 22 Special Access *Ex Parte* Letter); Letter from Brad E. Mutschelknaus, Counsel for Cbeyond *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 26, 2006); Access Point *et al.* Sept. 28 *Ex Parte* Letter, Attach.; Letter from James F. Wade, M/C Venture Partners *et al.* to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 24, 2006) Letter from Darrell Maynard, President, SouthEast Telephone, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 19, 2006) (requesting the merger be conditioned on state regulation of section 271 rates); Letter from Genevieve Morelli, Counsel for Momentum Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 13, 2006) (same); Letter from Brad E. Mutschelknaus and Edward A. Yorkgitis, Jr., Counsel for Cbeyond Communications and XO Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 27, 2006) (arguing for portability of interconnection and special access volume and term agreements); COMPTEL Condition Comments; Special Access Coalition Condition Comments; T-Mobile Condition Comments at 6; Sprint Nextel Condition Comments.

[174] *See, e.g.*, COMPTEL Sept. 22 Special Access *Ex Parte* Letter (arguing that a number of specific conditions are justified because the merger will result in the loss of AT&T as a competitor in BellSouth's region, will give the merged entity the incentive and opportunity to raise rivals' costs, and will lessen regulators' ability to engage in benchmarking); *see also passim* (addressing the loss of AT&T as a competitor in BellSouth's region); *supra* Part V.B.2.b (addressing whether the merger will increase the Applicants' incentive and/or ability to raise rivals' costs or engage in a price squeeze); *supra* V.I.2 (addressing issues related to benchmarking).

1. Relevant Markets

a. Relevant Product Markets

63. Retail enterprise customers purchase a variety of different communications services, including local voice, long distance and international voice, and data services.[175] More specifically, enterprise customers frequently purchase high-capacity transmission services,[176] including Frame Relay,[177] Asynchronous Transfer Mode (ATM),[178] Gigabit Ethernet,[179] and similar services provided via emerging technologies.[180] Retail enterprise customers also purchase other facilities and CPE.[181]

64. Consistent with Commission precedent,[182] and with the record in this proceeding, we find that the services offered to enterprise customers fall into a number of separate relevant product markets. More

[175] *See SBC/AT&T Order*, 20 FCC Rcd at 18321-22, para. 57; *Verizon/MCI Order*, 20 FCC Rcd at 18463, para. 56. AT&T provides "advanced IP and traditional network solutions for both voice and data" to business and government customers. AT&T/BellSouth Application, App. A at A-1. BellSouth provides "both standard and highly specialized communications services and products, including voice, data, Internet access, private networks, high-speed data equipment and conferencing services" to large business and government customers. *Id.* at A-3.

[176] The specific technology used by the individual enterprise customer depends on availability, needed capacity, services required, and desired service quality levels. Enterprise services could include some number of DS0 circuits or high-capacity circuits of DS1 or higher bandwidth, such as DS3, and OCn circuits. *See, e.g.*, *Triennial Review Order*, 18 FCC Rcd at 17155-56, para. 298 (discussing services typically purchased by enterprise customers). A DS0 is a two-wire basic connection, which operates at 64,000 bps, the worldwide standard speed for digitizing voice conversation using pulse code modulation. HARRY NEWTON, NEWTON'S TELECOM DICTIONARY, 273 (20th ed., 2004) (defining "DS-0") (NEWTON'S TELECOM DICTIONARY). A DS1 is a four-wire connection equivalent to 24 DS0s. A DS3 is equivalent to 28 DS1s. These circuits may be purchased by customers from state and federal tariffs. *See Triennial Review Order*, 18 FCC Rcd at 17155-56, para. 298.

[177] Frame Relay is a high-speed data service that allows local area networks to be connected across a public network. *See* TELECOMMUNICATIONS INDUSTRY ASSOCIATION, 2006 TELECOMMUNICATIONS MARKET REVIEW AND FORECAST 138 (2006) (TIA 2006 MARKET REVIEW). A T-1 provides the same speed and capacity service as a DS1. *See Triennial Review Order*, 18 FCC Rcd at 17104-05, para. 202 n.634. Similarly, a T-3 provides the same speed and capacity service as a DS3.

[178] ATM service can guarantee different quality of service levels to meet various customer needs. ATM offers higher reliability and greater capacity because it combines the advantages of circuit-switched and packet-switched networks, guaranteeing the delivery of information that is intolerant of delays, while allocating bandwidth more efficiently. *See* TIA 2006 MARKET REVIEW at 140-42.

[179] Gigabit Ethernet is a local area network (LAN) standard that allows a network to accommodate the high-bandwidth requirements of converged voice, video and data network applications. *See* TIA 2006 MARKET REVIEW at 125.

[180] Enterprises are increasing their use of IP Virtual Private Networks (IP-VPNs), and carriers are migrating to Multiprotocol Label Switching (MPLS). *See* TIA 2006 MARKET REVIEW at 134-36. MPLS is similar to other circuit-switched ATM or Frame Relay networks, except that MPLS is not dependent on a particular technology. *See, e.g.*, MPLS Resource Center, *The MPLS FAQ*, (visited July 31, 2006), *available at* http://www.mplsrc.com/faq1.shtml#MPLS%20History.

[181] *See SBC/AT&T Order*, 20 FCC Rcd at 18322, para. 57.

[182] *See SBC/AT&T Order*, 20 FCC Rcd at 18322, para. 58; *Verizon/MCI Order*, 20 FCC Rcd at 18464, para. 58.

specifically, we find that local voice, long distance voice, and data services constitute distinct product markets.

65. We have less information about the substitutability of different transmission services. While there is data in the record indicating that the number of customers taking Frame Relay is declining, while the number taking IP transmission services is increasing,[183] we do not have data on elasticities (and cross elasticities) of demand for any particular transmission services. Similarly, there is insufficient information about the migration time, price differences, and service quality differences that customers face when deciding to change from one transmission service to another. Thus, the evidence is insufficient for us to define precisely the boundaries of those transmission service markets.

66. In previous orders, the Commission also has found it appropriate to define separate relevant product markets based on the class of customer (particularly where there is "price discrimination").[184] For example, the Commission previously found that small enterprise customers fall into a separate relevant product market from mid-sized to large retail enterprise customers.[185] This distinction exists because, unlike small enterprise customers, larger businesses often contract for more complex services, including Frame Relay, virtual private networks, and enhanced 800 services.[186] Larger businesses also demand a greater volume of minutes, for which they often negotiate discounts.[187] Moreover, carriers treat small enterprise customers differently from larger business customers, both in the way they market their products and in the prices they charge.[188]

67. While the record demonstrates that service providers charge different prices to different customers for particular services, it fails to reveal any standard rules or general principles that dictate how service providers set prices for particular customers. For example, while record evidence indicates that

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[183] *See, e.g.*, AT&T/BellSouth Application App. B (discussing the growing trend in the use of IP networks); AT&T Info. Req., ATT232329 at 232329-47 (**[REDACTED]**). From 1997 through 2002, the number of Frame Relay ports more than tripled to 1.3 million; however, since then the market has shifted to IP-VPNs and frame relay port growth has dropped. TIA 2006 MARKET REVIEW at 140. From the year 2000 through the year 2005, ATM service revenues nearly tripled, from $1.1 billion to $2.70 billion. *Id.* at 143. The number of ATM ports in the United States reached a peak of 40,000 in 2005, and beginning in 2006 that number is expected to decline. *Id.* at 142. As newer technologies emerge, ATM's role as a backbone technology is changing as enterprise customers increase their use of IP-VPNs. *Id.*

Note that documents submitted by AT&T and BellSouth in response to the Commission's information request include numerical labeling in the following format: ATT-FCC-######### and BLS-FCC-######### (where # represents a digit). For convenience in citing these documents, we do not include "FCC," dashes or leading zeros. Thus, a document beginning on page ATT-FCC-000012345 and ending on page ATT-FCC-000012349 would be cited as "ATT12345-49."

[184] *See SBC/AT&T Order*, 20 FCC Rcd at 18323, para. 60; *Verizon/MCI Order*, 20 FCC Rcd at 18465, para. 60.

[185] *See SBC/AT&T Order*, 20 FCC Rcd at 18323, para. 60; *Verizon/MCI Order*, 20 FCC Rcd at 18465, para. 60; *see also Bell Atlantic/GTE Order*, 15 FCC Rcd at 14088-89, para. 102.

[186] *WorldCom/MCI Order*, 13 FCC Rcd at 18040-41, para. 26.

[187] *Id.*

[188] *See infra* note 189 (discussing how both AT&T and BellSouth adopt different marketing approaches for different classes of customers).

AT&T and BellSouth have created classes of enterprise customers for pricing, marketing, and other purposes, it appears that the two carriers use different break-points between the customer classes.[189] There is evidence in the record, however, suggesting that a number of factors influence how carriers price their services to particular types of customers.[190] These factors include the customer's total telecom spend; the types of services and technologies ordered; the customer's total employee count; the customer's total annual revenues; and whether the customer obtains customized services.[191] Further, it appears that carriers place varying degrees of importance on each of these factors, and consequently, carriers' pricing to particular enterprise customers may vary. Thus, although we find that there are

[189] Indeed, both AT&T and BellSouth use the term "enterprise" differently in the ordinary course of business. AT&T explains that it breaks down its business customers into two main categories: AT&T Business Services (ABS) (*i.e*., retail business customers that are global, large, or outside the legacy SBC 13-state region); and Business Communications Services (BCS) (*i.e*., small to medium retail business customers within the legacy SBC 13-state region).

Within ABS are the following categories: Signature; Enterprise; Select; Small Business; Global; Government; and Wholesale. "Signature" comprises a defined list of approximately 300 business customers that are typically AT&T's largest customers and generate the highest level of revenue. "Enterprise" customers generally order more than $1 million annually and include qualifying local governments and all state government customers outside the legacy SBC 13-state region, except Hawaii and Alaska. "Select" customers generally order more than $18,000 annually, have more than 85 employees, and make at least limited use of managed or data services. The "Small Business Customer" includes all business customers that do not satisfy the criteria for any of the other groups previously explained and are not "Wholesale," "Federal Government," or "Global" customers. "Global" customers include non-U.S. based customers and non-U.S. based subsidiaries of Enterprise customers. "Government" customers consist of federal government departments and agencies, the District of Columbia government, the State of Hawaii, foreign government embassies, missions, and consulates, quasi-government agencies; and services provided to government customers when AT&T is a member of a consortium or a sub-contractor. "Wholesale" customers include common carriers, Internet service providers (ISPs), and systems integrators. *See* AT&T Info. Req. at 4-6.

Within BCS are the following categories: BCS GEM; BCS Select; BCS Valued; and Affiliates. "BCS GEM" includes state and local governments, educational institutions, and medical institutions. "BCS Select" customers are expected to generate revenues of more that $7,000 per year, have more than 50 employees, or require complex services. "BCS Valued" customers are expected to spend less than $7,000 per year, have fewer than 50 employees, or require non-complex services. For financial and accounting purposes, legacy SBC separately maintains revenue information for affiliate businesses that use telecommunications services to operate their business and refers to them as "Affiliates." *See* AT&T Info. Req. at 6-7; *see also* AT&T Info. Req., ATT379971 at 379976 (**[REDACTED]**).

BellSouth breaks down its business customers into the following categories: Business Markets, which handles large business (LBS) customers and wholesale customers, and Retail Markets, which handles small business (SBS) and residential customers. LBS customers are divided into three categories: general business (less than 300 lines but total annual spending of at least $65,000); major (300-700 lines); and enterprise (700 or more lines). SBS customers are tiered according to monthly revenue. *See* BellSouth Info. Req. at 3-5. BellSouth has nothing approaching AT&T's high-end segmentations. *See* AT&T/BellSouth Application at 67.

[190] *See, e.g.*, AT&T Info. Req., ATT379971 at 379986, 379990 (**[REDACTED]**).

[191] *See supra* note 189.

separate product markets for the different enterprise customer groups, there does not appear to be industry-wide consensus as to how to differentiate one class from another.[192]

b. Relevant Geographic Markets

68. In prior merger orders, the Commission has recognized that, because a customer is unlikely to physically move its location in response to a small, but significant and nontransitory increase in the price of a communications service, each customer location constitutes a separate relevant geographic market. For reasons of administrative practicality, however, the Commission has aggregated customers facing similar competitive choices to create larger relevant geographic markets.[193] We believe this traditional approach is appropriate for enterprise customers with single locations in BellSouth's region. Unfortunately, the data in the record are not sufficiently detailed to define localized relevant geographic markets in which all enterprise customers face the same competitive choices. Accordingly, we will use the most disaggregated data possible in performing our structural analysis for different types of business services and for certain broad classes of business customers, where such data is available. In most cases, the data will be presented at the state level.[194] We do supplement our analysis with Metropolitan Statistical Area (MSA) data, however, where it is available.[195]

69. Consistent with the *SBC/AT&T Order* and *Verizon/MCI Order*, we reach a slightly different conclusion for larger, multi-location enterprise customers.[196] We find that these customers typically seek service from a provider that can serve all their locations, and generally only a few carriers serving a particular location have such capabilities. In light of the fact that there are relatively few providers that can offer a high level of ubiquitous service, we conclude that this geographic market should encompass all the geographic locations where these multi-location business customers may have a presence.[197] Thus, we find it appropriate to consider BellSouth's various states and regions as the relevant geographic market for regional, multi-location customers, while for business customers with locations throughout the

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[192] *See SBC/AT&T Order*, 20 FCC Rcd at 18323-24, para. 61; *Verizon/MCI Order*, 20 FCC Rcd at 18465-66, para. 61.

[193] *See SBC/AT&T Order*, 20 FCC Rcd at 18324, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para. 63.

[194] *See SBC/AT&T Order*, 20 FCC Rcd at 18324-25, para. 62; *Verizon/MCI Order*, 20 FCC Rcd at 18466-67, para. 62; Letter from Gary L. Phillips, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Aug. 18, 2006) (AT&T Aug. 18 *Ex Parte* Letter).

[195] We are unable to rely exclusively on MSA-level data because the data, in many cases, is based on too few observations and on small sample sizes. *See* Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 2 (filed July 31, 2006) (AT&T/BellSouth July 31 *Ex Parte* Letter) (discussing limitations in the Harte Hanks data). In light of these data limitations, we did not analyze MSA-level data that did not reflect at least thirty observations or where there were an insufficient number of MSAs to analyze.

[196] *SBC/AT&T Order*, 20 FCC Rcd at 18325, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para. 63.

[197] *See, e.g.*, *SBC/AT&T Order*, 20 FCC Rcd at 18325, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para. 63.

U.S., we will perform a structural analysis based upon available data at the national level that focuses on carriers that have the capability of serving customers throughout the country.[198]

c. Market Participants

70. We find, based on the record, that there are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, data/IP network providers, cable companies, other incumbent LECs, VoIP providers, systems integrators, and equipment vendors.[199]

2. Competitive Analysis

a. Horizontal Effects

71. *Unilateral Effects*. We conclude that, although there is evidence that horizontal concentration will increase as a result of the merger, this increase is not likely to result in anticompetitive effects for medium and large enterprise customers, given the large number of competitors already participating in this market and the high level of sophistication of mid-sized and large enterprise customers. For small enterprise customers, we similarly conclude that the merger is not likely to result in anticompetitive effects, based upon AT&T's withdrawal from this segment of the market,[200] as well as likely increased competition from cable and VoIP providers.

72. The lack of precise demand data notwithstanding, there is documentary evidence in the record that allows us to examine the Applicants' assertions regarding the degree to which they compete for particular classes of enterprise customers. Moreover, there are some data that permit us to identify (with some level of disaggregation) market participants, as well as to calculate current market shares, and to estimate changes in market share that are likely to result from the merger. In addition, the Applicants

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[198] *See SBC/AT&T Order*, 20 FCC Rcd at 18325, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para. 63.

[199] *See* AT&T/BellSouth Application at 68-82, App. B. We reject commenter suggestions that our list of market participants includes providers that do not provide actual market competition or is overly broad because we do not rely exclusively on the various types of market competitors to justify our conclusions. *See, e.g.*, Access Point *et al.* Petition at 42 (stating that there is no evidence that cable operators provide a serious competitive offering for large business customers); Cbeyond *et al.* Comments at 51-9 (arguing that competitive LECs do not account for enough competition to counter AT&T's removal from BellSouth's region and that other intermodal market participants do not qualify as significant market participants); MSV Reply at 3 (arguing that cable and wireless providers are not significant competitors in the enterprise market); ScanSource Reply at 8 (agreeing with Cbeyond *et al*. that intermodal providers such as wireless, cable, and VoIP providers are not and will not soon be significant competitors in the enterprise market); *but see* AT&T/BellSouth Reply at 36-7 (stating that cable companies are taking aim at the enterprise market and that they have significant business offerings); *id.* at 38 (arguing that VoIP competition is growing); *id.* at 39-41 (arguing that competitive LEC and interexchange carriers are providing competition in the enterprise market); Letter from Gary L. Philips, Gen. Atty and Asst. Gen. Counsel, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 06-74 at 2 (filed June 26, 2006) (AT&T June 26 *Ex Parte* Letter) (observing that ScanSource itself listed both a competitive LEC and a cable company in its list of current providers for Internet-based services). Moreover, our analysis is based on actual competition data supplied by the Applicants. *See* Appendix C.

[200] *See* AT&T/BellSouth Application at 65.

have provided internal documents about their business operations, as well as a number of studies that provide market share data about the carriers serving certain markets.[201]

73. The Applicants contend that they generally compete at opposite ends of the retail enterprise market.[202] The Applicants argue that BellSouth provides its local network services to primarily small and medium sized enterprise customers,[203] whereas AT&T focuses on serving large enterprise and government customers.[204] According to the Applicants, their respective enterprise businesses are largely complementary, and thus, the merger will have little competitive impact upon the enterprise market.[205]

74. Based upon review of internally produced documents, we find that the two companies in fact compete for certain classes of customers in the enterprise market.[206] Specifically, we find that BellSouth competes to a certain extent with AT&T for large enterprise customers[207] and that conversely, AT&T

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[201] *See* AT&T Info. Req., Exh. 5.13.

[202] *See* AT&T/BellSouth Application at 64-65, 67 (stating that AT&T's focus is on customers with the most geographically dispersed, complicated needs, while BellSouth is focused on in-region customers and voice and data requirements of other large business customers with operations in-region); AT&T/BellSouth Boniface Decl. at para. 15 (explaining that AT&T's focus is on the Fortune 1000 customers). The Applicants do not contend that they do not compete at all for the same customers, but suggest that they compete less than SBC and AT&T did in the previous merger. *See* AT&T/BellSouth Application at 67; AT&T/BellSouth Reply at 42. Additionally, the Applicants suggest that they provide a different suite of products. *See* AT&T/BellSouth Application at 67.

[203] *See* AT&T/BellSouth Carlton/Sider Decl. at para. 89. The Applicants further assert that BellSouth is a limited competitor to AT&T for large, national enterprise customers because it lacks out-of-region assets and strategic focus. *See* AT&T/BellSouth Application at 63; AT&T/BellSouth Boniface Decl. at paras. 5-8, 11-15; *see also id.* at para. 22 (discussing that BellSouth competes to service out-of-region large enterprise customers with operations that are predominantly in-region); AT&T/BellSouth Reply at 42 (noting that opponents of the merger do not dispute that BellSouth has no assets, facilities, or sales offices outside its region or plans to expand); AT&T June 26 *Ex Parte* Letter at 3 (stating that BellSouth's limited out-of-region attempts have "never positioned it to compete in any meaningful way to serve the primary telecom requirements of national customers"); *but see* ScanSource Reply at 3 (asserting that the merger will eliminate the possibility of AT&T and BellSouth competing out-of-region against each other).

[204] *See* AT&T/BellSouth Carlton/Sider Decl. at para. 88.

[205] *See* AT&T/BellSouth Application at 64 (noting that the competitive overlap between AT&T and BellSouth is narrower than that presented in the SBC/AT&T merger).

[206] *See, e.g.*, AT&T Info. Req., ATT111961 at 111967, 111974 (**[REDACTED]**); Letter from Peter F. Martin, Vice President, Regulatory and External Affairs, BellSouth Telecommunications, Inc., to Reece McAlister, Executive Secretary, Georgia Public Service Commission, G.P.S.C. Docket No. 20729, Attach. at para. 51 (filed May 19, 2005) (filing for retail deregulation from the Georgia Public Service Commission and stating, among other things, that AT&T is a competitor in the retail enterprise market); *see also* Cbeyond *et al.* Aug. 22 *Ex Parte* Letter at 6-7 (arguing that **[REDACTED]**); Letter from Denise N. Smith, Counsel for Cbeyond *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 1 (filed Aug. 31, 2006) (arguing that the merger will reduce competition in the retail enterprise market); *but see* AT&T/BellSouth Sept. 1 Special Access *Ex Parte* Letter at 7 (arguing that Cbeyond *et al*. misrepresent the evidence).

[207] *See, e.g.*, AT&T Info. Req., ATT343317 at 34330 (**[REDACTED]**); BellSouth News Release, "BellSouth to Launch Nationwide Business Data Service" (Oct. 10, 2005), *available at* http://bellsouth.mediaroom.com/index.php?s=press_releases&item=1445 (announcing BellSouth's internetworking

(continued….)

competes with BellSouth for small and mid-sized enterprise customers.[208] Documents clearly show that BellSouth has achieved some degree of success with its entry into the large enterprise market, especially in its own region. Documents in the record further show that AT&T has a presence in the small and mid-sized enterprise market, and that it competes for a wide range of customers.

75. Using data submitted by the Applicants, staff calculated Herfindahl-Hirschman Indices (HHIs),[209] at the state level and, where possible, the MSA-level, for local voice, long distance voice, and data enterprise services. In keeping with our conclusions about the relevant geographic markets, this analysis is conducted by examining the competitive alternatives of enterprise customers with single or multiple operations within the BellSouth franchise area, and also conducting a separate examination of the competitive choices for enterprise customers having multiple operations throughout the country.

76. In general, the market share calculations indicate a high level of concentration in most franchise areas for many relevant services for *large* enterprise customers with significant operations in BellSouth's region after the merger.[210] Within BellSouth's region, BellSouth's median statewide market share for local voice services increases from **[REDACTED]** percent to **[REDACTED]** percent.[211] The median

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agreement with Sprint Nextel to link businesses with multiple locations nationwide); BellSouth News Release, "BellSouth Launches Nationwide Business Data Service" (Mar. 20, 2005), *available at* http://bellsouth.mediaroom.com/index.php?s=press_releases&item=2831 (announcing BellSouth's launch of its nationwide business data service "to allow internetworking of multiple access methods across carrier networks for a consistent customer experience in any service location"); BellSouth Info. Req., BS24898 at 24931-37 (**[REDACTED]**); *but see* AT&T/BellSouth Sept. 1 Special Access *Ex Parte* Letter at 8 n.36 (citing AT&T/BellSouth Boniface Decl. for the contention that BellSouth's agreement with Sprint is an attempt to "stem losses from large business customers who increasingly demand MPLS services across all of their locations, but will not provide BellSouth with the ability to become a significant competitor for enterprise customers whose locations are not predominantly within [the BellSouth 9-state region]").

[208] *See, e.g.*, BellSouth Info. Req., BS39325 at 39325 (**[REDACTED]**); BellSouth Info. Req., BS46278 at 46279 (**[REDACTED]**).

[209] The HHI is calculated as the sum of the squares of the market shares of each firm participating in a relevant market. The HHI can range from nearly zero in the case of an atomistic market to 10,000 in the case of a pure monopoly. Because the HHI is based on the squares of the market shares of the participants, it gives proportionately greater weight to carriers with larger market shares. Changes in market concentration are measured by the change in the HHI. *See DOJ/FTC Guidelines* § 1.5.

[210] Our analysis of BellSouth's position in the large, mid-sized, and small retail enterprise services markets both before and after the merger is based upon analysis of certain data from Harte Hanks, which were supplied by the Applicants. Our analysis of BellSouth's position in the large, mid-sized, and small retail enterprise services markets both before and after the merger is based upon analysis of third-party data supplied by AT&T. These data are based on **[REDACTED]**. The analysis may overstate or understate carriers' competitive significance because our unit of measurement is customer counts rather than revenues or other, more traditional, metrics. Moreover, these business segments do not generally conform to the categorization schemes used by AT&T or BellSouth and thus may overstate or understate the actual level of concentration in each geographic market. *See supra* note 189. In general, we limit our analysis to geographic areas with at least 30 observations. We exclude the "UNSPECIFIED" category from our analysis because it represents incomplete responses. *See* AT&T/BellSouth July 31 *Ex Parte* Letter at 1-3; AT&T/BellSouth Aug. 18 *Ex Parte* Letter, Attach. (Syndicated Data); AT&T/BellSouth Aug. 18 *Ex Parte* Letter at 1.

[211] Appendix C, Table 1A. BellSouth's pre-merger market share for local service ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. *Id.*

(continued….)

post-merger HHI for these services in BellSouth's entire region is **[REDACTED]**.[212] BellSouth's median statewide market share for long distance voice services increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[213] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]**.[214] For Frame Relay services, BellSouth's median statewide market share increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[215] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]**.[216] For T-1 services, BellSouth's median statewide market share increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[217] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]**.[218]

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We present the range for BellSouth's pre- and post- merger market shares for MSA-level data for each product where sufficient data are available. *See* Appendix C, Tables 4A to 5B. BellSouth's pre-merger market share for local service ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 4A; *see also supra* note 195.

[212] Appendix C, Table 1A. We report the median post-merger HHI for BellSouth's territory for each product for which there are sufficient data. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED]**, and the maximum is **[REDACTED]** with an associated delta of **[REDACTED]**.

We present post-merger HHIs for the MSA data for each product where sufficient data are available. *See* Appendix C, Tables 4A-5C. The post-merger HHIs for these services, based on MSA data, range from **[REDACTED]** to **[REDACTED]**. Appendix 4A.

[213] Appendix C, Table 1B. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 4B.

[214] Appendix C, Table 1B. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED]**, and the maximum is **[REDACTED]** with an associated delta of **[REDACTED]**. *Id.* The post-merger HHIs for these services, based on MSA data, range from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 4B.

[215] Appendix C, Table 1C. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 4C.

[216] Appendix C, Table 1C. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED]**, and the maximum is **[REDACTED]** with an associated delta of **[REDACTED]**. *Id.* The post-merger HHIs for these services, based on MSA-level data, range from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 4C.

[217] Appendix C, Table 1D. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 4D.

[218] The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED]**, and the maximum is **[REDACTED]** with an associated delta of **[REDACTED]**. The post-merger HHIs for these services, based on MSA data, range from **[REDACTED]** to **[REDACTED]**.

77. Similarly, the market share calculations indicate a high level of concentration in most franchise areas for many relevant services for *mid-sized* enterprise customers with significant operations in BellSouth's region after the merger.[219] BellSouth's median statewide market share for local voice services increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[220] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]**.[221] BellSouth's median statewide market share for long distance voice services increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[222] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]**.[223] For Frame Relay services, BellSouth's median statewide market share increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[224] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]**.[225] For T-1 services, BellSouth's median statewide market share increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[226] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]**.[227]

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[219] *See supra* note 210.

[220] Appendix C, Table 2A. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 5A.

[221] Appendix C, Table 2A. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED]**, and the maximum is **[REDACTED]** with an associated delta of **[REDACTED]**. *Id.* The post-merger HHIs for these services, based on MSA data, range from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 5A.

[222] Appendix C, Table 2B. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 5B.

[223] Appendix C, Table 2B. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED]**, and the maximum is **[REDACTED]** with an associated delta of **[REDACTED]**. *Id.* The post-merger HHIs for these services, based on MSA data, ranges from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 5B.

[224] Appendix C, Table 2C. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. *Id.* We do not report MSA-level data for this service because there is sufficient data for only a few MSAs.

[225] Appendix C, Table 2C. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED]**, and the maximum is **[REDACTED]** with an associated delta of **[REDACTED]**. *Id.*

[226] Appendix C, Table 2D. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 5C.

[227] Appendix C, Table 2D. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED]**, and the maximum is **[REDACTED]** with an associated delta of **[REDACTED]**. *Id.* The

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78. Market share data pertaining to *small* enterprise customers within BellSouth's franchise area also indicate a high level of concentration for certain services in particular markets. Specifically, we consider data pertaining to local and long distance voice services for small enterprise customers.[228] BellSouth's median statewide market share for local voice services increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[229] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]**.[230] BellSouth's median statewide market share for long distance voice services increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[231] The median post-merger HHI for these services in BellSouth's region is **[REDACTED]**.[232]

79. The data indicate that the merger will result in a smaller increase in market concentration for enterprise customers having multiple operations located both inside and outside of BellSouth's region.[233] For example, for long distance voice services provided to these multi-location customers,[234] AT&T's national market share for services provided to the **[REDACTED]** customer class increases from **[REDACTED]** percent to **[REDACTED]** percent.[235] The HHI for these services increases from **[REDACTED]** to only **[REDACTED]**.[236] Similarly, AT&T's national market share for services

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post-merger HHIs for these services, based on MSA data, range from **[REDACTED]** to **[REDACTED]**. Appendix C, Table 5C.

[228] Given the difficulty in obtaining accurate data about the various customer groups, it is likely that there is an overlap of data between consumer groups. For example, as noted above, BellSouth explains that its small business category includes small business and residential customers. BellSouth Info. Req. at 3. In light of this, BellSouth's data about small enterprise customers are likely to contain data from small business customers, which are discussed in our section on mass market customers. *See infra* Part V.D (Mass Market Competition). Additionally, we note that, although small enterprise customers also purchase data services, we do not present summary statistics for these services because there is an insufficient number of observations for these services. *See supra* note 210.

[229] Appendix C, Table 3A. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market share ranges from **[REDACTED]** to **[REDACTED]**. We do not report MSA-level data for this service because there is sufficient data for only a few MSAs. *See supra* note 210.

[230] Appendix C, Table 3A. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED]**, and the maximum is **[REDACTED]** with an associated delta of **[REDACTED]**. *Id.*

[231] Appendix C, Table 3B. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED]**. Its post-merger market shares range from **[REDACTED]** to **[REDACTED]**. *Id.* We do not report MSA-level data for this service because there is sufficient data for only a few MSAs. *See supra* note 210.

[232] Appendix C, Table 3B. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED]**, and the maximum is **[REDACTED]** with an associated delta of **[REDACTED]**. *Id.*

[233] Our analysis of AT&T's and BellSouth's market position for mid-sized and large enterprise customers with operations both in and out of its region is based upon data reported in AT&T internal reports on **[REDACTED]**, and the **[REDACTED]**. *See* AT&T Info. Req., Exh. 5.13 Excerpt **[REDACTED]** at 24; *id*. at 28. The carrier market share data are based on national revenue data for the **[REDACTED]**. Appendix C, Table 6.

[234] The study does not define "long distance." *See* AT&T Info. Req., Exh. 5.13 Excerpt **[REDACTED]** at 11.

[235] Appendix C, Table 6.

[236] *Id.*

provided to the **[REDACTED]** customer class increase from **[REDACTED]** percent to **[REDACTED]**. The HHI for services provided to this customer class increases from **[REDACTED]** to **[REDACTED]**.[237]

80. For enterprise customers with locations predominantly in BellSouth's region, we find that myriad providers are prepared to make competitive offers. We further find that available market share data does not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless usage.[238] Foreign-based companies, competitive LECs, cable companies, systems integrators, and equipment vendors and value-added resellers are also providing services in this market.[239] Similarly, we find that market shares may misstate the competitive significance of existing firms and new entrants.[240] Large interexchange carriers and the BOCs currently have the biggest share of the market, but they are not the only providers competing for these customers. We find that a large number of carriers compete in this market (even though the market shares of some may be small), and that these multiple competitors ensure that there is sufficient competition.[241] For example, although AT&T/BellSouth's post-merger market share for long distance services provided to mid-sized enterprise customers will be **[REDACTED]** percent in **[REDACTED]**, five competitors each individually capture from **[REDACTED]** percent to **[REDACTED]** percent of the market, with the rest of the other competitors capturing the remaining **[REDACTED]** percent.[242] Thus, we find that sufficient enterprise competition remains within BellSouth's region to ensure that the merger is not likely to result in anticompetitive effects for medium and large in-region enterprise customers.

81. Although we find that medium-sized and large enterprise customers with national, multi-location operations do not have as many competitive options, we nevertheless conclude that this merger is unlikely to cause competitive harm to this market.[243] First, BellSouth's pre-merger presence in this market is

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[237] *Id.*

[238] *See* AT&T/BellSouth Aug. 18 *Ex Parte* Letter.

[239] *See* AT&T/BellSouth Application at 69-82; *id*., App. B ("Description of Competitors"). As discussed in prior Commission orders, there are numerous types of business models supporting competition for enterprise customers. Some competitive LECs market integrated voice and data services to enterprise customers, primarily through leasing high-capacity loops from the BOCs as UNEs or special access and then using the loops to provide a bundled offering including voice, data and Internet access. *See Triennial Review Order*, 18 FCC Rcd at 17014, para. 48 n.159 (observing that companies such as ITC^Deltacom, NewSouth and Cbeyond have focused on providing integrated services to the business market).

[240] *See supra* note 210.

[241] On average, there will be **[REDACTED]** providers of long distance services provided to mid-sized enterprise customers and **[REDACTED]** providers of long distance services provided to large enterprise customers. The corresponding figures for T1 services are **[REDACTED]** and **[REDACTED]**, respectively. We calculated this data based on the attachments to the AT&T Aug. 18 *Ex Parte* Letter. *See* AT&T Aug. 18 *Ex Parte* Letter, Attach.

[242] In the case of large enterprises, AT&T/BellSouth's post-merger market share for long distance services will be **[REDACTED]**% in **[REDACTED]**, but five competitors each individually capture from **[REDACTED]**% to **[REDACTED]**% of the market, and the remaining competitors account for the remaining **[REDACTED]**% of the market. We calculated this data based on the attachments to the AT&T Aug. 18 *Ex Parte* Letter. *See* AT&T Aug. 18 *Ex Parte* Letter, Attach.

[243] We reject commenters' assertion that, if the Commission finds that little current competition exists between the two companies, the merger nonetheless eliminates BellSouth as a potential competitor in the large enterprise market because we find that mid-sized and large enterprise customers tend to be sophisticated purchasers and are able to

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negligible, and thus, the post-merger market will have virtually as many competitors as before.[244] Second, as further discussed below, given their size and geographically-dispersed operations, these customers are highly sophisticated and negotiate for significant discounts.[245] We find that systems integrators and the use of emerging technologies, including various Internet Protocol enabled (IP-enabled) technologies, are likely to make this market more competitive, and that this trend is likely to continue in the future.[246]

82. As noted above, we find, consistent with the Commission's conclusions in the *SBC/AT&T Order* and the *Verizon/MCI Order*, that mid-sized and large enterprise customers tend to be sophisticated purchasers of communications services, whether they are located solely within BellSouth's region, or have locations both inside and outside BellSouth territory. These users tend to make their decisions about communications services by using either communications consultants or employing in-house communications experts. This is significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because it shows that these users are likely to make informed choices based on expert advice about service offerings and prices. Thus, so long as competitive choices remain in this market, these classes of customers should seek out best-priced alternatives, and the merged entity should not be able to raise and maintain prices above competitive levels.[247]

83. Finally, although small enterprise customers may not possess the same level of sophistication as their larger counterparts, we nonetheless find that the merger is not likely to result in anticompetitive effects for this group of customers. Consistent with the Commission's findings in the *SBC/AT&T Order*, we base our conclusion largely on the fact that AT&T has ceased to market to these customers outside the former SBC 13-state region.[248] As discussed elsewhere in this Order, evidence in this proceeding clearly indicates that AT&T determined that these types of services no longer presented a viable business opportunity, and that it has taken steps to close down its operations.[249] Thus, AT&T's gradual withdrawal from this market is due to its own internal decisions and would have occurred notwithstanding its acquisition of BellSouth. Moreover, we find that intermodal competition from cable telephony and mobile wireless service providers, and providers of certain VoIP services will likely continue to provide these customers with viable alternatives.[250]

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negotiate for significant discounts. *See, e.g.*, Access Point *et al.* Petition at 7-13; ScanSource Reply at 3-5; *but see infra* para. 82.

[244] *See supra* para. 79.

[245] *See* AT&T/BellSouth Application at 64, 68; AT&T/BellSouth Carlton/Sider Decl. at para. 14.

[246] *See, e.g.*, AT&T/BellSouth Application at 78-9.

[247] *See SBC/AT&T Order*, 20 FCC Rcd at 18332-33, para. 75; *Verizon/MCI Order*, 20 FCC Rcd at 18474, para. 75.

[248] *See SBC/AT&T Order*, 20 FCC Rcd at 18333, para. 76; *see also* AT&T/BellSouth Application at 65; AT&T/BellSouth Boniface Decl. at para. 30 (noting that AT&T is much less active in competing for smaller customers than it is in competing for larger business customers); AT&T/BellSouth Carlton/Sider Decl. at para. 88 (stating that AT&T is selective in its approach to small businesses).

[249] *See infra* Part V.D (Mass Market Competition).

[250] *See* AT&T/BellSouth Application at 81-82; AT&T/BellSouth Reply at 36-38; *see also SBC/AT&T Order*, 20 FCC Rcd at 18333, para. 76; *Verizon/MCI Order*, 20 FCC Rcd at 18474-75, para. 76.

84. In conclusion, although we find overlap between the Applicants' enterprise operations, we do not find that the increase in concentration resulting from the merger is likely to result in anticompetitive effects in this market. Thus, we reject commenters' claim that the merger will have adverse competitive effects because AT&T and BellSouth already compete to a significant degree for the same customers, and thus the merger will cause an increase in the merged entity's market share and in market concentration.[251] As discussed above, the record shows that, for all groups of business customers, there are multiple services and multiple providers that can meet their demand.[252]

85. *Coordinated Effects*. We find that the merger will not increase the likelihood of tacit collusion and other coordinated behavior in relevant markets. On the contrary and consistent with the Commission's conclusions in the *SBC/AT&T Order* and the *Verizon/MCI Order*, we find that, even if competitors reached tacit agreements in the enterprise market, there are strong incentives to cheat and scant ability to detect and punish such cheating. Specifically, the high value of enterprise contracts will create significant incentives for many competitors – particularly those with smaller market shares – to cheat on tacit agreements. Moreover, detection and punishment would be significantly frustrated by the facts that enterprise customers tend to be sophisticated and knowledgeable (often with the assistance of consultants), that contracts are typically the result of RFPs and are individually-negotiated (and frequently subject to non-disclosure clauses), that contracts are generally for customized service packages, and that the contracts usually remain in effect for a number of years. Accordingly, we find no basis to conclude that the merger increases the likelihood of tacit collusion or other coordinated effect in the relevant markets in BellSouth's region.[253]

86. *Mutual Forbearance*. We reject commenters' assertions that this merger would reinforce the BOCs' historical reluctance to compete with each other.[254] First, consistent with the Commission's findings in the *SBC/AT&T Order* and the *Verizon/MCI Order*, we find it highly unlikely that the companies would engage in mutual forbearance with respect to large national enterprise customers, given the significant revenue opportunities associated with serving those customers. Second, even if commenters are correct with respect to medium and large in-region enterprise customers, we find, as discussed above, that there will be sufficient competition based on the competitors that remain in the market.[255] Finally, with respect to small enterprise customers, we have already discussed AT&T's announced gradual withdrawal from this market, and we conclude, based on the record, that it was not exerting significant competitive pressure with respect to those customers prior to the announcement of the merger. In those markets, as discussed above, we find that intermodal competition from cable telephony

[251] *See* Access Point *et al.* Petition at 10-11; Cbeyond *et al.* Comments at 51-2; MSV LLC Reply at 4. We likewise reject calls for a "fresh look" condition. *See, e.g.*, ScanSource Sept. 22 *Ex Parte* Letter, Attach. at 9; ScanSource Sept. Sept. 28 *Ex Parte* Letter; *but see* AT&T Oct. 3 *Ex Parte* Letter.

[252] We note that filings in this proceeding offer the opinions of various enterprise customers expressing either support for, or concern about, the proposed merger. *See, e.g.*, AT&T/BellSouth Reply, App. B (providing statements from a number of enterprise customers on the competitive nature of the market). We conclude that none of these filings provide representative or reliable evidence regarding enterprise competition for any particular class or classes of enterprise customers nor do they provide clear evidence regarding particular services offered in particular geographic markets. Thus, we do not rely on any of these filings in our analysis.

[253] *See SBC/AT&T Order*, 20 FCC Rcd at 18334, para. 78; *Verizon/MCI Order*, 20 FCC Rcd at 18475-76, para. 79.

[254] *See, e.g.*, New Jersey Ratepayer Advocate Comments at 17; ScanSource Reply at 10.

[255] *See SBC/AT&T Order*, 20 FCC Rcd at 18334-35, para. 79; *Verizon/MCI Order*, 20 FCC Rcd at 18478, para. 80.

service providers, mobile wireless service providers, and VoIP service providers will likely continue to provide these customers with viable alternatives.[256]

b. Vertical Effects

87. We reject commenter concerns about their continued ability to serve enterprise customers in BellSouth's franchise region because the merger will make them more reliant on BellSouth's facilities.[257] We address these arguments in our analysis of the wholesale special access market, and in other sections of this Order.[258] Thus, we find that the merger is not likely to result in anticompetitive effects for wholesale inputs used to serve enterprise customers.

D. Mass Market Telecommunications Competition

88. In this section, we consider the effects of the proposed merger on local service; long distance service; and bundled local and long distance service provided to mass market customers. As discussed below, we find that AT&T's acquisition of BellSouth is not likely to result in anticompetitive effects for mass market services.

1. Relevant Markets

a. Relevant Product Markets

89. Based on the record in this proceeding and consistent with the *SBC/AT&T Order* and the *Verizon/MCI Order*,[259] we identify three relevant product markets for our mass market analysis: (1) local service; (2) long distance service; and (3) bundled local and long distance service.[260] Also, consistent with those orders, we consider both the demand for "access" and demand for "usage" when defining our relevant product markets.[261]

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[256] *See supra* para. 83.

[257] *See, e.g.*, ACCESS Comments at 1-3; Cbeyond *et al.* Comments at 88-90; TWTC Petition at 32-49.

[258] *See supra* Part V.B (Wholesale Special Access Competition); *infra* Part V.F (Internet Backbone Competition).

[259] *SBC/AT&T Order*, 20 FCC Rcd at 18336-46, paras. 82-99; *Verizon/MCI Order*, 20 FCC Rcd at 18477-87, paras. 83-100. In prior proceedings, the Commission has defined mass market customers as residential and small business customers that purchase standardized offerings of communications services. *See, e.g.*, *WorldCom/MCI Order*, 13 FCC Rcd at 18040, para. 24; *SBC/Ameritech Order*, 14 FCC Rcd at 14746, para. 68. The Commission addresses international mass market voice services, along with other international services in Part V.G of this Order. The Commission addresses mass market broadband services in Part V.E.

[260] Fones4All, a competitive wireline carrier, urges the Commission to recognize an additional product market of low income consumers eligible for universal service support. Fones4All Comments at 8-10. We are not persuaded that the availability of universal service support to all qualified eligible telecommunications carriers (ETCs) affects our competitive analysis sufficiently to warrant a separate product market.

[261] *SBC/AT&T Order*, 20 FCC Rcd at 18336-37, para. 84; *Verizon/MCI Order*, 20 FCC Rcd at 18477-78, para. 85. As the Commission explained, a consumer requires "access" in order to connect to a communications network, whether it be a wireline telephone network, a mobile wireless network, or the public Internet. Because a mass market consumer today can choose one or more access providers, his demand for usage – *i.e.*, how much of a

(continued….)

(i) Local Service

90. Based on record evidence, and consistent with the *SBC/AT&T Order* and the *Verizon/MCI Order*, we define the market for local service to include not only wireline local service,[262] but also facilities-based VoIP service, and circuit-switched cable telephony service to the extent that consumers view these as close substitutes for wireline local service. In addition, the record evidence suggests that, for certain categories of customers, mobile wireless service is viewed as a close substitute to wireline local service.

91. *Competitive LECs.* Competitive wireline carriers in the AT&T and BellSouth franchise areas provide local service to mass market consumers.[263] Most of these carriers provide service using a mix of their own facilities and the incumbent wireline carrier's facilities.[264] Some companies resell communications service provided entirely over the incumbent's facilities.[265]

92. *VoIP*. VoIP services are being provided to consumers in a variety of ways today. The degree to which particular VoIP services are viewed as close substitutes to other local services varies depending upon the characteristics of the VoIP offering. Consistent with the *SBC/AT&T Order* and the *Verizon/MCI Order*, we divide VoIP providers into two general types: (1) facilities-based VoIP providers and (2) "over-the-top" VoIP providers.[266] As discussed below, we find that mass market consumers view facilities-based VoIP services as sufficiently close substitutes for local service to include them in the

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service he actually consumes – will be determined by the set of access providers he has chosen, the prices and terms set by those access providers, and other personal characteristics of the consumer. Thus, for example, if a consumer has a wireless phone, a wireline phone, and a broadband connection plus a VoIP subscription, he can make a long distance call using either phone or through the broadband connection. To the extent that consumers view these choices as reasonable substitutes, they are in the same product market for purposes of our analysis. *See EchoStar/DirecTV Order*, 17 FCC Rcd at 20606, para. 106.

[262] One commenter asserts that switched wireline access dedicated to voice communication is in such steep decline that it is no longer a competitively significant product market. Jonathan L. Rubin Comments at 9. As discussed herein, we agree that there are many potential substitutions for that method of providing mass market local or long distance communications services.

[263] AT&T/BellSouth Application at 82, 92; BellSouth Info. Req., Exh. 36.f; *Local Telephone Competition: Status as of December 31, 2005*, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (July 2006), at Table 7.

[264] *See, e.g.,* Cbeyond *et al.* Comments at 35-40.

[265] *See, e.g.,* Resale Joint Commenters Comments at 5-7.

[266] We define facilities-based VoIP providers as providers that own and control the last mile facility between the customer's home and the provider's network. Facilities-based VoIP providers include the cable VoIP providers. These VoIP providers typically have dedicated facilities, transport calls over a private network they own or lease, and may have a backup power source in the event of a service disruption. VoIP providers not meeting this definition are referred to as "over-the-top" VoIP providers. Examples of over-the-top VoIP providers include Vonage, Skype, and AT&T (by means of its CallVantage service). These providers require the end user to obtain broadband transmission from a third-party provider, and the extent to which they rely on their own facilities varies from provider to provider. *SBC/AT&T Order*, 20 FCC Rcd at 18337-40, paras. 86-88; *Verizon/MCI Order*, 20 FCC Rcd at 18479-81, paras. 87-89.

relevant product market. However, the record is insufficient to determine which over-the-top VoIP services should be included in the relevant product market.

93. Based upon the information in this record, we find that facilities-based VoIP services clearly fall within the relevant service market for local services. Facilities-based VoIP services have many similar characteristics to traditional wireline local service.[267] There is also significant evidence indicating that mass market subscription to cable-based VoIP continues to increase nationwide as cable operators continue to roll out these services throughout their footprints.[268] In addition, the record indicates that the Applicants view cable-based VoIP as their primary competitive threat in the mass market, and consider the prospect of consumer substitution to cable-based VoIP when devising their strategies and service offers.[269]

94. As with the SBC/AT&T and Verizon/MCI proceedings, the record here is inconclusive regarding the extent to which various over-the-top VoIP services should be included in the relevant product market for local services. The varieties of over-the-top VoIP differ significantly in their service characteristics, including quality of service and price.[270] The extent to which consumers view these

[267] For example, a facilities-based VoIP provider will generally provide installation of necessary equipment, which is connected to the consumer's home inside wiring. This permits the use of all of the household's traditional wireline and cordless handsets. *See, e.g.*, Cox Communications, Digital Telephone Frequently Asked Questions (visited Sept. 6, 2006) http://www.cox.com/telephone/FAQs.asp#P25_5970.

[268] *See, e.g.*, Letter from Cody J. Harrison, Advance/Newhouse Communications *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket 06-74 at 3 (filed Sept. 27, 2006) (Cable Companies Sept. 27 *Ex Parte* Letter) (stating "[t]here is no doubt that cable is offering real, facilities-based competition to incumbent [LECs] across the country, including AT&T and BellSouth. Consumers are reaping the benefit of this competition and these benefits are likely to expand significantly."); *Id.* at 2 (describing IP telephony offerings by Advance/Newhouse Communications, Cablevision Systems Corporation, Charter Communications, Cox Communications, and Insight Communications Company). In December 2004, Time Warner completed its launch of residential IP telephony service across the country. *See* Time Warner Inc., Highlights: A Quarterly Overview of Key Developments at Time Warner and its Businesses, Press Release (Feb. 3, 2005) http://www.timewarner.com/corp/newsroom/pr/0,20812,1024486,00.html. As of June 2006, Time Warner's Digital Phone subscriber base was 1.6 million, an increase of 990,000 from June 2005. *See* Time Warner Inc., SEC Form 10-Q at 23-24 (filed Aug. 2, 2006), *available at* http://www.sec.gov/Archives/edgar/data/1105705/000095014406007216/g01998e10vq.htm.

[269] *See, e.g.*, AT&T Info. Req., ATT4537; ATT4718 at 4722; ATT316635-652; BellSouth Info. Req., BS196769-880; BS264001 at 264006-09; BS268403-18. In light of such competition, certain cable companies argue that this merger should be conditioned on the resolution of certain IP-enabled voice network interconnection, intercarrier compensation, and transiting issues. *See* Cable Companies Sept. 27 *Ex Parte* Letter at 9-13; Cable Companies Condition Comments; Letter from Michael H. Pryor, Counsel for Advance/Newhouse *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Dec. 11, 2006). We disagree. These issues are the subject of ongoing Commission proceedings, and are not appropriately addressed in the context of this merger review. *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*IP-Enabled Services NPRM*); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005); *see generally* Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 3, 2006).

[270] *See SBC/AT&T Order*, 20 FCC Rcd at 18338, para. 87; *Verizon/MCI* Order, 20 FCC Rcd at 18479-80, para. 88.

services as substitutes for traditional wireline local service may vary based on these differences.[271] In addition, the requirement that a consumer have broadband access to be able to use certain over-the-top VoIP services affects its substitutability. Specifically, for consumers who do not already have broadband access service, the subscription fee to obtain it must be added to the subscription fee for the over-the-top VoIP service when weighing it against the price of traditional wireline local service, which could make substitution uneconomical.[272] Even for consumers who have broadband service, their willingness to subscribe to over-the-top VoIP service instead of wireline local service will vary with the attributes of the service and their willingness to trade service characteristics for lower prices. Although it is likely that some portion of mass market consumers view certain over-the-top VoIP services as substitutes for wireline local service, there is insufficient information in our record to determine which types of over-the-top VoIP services should be included in the product market. For this reason, and in order to be conservative, we decline to include these services for purposes of our product market analysis in this proceeding.

95. *Mobile Wireless Service*. Consistent with the *SBC/AT&T Order* and the *Verizon/MCI Order*, we find that mobile wireless service should be included in the local services product market when it is used as a complete substitute for all of a consumer's voice communications needs.[273] On the one hand, increasing numbers of mass market consumers are subscribing to mobile wireless services, thus providing an additional access option for making local telephone calls.[274] On the other hand, we recognize that the average cost for mobile wireless service appears to be higher than for wireline local service.[275] In

[271] *See, e.g.*, Cbeyond *et al*. Comments at 49-50; Consumer Federation *et al*. Cooper/Roycroft Decl. at 15-16; New Jersey Ratepayer Advocate Comments, Declaration of Susan M. Baldwin and Sarah M. Bosley (New Jersey Ratepayer Advocate Baldwin/Bosley Decl.) at paras. 116-17.

[272] About 30 million U.S. households (approximately 28%) subscribed to a broadband service in 2005. U.S. General Accountability Office, Broadband Deployment is Extensive throughout the United States, but it is Difficult to Address the Extent of Deployment Gaps in Rural Areas, GAO-06-426 at 10 (May 2006), *available at* http://www.gao.gov/new.items/d06426.pdf. These consumers may be more willing to consider over-the-top VoIP services than consumers without broadband service.

[273] The Commission previously found that, although wireline services do not have a price constraining effect on mobile wireless services, some consumers may find that mobile wireless services are a good substitute for wireline services. *SBC/AT&T Order*, 20 FCC Rcd at 18340-42, paras. 89-90; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21558, paras. 73-74. As we discuss below, we include mobile wireless services in the long distance service market to some extent as well.

[274] *See, e.g.*, Clyde Tucker *et al.*, Household Telephone Service and Usage Patterns in the United States in 2004 at Figures 1, 2, Table B, *available at* http://www.bls.gov/ore/pdf/st040130.pdf (Household Telephone Survey).

[275] The Commission reports that the average monthly household expenditure for billed wireline local telephone service is $37, and the average for wireless service is $41. Industry Analysis and Technology Division, FCC, *Trends in Telephone Service* at 3-4 (Apr. 2005) (*Trends in Telephone Service*), *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend605.pdf. While there are a few carriers offering service plans designed to compete with wireline local service, the two largest, Leap Wireless and MetroPCS, served a combined total of 3.7 million customers at the end of 2005 and only offered service in limited portions of 22 states. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, para. 209 (2006) (*Eleventh CMRS Competition Report*). The price of a mobile wireless plan offered by a national carrier with sufficient anytime minutes to accommodate the typical

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addition, while most customers making wireline local calls face a per-minute cost of zero (because they can make unlimited local calls for a flat monthly fee), many wireless customers must pay per-minute fees when making local calls with their wireless phones.[276]

96. The record reveals that growing numbers of subscribers in particular segments of the mass market are choosing mobile wireless service instead of wireline local service. Evidence indicates that, overall, approximately 6 percent of households have chosen to rely upon mobile wireless service for all of their communications needs.[277] Recent research sponsored by the Bureau of Labor Statistics reveals that, for certain segments of the U.S. population, a significantly higher percentage of households rely solely on mobile wireless services (*e.g.*, renters (11.8 percent), adults between the ages of twenty-three and thirty-four (9.6 percent), and single individuals (10.5 percent)).[278] We also find that AT&T and BellSouth consider this growing substitution in developing their marketing, research and development, and corporate strategies for local service offerings.[279] Finally, we base our finding on the Commission's determination in the *Sprint/Nextel Order* that Sprint/Nextel after the merger would likely take actions that would increase intermodal competition between wireline and mobile wireless services,[280] as well as Sprint's plans to focus its efforts on encouraging consumers to "cut the cord."[281] Accordingly, our expectation is that intermodal competition between mobile wireless and wireline services will likely increase in the near term. Even if most segments of the mass market are unlikely to rely solely upon wireless services instead of wireline local services today,[282] our product market analysis only requires that there be evidence of sufficient substitution for significant segments of the mass market to consider it in our analysis.[283] Based on the factors discussed in this section, we conclude that mobile wireless services

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calling needs of a wireline consumer generally costs around $50-$60 per month, which may not make it price competitive for consumers. *Id.* at para. 210.

[276] Many consumers have mobile wireless plans in which they are assessed a per-minute charge for each incoming and outgoing call (*e.g.*, prepaid calling plans). Other consumers subscribe to mobile wireless plans with a limited number of anytime minutes with the result that they may incur overage charges for minutes in excess of their allotted anytime minutes. *See, e.g.*, *Eleventh CMRS Competition Report*, paras. 93-94; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21613-14, para. 240.

[277] Household Telephone Survey at Table A. BellSouth estimates that 15% of households in its footprint rely solely on wireless for voice communication requirements. BellSouth Info. Req. at 77.

[278] Household Telephone Survey at Tables A, B.

[279] AT&T Info. Req., ATT5795-5820; ATT329518 at 329522-524; BellSouth Info. Req., BS196769-196880; BS187427 at 187440-41; BS304103 at 304109. *SBC/AT&T Order*, 20 FCC Rcd at 18341, para. 91 (similar finding regarding AT&T's predecessor, SBC); *see also Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21614, para. 241.

[280] *Sprint/Nextel Order*, 20 FCC Rcd at 14017-19, paras. 141-43.

[281] Yuki Noguchi, *Sprint Prepares to Cut the Cord*, WASHINGTON POST, June 6, 2005, at D01.

[282] *See, e.g.*, Consumer Federation *et al*. Cooper/Roycroft Decl. at 19-21 (wireless subscription is expensive compared to wireline; it is not compatible with household alarm systems, satellite TV and digital video recorders, and may not be E911 compatible); Cbeyond *et al.* Comments at 48 (wireless lacks the ubiquity and service quality to be a suitable substitute for wireline); New Jersey Ratepayer Advocate Baldwin/Bosley Decl. at paras. 102, 118-24 (wireless services are a complement to, not substitute for, wireline services in most cases).

[283] *See, e.g.*, AT&T Info. Req., ATT5795-5820; ATT316765-767; ATT329518 at 329522-524 (**[REDACTED]**).

should be included within the product market for local services to the extent that customers rely on wireless services as a complete substitute for, rather than a complement to, wireline services.

(ii) Long Distance Services

97. As with the SBC/AT&T and Verizon/MCI proceedings, there is significant evidence in the record that long distance service purchased on a stand-alone basis is becoming a fringe market, including the 2004 decision by legacy AT&T to cease marketing long distance services,[284] the declining proportion of consumers choosing a long distance provider different from their local service provider,[285] and other documentary evidence.[286] Nonetheless, because equal access requirements permit a consumer to choose to subscribe to an alternative carrier's long distance service, we follow Commission precedent and consider long distance services as a separate relevant product market. As discussed below, we find that this market includes not only presubscribed wireline long distance providers, but also mobile wireless service and transaction services, such as prepaid calling cards and dial-around services.[287]

98. *Mobile Wireless*. We find it appropriate to include mobile wireless services in the relevant market at least to some extent based upon usage substitution between wireless and wireline long distance service, although the precise extent of the substitution is unclear. The Commission previously has noted mobile wireless providers' increased offering of wide-area pricing plans,[288] and that consumers are switching minutes of long distance usage from wireline to mobile wireless services.[289]

99. In evaluating the substitutability of wireless service for stand-alone long distance service, our analysis focuses on the behavior of those consumers that currently subscribe to both a wireline long distance service and a mobile wireless service.[290] Evidence suggests that consumers are increasingly

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[284] AT&T/BellSouth Application at 84-86.

[285] Between March 2005 and May 2006, the percentage of BellSouth's residential lines with BellSouth as the presubscribed interexchange carrier increased from **[REDACTED]**% to **[REDACTED]**%. Over the same time period, the percentage of legacy AT&T residential lines with AT&T as the presubscribed interexchange carrier fell from **[REDACTED]**% to **[REDACTED]**%, and the legacy AT&T long distance customer base fell **[REDACTED]**% nationwide and **[REDACTED]**% in the BellSouth region. We note that during this time legacy AT&T implemented numerous rate increases in its long distance charges to "harvest" these customers. *See generally* BellSouth Info. Req., Exh. 36.a.i.001; AT&T Info. Req., Exh. 37a, 38b; *see also SBC/AT&T Order*, 20 FCC Rcd at 18348, para. 103.

[286] AT&T Info. Req., ATT5795 at 5821-27 (**[REDACTED]**).

[287] There is insufficient information in this record to assess the extent to which mass market consumers use facilities-based and over-the-top VoIP services specifically for domestic long distance calls.

[288] *See, e.g.*, *Eleventh CMRS Competition Report*, para. 90.

[289] *See Federal-State Joint Board on Universal Service*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7532-33, para. 25 (2006) (*Universal Service Contribution Methodology*) (according to a traffic study conducted by TNS Telecoms for TracFone Wireless, the (then) seven large national mobile wireless service providers' interstate minutes of use ranged from 11.9% to 37.1%); *see also Trends in Telephone Service* at 11-2. However, the long distance usage data in the record are for mass market and all business customers combined, and thus cannot be used to infer the calling patterns for mass market consumers alone.

[290] Our market definition analysis does not consider the purchasing behavior of consumers who do not have a presubscribed interexchange carrier or who rely upon mobile wireless service for all of their communications needs,

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using their mobile wireless service for long distance calls,[291] and that AT&T and BellSouth consider minute substitution in their business strategies.[292] As a general matter, we expect that a consumer who subscribes to both a mobile wireless service and a wireline long distance service will allocate minutes between these services in an optimal manner, *i.e.*, the consumer will seek the lowest possible charge based on the time of day the call is placed and consistent with the desired service quality. While we have insufficient information in this record to determine the precise extent of wireless long distance minute substitution, we acknowledge that mobile wireless services are in the relevant product market at least to some extent.

100. *Transaction Services.* Certain segments of mass market consumers use transaction services (prepaid calling cards and dial-around services) as a substitute for subscription long distance services. We have found that prepaid cards are used by consumers who cannot otherwise afford traditional long distance, wireless service, or a home phone; who travel frequently; or who have very targeted calling needs.[293] We have insufficient information to determine the precise extent of consumer substitution between transaction services and presubscribed wireline long distance services. However, we include these services in the relevant market definition to the extent that consumers view them as substitutes for presubscribed wireline long distance service. In any event, to the extent that these services are part of the relevant market, they appear to be of declining significance.[294]

(iii) Bundled Local and Long Distance Services

101. We agree with the Applicants and commenters that it remains appropriate to treat bundled local and long distance services as a separate relevant product market.[295] Because of the varied marketing strategies and limitations in the data, we define a local and long distance service bundle,[296] for purposes of

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because they would be unaffected by a theoretical price increase for wireline long distance services as a result of the merger. In addition, we do not consider the purchasing behavior of consumers who do not currently subscribe to a mobile wireless service because it would most likely be more costly for these consumers to subscribe to a mobile wireless service in order to migrate wireline long distance minutes to a mobile wireless service than it would be to pay a higher price for wireline long distance service.

[291] *Trends in Telephone Service* at 11-2.

[292] BellSouth Info. Req., BS187427 at 187452-54; AT&T Info. Req., ATT5431-5453.

[293] *See SBC/AT&T Order*, 20 FCC Rcd at 18343, para. 94, n.290.

[294] AT&T Info. Req., ATT2517 at 2518-25 (**[REDACTED]**); *id.* at ATT2940 at 2945. *See also SBC/AT&T Order*, 20 FCC Rcd at 18343-44, para. 94.

[295] *See SBC/AT&T Order*, 20 FCC Rcd at 18344-45, paras. 95-96; *Verizon/MCI Order*, 20 FCC Rcd at 18485-86, paras. 96-97; AT&T/BellSouth Application at 87; Consumer Federation *et al.* Cooper/Roycroft Decl. at 17-18; Cbeyond *et al*. Petition at 29. The Commission has previously noted the increased subscription to bundled telecommunications service offerings. *See, e.g., Section 272 Sunset FNPRM*, 18 FCC Rcd at 10919, para. 9.

[296] The economics literature generally discusses two types of bundles: a pure bundle, where the bundled services are only sold together and are not sold individually; and a mixed bundle, where the bundled services are sold individually, as well as in a package. In a mixed bundle, the package generally is sold at a discount relative to the sum of the individual service component prices. *See, e.g.*, Barry Nalebuff, *Bundling, Tying and Portfolio Effects*, DTI Economics Paper No. 1 (2003) at 14-15, *available at* http://www.dti.gov.uk/files/file14774.pdf. There is significant variation across providers as to whether they offer a pure bundle or a mixed bundle of communications services.

this proceeding only, as a customer's purchase of local and long distance services from the same carrier, regardless of whether these services are purchased together as part of an advertised bundle from a single carrier or whether the consumer creates the bundle by selecting separately-offered local and long distance service plans from the same provider. The evidence indicates that consumers predominantly purchase local and long distance services from a single provider today. This trend is likely to continue, and the stand-alone wireline long distance market is steadily declining in size relative to the bundled services market.[297]

102. Several other factors also convince us that it is appropriate to define bundled local and long distance services as a separate relevant product market. First, we find that the Applicants' marketing and pricing strategies are designed to encourage subscription to a bundled service package.[298] Second, the evidence in the record indicates increasing intermodal competition is likely between wireline services and services provided on alternative service platforms such as facilities-based VoIP and mobile wireless. These intermodal services tend to be offered as a bundle of local and long distance services.[299] These findings suggest that competition is increasingly occurring between bundled offerings rather than between a bundle and stand-alone local and long distance services offered by separate providers.

b. Relevant Geographic Market

103. As with special access and enterprise services, we conclude that the relevant geographic market for mass market local, long distance, and bundled local and long distance services is the customer's location.[300] We then aggregate customers facing similar competitive choices. Consistent with the approach adopted in, and for the reasons given in, the *SBC/AT&T Order* and the *Verizon/MCI Order*, we

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[297] As of May 2006, **[REDACTED]** of BellSouth's retail local consumer lines have BellSouth as a presubscribed interexchange carrier. *See* BellSouth Info. Req., Exh. 36.a.i.001. The legacy AT&T stand-alone long distance customer base declined **[REDACTED]**% nationwide and **[REDACTED]**% in the BellSouth region between March 2005 and May 2006. AT&T Info. Req., Exh. 37a, 38b. We note that the Commission had anticipated that a bundled product market might become a relevant product market sometime after the BOCs completed the section 271 process. *See, e.g.*, *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20010-11, paras. 39-42; *WorldCom/MCI Order*, 13 FCC Rcd at 18038-39, para. 22 n.60. AT&T's predecessor, SBC, completed the section 271 process in October 2003.

[298] AT&T's documents reveal that its research and development, marketing, and corporate strategies focus upon service offerings designed to encourage consumers to subscribe to a local and long distance service bundle. AT&T's incentive is to drive consumers to purchase all telephone services from AT&T to reduce its marketing costs and churn, as well as to increase its average revenue per user. AT&T Info. Req., ATT316635-52; ATT342653. BellSouth documents reveal similar strategies. BellSouth Info. Req., BS187427 at 18753; BS264001 at 264018-21.

[299] Promotional information for facilities-based VoIP providers generally appears to focus on bundled offerings. *See, e.g.*, Optimum Voice, What is It? (visited Sept. 6, 2006) http://www.optimumvoice.com/index.jhtml (Cablevision's product "offers unlimited local, regional and long-distance calling within the United States, Puerto Rico and Canada"); Comcast, Services for You (visited Sept. 6, 2006) http://www.comcast.com/Benefits/VoiceBenefits.ashx?.link1k=59 (offering "unlimited local and long distance"); Time Warner Cable, Unlimited Calling (visited Sept. 6, 2006) http://www.timewarnercable.com/corporate/products/digitalphone (offering "unlimited calls anywhere in the U.S. and Canada for one low monthly price").

[300] *See supra* Parts V.B (Wholesale Special Access Competition), V.C (Retail Enterprise Competition).

analyze local, long distance, and bundled local and long distance services in BellSouth's franchise area within each state. We do not analyze market shares in AT&T's franchise territories because BellSouth does not offer mass market services in AT&T's franchise areas, with the exception of mobile wireless services. It does not compete with AT&T in the wireless service market because BellSouth and AT&T share ownership of their wireless affiliate, Cingular.[301]

104. Some commenters argue that we should analyze geographic markets smaller than states.[302] We recognize that consumers may face different competitive choices in different locations within a state (*e.g.*, in some areas of a state, cable companies may provide VoIP, while in other areas they may not). Although we recognize that, in theory, using a state-level analysis may mask some variations in smaller geographic areas, given the limitations of available data, we find a state-wide approach to be reasonable, particularly given that BellSouth prices many of its product offerings on a statewide basis. Accordingly, we analyze mass market local, long distance, and bundled local and long distance services in BellSouth's franchise area within each state.

c. Market Participants

105. As the foregoing indicates, BellSouth and AT&T face competition from a variety of providers of retail mass market services. These competitors include competitive wireline local exchange carriers and long distance providers, facilities-based VoIP providers, cable circuit-switched service providers, and wireless carriers, to the extent consumers use their services as a replacement for local or long distance services.[303]

2. Competitive Analysis

a. Horizontal Effects

106. *Unilateral Effects*. As discussed below, and consistent with the Commission's findings in the *SBC/AT&T Order*,[304] we find that AT&T's acquisition of BellSouth is not likely to result in anticompetitive effects for mass market services due to AT&T's actions to cease marketing and gradually withdraw from providing local service, long distance service, and bundled local and long distance service to the mass market outside of the SBC region.[305] We also conclude that competition from intermodal competitors is growing quickly, and we expect it to become increasingly significant in the years to come.

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[301] *See* AT&T/BellSouth Boniface Decl. at para. 35. Only residents of BellSouth's 9-state region can order wireline service from its webpage. *See* BellSouth, BellSouth Local Phone Service and Calling Plans (visited Sept. 20, 2006) http://www.bellsouth.com/consumer/local/index.html. For its part, AT&T is no longer a price-constraining force in mass market services in BellSouth territory. *See* AT&T/BellSouth Application at 86; AT&T/BellSouth Boniface Decl. at para. 35; AT&T/BellSouth Kahan Decl. at paras. 46-48.

[302] New Jersey Ratepayer Advocate Baldwin/Bosley Decl. at paras. 108-09; Cbeyond *et al.* Comments at 30.

[303] As discussed above, we do not include over-the-top VoIP for purposes of this market analysis. *See supra* para. 94. In any event, AT&T states that its customer base of over-the-top VoIP customers in BellSouth territory is small. AT&T/BellSouth Reply at 53; AT&T Info. Req., Exh. 37.b.

[304] *SBC/AT&T Order*, 20 FCC Rcd at 18346, para. 101.

[305] AT&T/BellSouth Application at 84-86; AT&T/BellSouth Kahan Decl. at paras. 46-48.

107. We begin our analysis by examining the market shares of AT&T and BellSouth, plus supply and demand factors. In general, the market share calculations indicate a high level of concentration in most franchise areas in the BellSouth states for all relevant services.[306] Within BellSouth's franchise areas, its median market share for local services increases from **[REDACTED]** percent to **[REDACTED]** percent,[307] with a post-merger market share range of **[REDACTED]** percent to **[REDACTED]** percent. Similarly, within the BellSouth franchise areas, its median market share of long distance services will increase from **[REDACTED]** percent to **[REDACTED]** percent, with a post-acquisition market share range from **[REDACTED]** percent to **[REDACTED]** percent.[308] Finally, within the BellSouth franchise areas, its median market share for bundled local and long distance services will increase from **[REDACTED]** percent to **[REDACTED]** percent, with a post-acquisition market share range of **[REDACTED]** percent to **[REDACTED]** percent.[309] Because these market shares suggest potentially problematic levels of concentration, we must next evaluate other aspects of the market.

108. Although we agree with commenters that the Applicants' post-merger market shares for the relevant products are high,[310] we nonetheless find that these numbers significantly overstate the likely

[306] We discuss the Applicants' market shares before and after the merger instead of HHIs for each geographic market because we do not have sufficient market share information for all of the significant competitors in these markets. Market share calculations for each of SBC's franchise areas are provided in Appendix D. Our analysis of concentration in the mass market relies upon data for residential customers because of the administrative difficulty of distinguishing small business data from data for other classes of businesses. The Commission has previously found that residential and very small businesses have similar patterns of demand, are served primarily through mass marketing techniques, purchase similar volumes and communications services, and would likely face the same competitive alternatives within a geographic market. Thus, we conclude that an analysis of market share of residential consumers is likely to accurately represent the Applicants' position in the mass market. *Cf. SBC/AT&T Order*, 20 FCC Rcd at 18347, para. 102; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20016, para. 53; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3829, para. 293 (1999); *SBC/Ameritech Order*, 14 FCC Rcd at 14746, para. 68.

[307] We estimate total residential local access lines in each relevant geographic market by summing the number of wireline local access lines and an estimate of the number of residential wireless-only lines. We estimate BellSouth's share of residential wireless-only lines in the relevant markets by taking the BLS estimate of wireless-only consumers of 6%, a conservative figure, and multiplying it by an estimate of Cingular's share of mobile wireless lines in the NRUF database. *See* Household Telephone Survey at Table A. Although BellSouth cites a higher percentage of wireless-only consumers in its region, it did not provide supporting data. BellSouth Info. Req. at 77. We note that interconnected VoIP providers have been required to provide 911 service since November 2005, so they should be captured by E911 listings. *See IP-Enabled Services; E911 Requirements for IP Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10246, 10256-58, para. 1, n.1, 23-24 (2005) (*VoIP 911 Order*).

[308] Our calculations for the long distance market include only those consumers with a wireline long distance presubscribed carrier. We have no information to estimate the extent to which consumers may be able to migrate long distance minutes to their mobile wireless service or prepaid calling cards. Thus, we recognize that these market shares are likely to overstate AT&T's post-merger share of the long distance market.

[309] With respect to bundled local and long distance market shares, we follow a methodology similar to that employed in calculating BellSouth's share of local services, described above at note 307.

[310] *See* New Jersey Ratepayer Advocate Comments at 8; New Jersey Ratepayer Advocate Baldwin/Bosley Decl. at paras. 31, 176-82; Consumer Federation *et al.* Petition at 39.

competitive impact of the merger. Regardless of the role legacy AT&T played in the past, its withdrawal from the mass market outside of the SBC region means the legacy AT&T infrastructure is not a significant provider (or potential provider) of local service, long distance service, or bundled local and long distance service to mass market consumers in the BellSouth region.[311] The record demonstrates that once legacy AT&T determined that mass market services were no longer a viable business opportunity, it implemented steps to close down its mass market operations.[312] We reject as speculative and unrealistic commenters' suggestion that AT&T is a potential mass market competitor in BellSouth territory on the grounds that it could readily reverse this decision.[313] Thus, we agree with the Applicants that AT&T is not a significant present or potential participant in these markets.

109. Similarly, we find that BellSouth is not a competitor for mass market communications services in AT&T's region.[314] Further, we note that the record evidence indicates that the Applicants' current and future pricing incentives are based more on likely competition from intermodal competitors than from competitive LECs.[315]

110. Finally, we reject commenters' other arguments that consumers will be worse off after the merger. The New Jersey Ratepayer Advocate expresses concern that the merged entity will focus on lucrative video and wireless markets, and stop investing in basic wireline service to the detriment of a number of consumers.[316] Fones4All raises a concern regarding its ability to offer competing mass market services because of the prices charged for unbundled local switching and two-wire loops.[317] Other

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[311] *See SBC/AT&T Order*, 20 FCC Rcd at 18348, n.312. Legacy AT&T stated that it found it difficult to compete for mass market local exchange customers for a variety of reasons, including competition from facilities-based intermodal providers, such as cable companies and wireless carriers; competition from other VoIP providers; competition from other wireline carriers; and the D.C. Circuit's vacatur of the unbundling rules set forth in the *Triennial Review Order*, to which the Commission responded by phasing out competitive LEC access to UNE-P at TELRIC prices. *See also* AT&T/BellSouth Reply at 48.

[312] *See* AT&T/BellSouth Reply at 48-52.

[313] *See, e.g.*, Access Point *et al.* Petition at 7-10; Cbeyond *et al.* Comments at 35-45; Earthlink Petition at 18-20; MSV LLC Comments at 5.

[314] AT&T/BellSouth Boniface Decl. at para. 35. As discussed above, both BellSouth and AT&T market wireless services on a nationwide basis, but they do so through their wholly-owned joint venture, Cingular. Thus, they do not compete with each other in offering wireless services.

[315] *See, e.g.*, BellSouth Info. Req., BS196769-880.

[316] New Jersey Ratepayer Advocate Comments at 20-21 (merged company will relegate telephone service to the "back seat"); New Jersey Ratepayer Advocate Baldwin/Bosley Decl. at paras. 231-45 (increase in installation intervals supports claim that service quality is declining in Applicants' territories); *see also* Consumer Federation *et al.* Petition at 7-8 (AT&T and local cable company will target high-end consumers with bundles, while less affluent consumers will be left on the sidelines); Fones4All Comments at 13 (merged company will focus on new services over their wireless and IPTV networks); .

[317] Fones4All Comments at 19-20; Fones4All Condition Comments; Letter from Ross A. Buntrock, Counsel for Fones4All Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Nov. 30, 2006); Letter from Nicholas N. Owens, National Ombudsman, U.S. Small Business Administration, to Eric Malinen, Senior Legal Advisor, Office of Communications Business Opportunities, FCC, WC Docket No. 06-74 (filed Oct. 20, 2006) (noting that the Office of the National Ombudsman received a complaint from Mr. Buntrock on behalf of Fones4All). *But see* Letter from Gary L. Phillips, Gen. Atty and Asst. Gen. Counsel, AT&T Services, Inc., to

(continued….)

commenters raise general concerns regarding the impact of the merger on some classes of consumers.[318] We find the concerns regarding Applicants' post-merger business plans to be speculative.[319] Indeed, the Applicants claim that the merged company will spend more on innovation and network infrastructure than the total spent by the individual companies before the proposed merger.[320] Further, the commenters have not established that these concerns are merger specific, and so we decline to address them in the context of this proceeding.

111. *Coordinated Effects*. We also find that AT&T's acquisition of BellSouth is unlikely to result in anticompetitive effects through coordinated interaction among remaining competitors. Given our finding that neither AT&T nor BellSouth is a significant mass market participant outside its region, we find no indication that the proposed acquisition increases the likelihood of coordinated interaction for the relevant products. Moreover, the increasing trend toward bundled service offerings likely decreases the possibility of coordinated interaction. Because of the complexity and variety of the bundled local and long distance service offers, competitors will find it difficult to coordinate on prices.[321]

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Marlene H. Dortch, Secretary, FCC, WC Docket 06-74 (filed Oct. 4, 2006) (disputing Fones4All's allegations and arguing that they are not merger specific). Similarly, the Resale Joint Commenters and Momentum Telecom, Inc. argue that Applicants have attempted to eliminate their ability to provide consumers with resold telephone services. *See* Resale Joint Commenters Comments at 5-10; Letter from Rick Richardson, General Counsel, Momentum Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 5, 2006); Resale Joint Commenters Condition Comments at 3-6; Letter from John J. Heitmann, Counsel for Resale Joint Commenters, to Kevin J. Martin, Chairman, FCC *et al.*, WC Docket No. 06-74 (filed Dec. 13, 2006); *but see* Letter from Bennett L. Ross, General Counsel - D.C., BellSouth D.C., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 4, 2006) (disputing Resale Joint Commenters allegations and arguing that they are not merger specific).

[318] *See, e.g.*, Letter from Deacon Dana Williams, Chairman, Georgia ACORN, to Chairman Kevin Martin *et al.*, WC Docket No. 06-74 (filed Sept. 18, 2006) ("the proposed merger of AT&T and BellSouth could harm low and moderate income families"); Letter from Rudy Arredondo, President and CEO, National Latino Farmers and Ranchers Trade Association, to Chairman Kevin Martin *et al.*, WC Docket No. 06-74 (filed Sept. 22, 2006) (expressing concerns that the merger will harm "minority small businesses in some of the most rural parts of the country").

[319] We note that many aspects of service quality are regulated. *See, e.g.*, 47 C.F.R. § 6.1 *et seq.* (access to telecommunications service and equipment by persons with disabilities). Consumers with complaints regarding the quality of their telephone service should contact their state regulatory agency or the Commission at http://www.fcc.gov/cgb/complaints.html.

[320] AT&T/BellSouth Application at 47-48.

[321] The difficulties in coordinating actions may be exacerbated not only by the bundling of local and long distance services but also by the offering of discounts to consumers that purchase additional services from the providers. *See, e.g.*, *DOJ/FTC Guidelines* § 2.1.1 ("Reaching terms of coordination may be limited or impeded by product heterogeneity or by firms having substantially incomplete information about the conditions and prospects of their rivals' businesses, perhaps because of important differences among their current business operations. In addition, reaching terms of coordination may be limited or impeded by firm heterogeneity, for example, differences in vertical integration or the production of another product that tends to be used together with the relevant product.").

b. Vertical Effects

112. We also are not persuaded by commenters' claims that the merger will increase the merged entity's incentive and ability to raise the costs of mass market rivals.[322] We discussed these vertical concerns in our analyses of the wholesale special access market and in other sections of this Order.[323]

E. Mass Market High-Speed Internet Access Competition

113. In this section, we consider the competitive effects of the proposed merger in the markets for mass market high-speed Internet access services.[324] We find that the merger is not likely to result in anticompetitive effects for mass market high-speed Internet access services. Specifically, we conclude that the merger is not likely to cause horizontal anticompetitive effects because neither AT&T nor BellSouth provides any significant level of mass market Internet access service outside of its respective region. We further conclude that, while the merger will result in some vertical integration, the record does not support commenters' arguments that the merger will increase AT&T's incentive to act anticompetitively with respect to mass market high-speed Internet access services.

1. Relevant Markets

114. As the Commission has previously found, high-speed Internet access services, as distinct from narrowband services, constitute a relevant product market for purposes of determining the effects of a proposed merger on the public interest.[325] The Commission also has found previously that the relevant geographic markets for residential high-speed Internet access services are local.[326] We believe that both of these market definitions remain appropriate for the purpose of our public interest analysis.

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[322] *See, e.g.*, Cbeyond *et al.* Comments at 8-9 (expressing concern that the merged company would have increased incentive and ability to raise retail rivals' costs in a greatly increased geographic area); Sprint Nextel Comments at 3-12 (expressing concerns about merged entity's ability to discriminate against competing wireless carriers in the pricing and/or provisioning of wholesale inputs; Applicants compete with Sprint Nextel for mass market minutes directly through Cingular and through intermodal channels).

[323] *See supra* Part V.B (Wholesale Special Access Competition); *infra* Part V.F (Internet Backbone Competition).

[324] The Commission's *Fourth Section 706 Report* contains a detailed description of high-speed Internet access via various technologies. *See generally Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 04-54, Fourth Report to Congress, FCC 04-208 (rel. Sept. 9, 2004) (*Fourth Section 706 Report*). The report defines "high-speed" lines as those lines that have a 200 kilobits per second (kbps) or greater transmission speed in at least one direction. *See id.* at 8.

[325] *See Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8295, para. 212 (2006).

[326] *See id.* at para. 217.

2. Competitive Analysis

a. Horizontal Effects

115. The record demonstrates that AT&T does not actively market mass market Internet access services out-of-region, nor does it plan to implement a major out-of-region marketing initiative.[327] The record also demonstrates that BellSouth does not provide any out-of-region high-speed Internet access service offerings, nor does it appear that it plans to do so.[328] Based on the record evidence, we thus conclude that the proposed merger has no horizontal effects.

b. Vertical Effects

116. Several commenters claim that the vertical integration created by the proposed merger will give the merged entity an incentive to limit consumers' access to unaffiliated content and/or applications on the Internet by either: (a) blocking consumer access; (b) injecting latency into the consumers' high-speed Internet access service; and/or (c) mandating that the consumer pay more for access to unaffiliated content and applications.[329] In addition, several commenters have alleged that the merged entity will have

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[327] *See* AT&T/BellSouth Application at 105 (stating that AT&T offers residential Internet access services primarily within its 13-state region). AT&T does have a wholesale agreement with Covad to offer DSL services out-of-region, but AT&T has only a limited number of customers through that arrangement. *See id.* at 106. We therefore reject commenters' assertions that AT&T is BellSouth's most significant potential mass market broadband competitor. *See, e.g.*, CDD Petition at 6; Consumer Federation *et al.* Cooper/Roycroft Decl. at 24-25; Earthlink Petition at 9-18. Despite AT&T's agreement with Covad, AT&T only has 3,000 DSL customers in BellSouth's region, a decline of nearly 20% from a year ago, and it is not engaged in active marketing of this service. *See* AT&T/BellSouth Reply at 54. Additionally, AT&T holds no spectrum in BellSouth's region that could be used for mass market services, other than a 2.3 GHz license covering one county in rural Kentucky. *See id.* at 55. AT&T is testing wireless broadband services in Alpharetta and Atlanta, Georgia to consumer and enterprise business customers. *See* Letter from Joan Marsh, Executive Director – Federal Regulatory Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed May 9, 2006); *see also* AT&T Info. Req., ATT259496 at 259499, 259520, 259522 (**[REDACTED]**); AT&T Info. Req., ATT383921 at 383927 (**[REDACTED]**).

[328] We reject commenters' claims that BellSouth is a potential broadband competitor in AT&T's region using wireless technologies. *See, e.g.*, CDD Petition at 6; Consumer Federation *et al.* Cooper/Roycroft Decl. at 24-25. Although BellSouth holds WCS spectrum in AT&T's region, the merged entity would only hold a small fraction of this spectrum and additionally many other available spectrum bands can provide the same service as this spectrum. *See* AT&T/BellSouth Reply at 55; *infra* para. 178 (noting the availability of spectrum blocks). Further, BellSouth only provides Internet access services exclusively within its region. *See* AT&T/BellSouth Application at 106.

[329] *See, e.g.*, CDD Petition at 3-4 (asserting that "the Commission should take Mr. Whitacre's own words at face value" on his "repeated promises to use AT&T's market power to extract revenue from Internet users"); CDD Condition Comments; Concerned Mayors Alliance Petition at 25 (asserting that "[i]t is no secret that AT&T does not want to permit open access to its network facilities for competing Internet service providers"); Consumer Federation *et al.* Petition at 51-2 (arguing that "AT&T can easily (1) identify the customer which has [chosen to use a non-AT&T Internet technology to access video programming], and (2) assign lower priority to the delivery of this content, thus degrading the [non-AT&T] technology, (3) designate the consumers who purchase their content from non-AT&T sources as 'heavy users' who take 'excessive bandwidth,' and (4) charge these end users (whose only offence is to make a competitive choice) more than those customers who purchase AT&T-sourced content"); Georgia PSC Comments at 2 (arguing that "[c]onsumers may be required to purchase their provider's applications or suffer through much slower access and having to pay additional amounts for adequate access"); It's Our Net Coalition Condition Comments; Center for Creative Voices in Media Condition Comments; Letter from Mark J.

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increased incentive to discriminate against unaffiliated ISPs.[330] For the reasons given below, we conclude that given the competitive nature of the broadband market, the proposed merger is not likely to increase incentives for the merged entity to engage in conduct that is harmful to consumers or competition with respect to the delivery of Internet content, services, or applications.

117. We agree with Applicants that there is substantial competition in the provision of Internet access services.[331] Broadband penetration has increased rapidly over the last year with more Americans relying on high-speed connections to the Internet for access to news, entertainment, and communication.[332] Increased penetration has been accompanied by more vigorous competition. Greater competition limits the ability of providers to engage in anticompetitive conduct since subscribers would have the option of switching to alternative providers if their access to content were blocked or degraded. In particular, cable providers collectively continue to retain the largest share of the mass market high-speed Internet access market.[333] Additionally, consumers have gained access to more choice in broadband

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O'Connor, Counsel for Earthlink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 6, 2006); *but see* AT&T/BellSouth Reply at 82 (arguing that opponents of the merger provide nothing more than conclusory assertions without any economic or other analytical explanations as to how the proposed merger will lead to anticompetitive Internet behavior); Letter from Gary L. Phillips, AT&T Inc. and Bennett L. Ross, BellSouth Corp, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 4, 2006); Letter from Brad E. Herr, President, AC Data Systems, Inc., and Jack Field, VP Global Connectivity Solutions, ADC Telecommunications, to Kevin J. Martin, Chairman, FCC, WC Docket No. 06-74 (filed Oct. 24, 2006) (arguing that telecom manufacturing companies are opposed to "network neutrality" regulation); United States Internet Industry Association Condition Comments; New Jersey Ratepayer Advocate Condition Comments at 8-9; Georgia PSC Condition Comments, Attach. at 3.

[330] *See, e.g.*, FISPA Condition Comments; Raw Bandwidth Communications, Inc. Condition Comments at 4-5, 9-10; NetZero Condition Comments at 3-5; T-Mobile Condition Comments at 6-9; Letter from Ronald W. Del Sesto, Jr., Counsel for NetZero, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 27, 2006); Georgia PSC Condition Comments, Attach. at 3-4.

[331] *See* AT&T/BellSouth Application at 108; *see also* BellSouth Info. Req., BS262957 at 262957 **[REDACTED]**; BellSouth Info. Req., BS267460 at 267460-75 **[REDACTED]**.

[332] At the end of 2000, 84.6% of U.S. households with Internet access were dial-up customers. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket 01-129, Eighth Annual Report, 17 FCC Rcd 1244, 1265, para. 43 (2002) (*Eighth Annual Video Competition Report*). Now, high-speed Internet access rivals that of dial-up: of the 70.3 million households with Internet access in June 2005, 33.7 million (or 48%) had high-speed access. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, Twelfth Annual Report, 21 FCC Rcd 2503, 2567, para. 137 (2006) (*Twelfth Annual Video Competition Report*). More recent data suggests that the number of high-speed lines grew to over 50 million by December 2005. *See* Industry Access and Technology Division, FCC, *High-Speed Services for Internet Access: Status as of December 31, 2005*, July 2006, at Table 1 (*High-Speed Services Dec. 2005 Report*) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-266596A1.pdf; *see also* AB Bernstein Research, *Broadband Update: "Value Share" and "Subscriber Share" Have Diverged*, Apr. 7, 2006 (*Bernstein Broadband Update*) at 1-2 (stating that "[d]uring 4Q05, Internet penetration (including both dial-up and broadband connections) as a percentage of U.S. households increased 70bps [basis points] to 64%, or around two-thirds of all households" and has been gradually accelerating).

[333] *See High-Speed Services Dec. 2005 Report* at 3 (stating that for high-speed lines, *i.e.*, lines connecting to the Internet that exceed 200 kbps in at least one direction, designed to serve primarily residential end users, 57.5% were cable modem lines); *id.* at Table 4 (depicting that for residential advanced services lines, *i.e.*, lines connecting to the Internet that exceed 200 kbps in both directions, 62.4% were cable modem lines); *see also* AT&T/BellSouth Reply
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providers.[334] Moreover cable modem service and DSL service are facing emerging competition from deployment of cellular, Wi-Fi, and Wi-Max-based competitors, and broadband over power line (BPL) providers.[335] Commission statistics indicate that satellite and wireless broadband lines more than sextupled between December 2004 and December 2005, from 549,621 to 3,809,247, with BPL lines increasing 20 percent between June 2005 and December 2005.[336] Given these alternatives, if the merged entity sought to discriminate against competing content or service providers, it would risk losing customers to competing broadband service providers. Thus, we find that the strong and increasing competition for mass market high-speed Internet access services will limit the incentives and ability of the merged entity to discriminate.

118. Further, there is no record evidence indicating that either of the Applicants has willfully blocked a web page or other Internet content, service, or application via its high-speed Internet platforms.[337] Commenters and petitioners do not offer evidence that the merged entity is likely to discriminate against Internet content, services, or applications after the proposed transactions are complete; nor do they explain how the changes in ownership resulting from the transactions could increase the merged entity's incentive to do so. If in the future, evidence arises that any company is willfully blocking or degrading Internet content, affected parties may file a complaint with the Commission.[338]

119. The Commission also has adopted an *Internet Policy Statement* on broadband access to the Internet.[339] This statement reflects the Commission's view that it has the jurisdiction necessary to ensure

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at 88-89 (asserting that gains in DSL providers against cable modem providers demonstrate the competitive nature of the marketplace).

[334] For example, while the percentage of zip codes served by only one broadband provider has dropped from 14.9% in 2003 to 5.6% in 2005, the percentage of zip codes served by four or more broadband providers has increased from 46.3% in 2003 to 66.6% in 2005. *See High-Speed Services Dec. 2005 Report* at Table 15; *infra* Part V.H (finding that there is spectrum available for wireless broadband opportunities).

[335] Wireless-Fidelity (Wi-Fi) is an interoperability certification for wireless local area network (LAN) products. This term has been applied to devices developed in accordance with the Institute of Electrical and Electronics Engineers (IEEE) 802.11 standard. *Twelfth Annual Video Competition Report*, 21 FCC Rcd at 2604, para. 225, n.785. Wi-Max is a wireless standard, embodied in IEEE Standard 802.16, that can provide wireless high-speed Internet access with speeds up to 75 Mbps and ranges up to 30 miles. *Id*. at 2604, para. 226. BPL is a new type of carrier current technology that provides access to high-speed broadband services using electric utility companies' power lines. *See Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems, Carrier Current Systems, Including Broadband Over Power Line Systems*, 19 FCC Rcd 21265, 21266 (2004); *see also* 47 C.F.R. § 15.3(ff) (defining the term "Access BPL").

[336] *High-Speed Services for Internet Access: 2005 Status Report* at Table 1. A separate FCC report indicates that cellular-based high-speed Internet access service "has been launched in at least some portion of counties containing 278 million people, or roughly 97 percent of the U.S. population . . . ." *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services)*, 20 FCC Rcd 15908, 15953-54, para. 119 (2005).

[337] *See supra* note 329.

[338] *See Madison River Communications and Affiliated Companies*, Order, 20 FCC Rcd 4295 (2005).

[339] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Policy Statement*, CC Docket No. 02-33, 20 FCC Rcd 14986 (rel. Sept. 23, 2005) (*Internet Policy Statement*). We note that AT&T
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that providers of telecommunications for Internet access or Internet Protocol-enabled services operate in a neutral manner. To ensure that broadband networks are widely deployed, open, affordable, and accessible, the Commission adopted four principles embodied in that *Internet Policy Statement*:

> (1) consumers are entitled to access the lawful Internet content of their choice; (2) consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement; (3) consumers are entitled to connect their choice of legal devices that do not harm the network; and (4) consumers are entitled to competition among network providers, application and service providers, and content providers.[340]

The Commission held out the possibility of codifying the *Internet Policy Statement*'s principles where circumstances warrant in order to foster the creation, adoption, and use of Internet broadband content, applications, services, and attachments, and to ensure consumers benefit from the innovation that comes from competition. Accordingly, the Commission chose not to adopt rules in the *Internet Policy Statement*.[341] This statement contains principles against which the conduct of the merged entity and other broadband service providers can be measured. Nothing in the record of this proceeding, however, demonstrates that these principles are being violated by AT&T or BellSouth or that the transactions before us create economic incentives that are likely to lead to violations. Additionally, as noted above, the vigorous growth of competition in the high-speed Internet access market further reduces the chances that the transactions are likely to lead to violations of the principles.

120. With respect to claims that the merged entity will have an increased incentive to discriminate against unaffiliated ISPs, we find that merger of AT&T and BellSouth is not likely to result in anticompetitive effects.[342] The merger will have no impact on the rights and obligations of ISPs as related to wireline facilities-based providers.[343] Further, the fact that there are an increasing number of other

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remains bound to its voluntary commitment in the *SBC/AT&T Order* that it will conduct business in a manner that comports with the principles set forth in the *Internet Policy Statement* through November 2007. *See SBC/AT&T Order*, 20 FCC Rcd at 18368, 18411, para. 144, Appendix F; *see also* Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed July 21, 2006).

[340] *Internet Policy Statement*, 20 FCC Rcd at 14987-88, para. 4. The Commission found that the principles adopted in the *Internet Policy Statement* are subject to reasonable network management. *Id.* at 14988, para. 5 n.15.

[341] *Id.* at 14988, para. 5.

[342] We note that Earthlink filed in the docket of this proceeding allegations that AT&T violated certain ADSL related voluntary commitments set forth in the *SBC/AT&T Order*, which were disputed by AT&T. *See* Letter from Donna N. Lampert, Counsel for Earthlink, to Marlene H. Dortch, Secretary, FCC, WC Docket 06-74, Attach. (filed Sept. 12, 2006); Letter from Gary L. Phillips, Gen. Atty and Asst. Gen. Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 20, 2006); Letter from Donna N. Lampert and Mark J. O'Connor, Counsel for Earthlink, to Marlene H. Dortch, Secretary, FCC, WC Docket 06-74 (filed Sept. 27, 2006); Letter from Jack Zinman, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 3, 2006). TeleTruth likewise alleges that AT&T has failed to comply with conditions of previous mergers. *See* TeleTruth Condition Comments. Earthlink's and TeleTruth's allegations are more appropriately addressed via the Commission's complaint process.

[343] *See Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*,

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broadband competitors should provide new opportunities for ISPs to provide service to customers in the combined AT&T/BellSouth territory.[344]

F. Internet Backbone Competition

121. We next turn to the potential competitive effects of the proposed merger on Internet backbone services. We find that the proposed merger of AT&T and BellSouth is not likely to result in anticompetitive effects in any Internet backbone market. We also conclude that, while the merger may result in significant vertical integration, the record does not support commenters' concerns that the merger will "tip" the backbone market, resulting in increased supra-competitive transit prices, or lower service quality. In addition, we find insufficient evidence in the record to conclude that the merged firm will engage in packet discrimination or degradation against rivals' VoIP, IP video, and other IP-enabled services.

1. Background

122. As the Commission recently explained,[345] the Internet is an interconnected network of packet-switched networks. End users (individuals, enterprise customers, and content providers) typically, though not always, obtain access to the Internet through ISPs using a "dial-up" modem, cable modem, DSL, wireless network, or a dedicated high-speed facility (which the companies often call "Dedicated Internet Access" (DIA)). ISPs provide access to the Internet on a local, regional, or national basis, and most have limited network facilities. In order to provide Internet service to end users, ISPs and owners of other smaller networks interconnect with Internet backbone providers (IBPs), which generally are larger Internet backbone networks.[346] The backbone networks operate high-capacity long-haul transmission

(Continued from previous page)
GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4801, para. 4 (2002) (*Cable Modem Declaratory Ruling*), *aff'd, Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Services*, 125 S. Ct. 2688 (2005) (*NCTA v. Brand X*); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era*, CC Docket Nos. 02-33, 01-337, 95-20, and 98-10, WC Docket Nos. 04-242 and 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Internet Access Services Order or Consumer Protection in the Broadband Era Notice*), *petitions for review pending, Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3rd Cir. filed Oct. 26, 2005).

[344] *See supra* para. 117.

[345] *See SBC/AT&T Order*, 20 FCC Rcd at 18351-52, paras. 109-11; *Verizon/MCI Order*, 20 FCC Rcd at 18493-94, paras. 110-12.

[346] An ISP's traffic connects to a backbone provider's network at a facility called a "point of presence" or "POP." Backbone providers have POPs in many locations, usually concentrated in more densely-populated areas where Internet end users' demands for access are highest. An ISP or end user relies on telecommunications lines to reach POPs. We note that large businesses often purchase dedicated lines that connect directly to Internet backbone networks. *See* U.S. General Accountability Office, Characteristics and Competitiveness of the Internet Backbone
(continued….)

facilities and are interconnected with each other. Typically, a representative Internet communication consists of an ISP sending data from one of its customers to the IBP that the ISP uses for backbone services. The IBP, in turn, routes the data to another backbone network, which delivers the data to the ISP serving the end user to whom the data is addressed.[347]

123. IBPs may exchange traffic either through "peering" or "transit" arrangements. Under a peering arrangement each IBP "peer" will accept and deliver, without charge, traffic destined either for its own network or for one of its own backbone customers.[348] Transit arrangements, by contrast, permit an ISP, small or regional IBP, or other corporate business, to reach the entire Internet using dedicated access lines linking it directly to the transit provider's Internet backbone network.[349] An IBP providing transit service enables the customer to send and receive traffic through the purchaser's IBP to any other network or destination on the Internet. Frequently, IBP customers obtain transit packaged with a dedicated high-speed facility as part of a DIA service, with the transit customers paying fees for both the connection and the transit service.[350]

124. IBPs generally can be categorized into tiers based on their size, geographic scope, and interconnections. "Tier 1" IBPs consist of a small group of the largest IBPs that sell transit and/or dedicated Internet access to substantial numbers of ISPs and corporate customers or other enterprise customers. These Tier 1 IBPs peer with all other Tier 1 IBPs on a settlement-free basis. Lower tier IBPs may peer with each other, but generally must purchase transit from a higher tier IBP to reach those end users that are not customers of the networks of their peers.[351]

(Continued from previous page)
Market, GAO-02-16 at 4 (Oct. 2001), *available at* http://www.gao.gov/new.items/d0216.pdf (GAO Internet Backbone Report).

[347] Once on an Internet backbone network, digital data signals that were split into separate pieces or "packets" at the transmission point are separately routed over the most efficient available pathway and reassembled at their destination point. The Internet Protocol (IP) Suite is the standard that governs the routing and transfer of data packets on the Internet. GAO Internet Backbone Report at 6.

[348] For example, if IBP A only has a peering arrangement with IBP B, and IBP B also has a peering arrangement with IBP C, then IBP B will not allow customers of IBP A to send traffic to or receive traffic from customers of IBP C. In order to provide access to customers of IBP C, IBP A must either peer with IBP C or enter a transit agreement (*i.e.*, pay for a connection) with IBP B or IBP C. Decisions about peering are not regulated, but are the product of negotiations in the marketplace.

[349] That is, in a transit arrangement, an IBP agrees to deliver all Internet traffic that originates or terminates on the paying IBP's backbone regardless of the destination or source of that traffic. Thus, if IBP A becomes a transit customer of IBP B, then as a paying customer of IBP B, IBP A is able to send traffic to and receive traffic from IBP C via IBP B's network.

[350] Some IBPs also offer "paid peering," where the "paid peer" pays on a volume basis to exchange traffic, but the quality of interconnection is similar to settlement-free peering. By contrast, traffic exchanges involving a transit provider may experience up to nine inter-network connections, or "hops," over the originating, transiting, and terminating networks, reducing efficiency and reliability and increasing latency and potential packet loss.

[351] IBPs establish a variety of peering criteria that are used when deciding whether to begin peering with, or to continue peering with, other IBPs. These criteria generally specify factors such as ratios of traffic exchanged between the backbones, the geographic scope and capacity of the peering networks' backbone facilities, and the number of interconnection points, among other things. *See SBC/AT&T Order*, 20 FCC Rcd at 18352, para. 111; *Verizon/MCI Order*, 20 FCC Rcd at 18494, para. 112.

2. Relevant Markets

a. Relevant Product Market

125. Consistent with prior Commission orders, and based on the record here, we find that Tier 1 backbone services – the transporting and routing of packets between ISPs and large enterprise customers and Internet backbone networks – constitutes a separate relevant product market.[352] In this regard, we note key differences in quality and price between the transit and DIA services offered by Tier 1 and lower tier IBPs. For example, lower tier IBPs, ISPs, and multi-location enterprise customers typically seek service from a provider that can serve all their locations, and not all IBPs with POPs in a particular location will have such reach to all other locations. Only Tier 1 providers can offer such a high level of ubiquitous service. We find that there are no substitutes for these Tier 1 connectivity services sufficiently close to defeat or discipline a small but significant nontransitory increase in price.[353]

b. Relevant Geographic Market

126. Consistent with Commission precedent and the DOJ's previous findings, we analyze the market for Tier 1 IBPs using a national geographic market.[354] Although Consumer Federation *et al*. contend that IBP markets have local or regional characteristics,[355] there is no evidence in the record to suggest that the characteristics of the IBP market in BellSouth's in-region territory differs from the rest of the country.[356] Consequently, we find it appropriate to evaluate Tier 1 backbone services at the national level.

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[352] *See SBC/AT&T Order*, 20 FCC Rcd at 18352, para. 112; *Verizon/MCI Order*, 20 FCC Rcd at 18494, para. 113; *WorldCom/MCI Order*, 13 FCC Rcd at 18106, para. 148. The DOJ defines a Tier 1 provider as a provider that has (i) high-capacity networks nationwide or internationally and (ii) settlement-free interconnection arrangements with all other Tier 1 providers. *See United States v. WorldCom, Inc. and Sprint Corp*., Case No. 1:00-CV-01526, Complaint at para. 27 (D.D.C. filed June 27, 2000) (*DOJ-WorldCom/Sprint Complaint*).

[353] *See SBC /AT&T Order*, 20 FCC Rcd at 18352, para. 112; *Verizon/MCI Order*, 20 FCC Rcd at 18494, para. 113; *DOJ-WorldCom/Sprint Complaint* at para. 31.

[354] *See SBC /AT&T Order*, 20 FCC Rcd at 18352, para. 114; V*erizon/MCI Order*, 20 FCC Rcd at 18495, para. 115; *WorldCom/MCI Order*, 13 FCC Rcd at 18106, para. 148; *DOJ-WorldCom/Sprint Complaint* at para. 31.

[355] Consumer Federation *et al*. Reply Comments, Reply Declaration of Mark N. Cooper and Trevor Roycroft (Consumer Federation *et al*. Cooper/Roycroft Reply Decl.) at 58.

[356] Similarly, although NTCA claims that a majority of its members have access to two or fewer IBPs, it is unclear whether NTCA's members are referring to Tier 1 IBPs or lower tier IBPs. NTCA Reply at 2-3. The record contains no evidence that AT&T competes for NTCA members' IBP business, much less that it competes against BellSouth for that business. Thus, there is no evidence that the integration of the AT&T and BellSouth IBP networks will have any direct impact on the availability or price of IBP services for NTCA members. We do, however, recognize the unique concerns of rural carriers expressed by NTCA and others concerning a potential lack of options for access to Internet backbones at reasonable rates, terms, and conditions. *See, e.g.*, Letter from Daniel Mitchell, Vice President, Legal and Industry, NTCA, and Karlen Reed, Regulatory Counsel, Legal and Industry, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket 06-74 at 2 (filed Dec. 15, 2006). Nonetheless, we commit to monitor vigilantly the competitive conditions unique to rural areas and will take action, as necessary, to ensure that the benefits of the Internet are extended throughout the United States. We also commit to addressing these concerns in other on-going rulemakings, including the *IP-Enabled Services* proceeding. *See IP-Enabled Services NPRM*, 19 FCC Rcd 4863.

c. Market Participants

127. Based on our prior decisions and the record evidence, we find that there likely are between six and eight Tier 1 Internet backbone providers based on the definition of Tier 1 backbones that has been used in the past:[357] AT&T, Verizon, Sprint, Level 3, Qwest, Global Crossing, and likely SAVVIS and Cogent.[358] These eight providers offer dedicated Internet access and transit services primarily to ISPs and enterprise customers, and they generated **[REDACTED]** in revenues in 2003, the most recent year for which revenue data is available.[359] In choosing an IBP, ISP and enterprise customers seek the lowest price, highest quality, and broadest geographic reach consistent with their needs, and these Tier 1 backbone providers compete vigorously on these bases.

128. The Applicants argue that, based on the above definition of a Tier 1 provider, there may well be other competitively significant, nearly fully peered backbones beyond those listed above.[360] We find no evidence, however, that other networks could provide viable competitive alternatives for customers seeking transit if there were to be a small but significant and nontransitory increase in price by domestic Tier 1 IBPs. We therefore limit our analysis to these eight Tier 1 IBPs.

3. Competitive Analysis

129. For the reasons given below, we find that the merger is not likely to result in anticompetitive effects either through unilateral action by the merged entity or possible tipping of the Tier 1 Internet backbone market to a monopoly or duopoly. We also find it unlikely that the remaining Tier 1 IBPs would engage in coordinated interaction as a result of the merger. Finally, we are not persuaded that the vertical aspects of the proposed merger would increase the merged firm's incentive and ability to raise rivals' costs by discriminating against the IP traffic of its broadband competitors or by raising the price of special access services to its backbone competitors.

a. Horizontal Effects of the Merger

130. As the Commission previously has explained, the Internet backbone market is characterized by "direct network effects," where the value of the network increases with each additional user who joins it."[361] Because of these strong network effects, the Commission and the DOJ have recognized that, if one backbone provider were to become significantly larger than the others, or if it were to develop greater negotiating power, there is a danger that this dominant provider might be able to "tip" the Internet

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[357] *See SBC/AT&T Order*, 20 FCC Rcd at 18353-54, para. 115; *Verizon/MCI Order*, 20 FCC Rcd at 18495, para. 116.

[358] *See SBC/AT&T Order*, 20 FCC Rcd at 18353-54, para. 115; *Verizon/MCI Order*, 20 FCC Rcd at 18495, para. 116; *see also* TWTC Petition at 27.

[359] *SBC/AT&T Order*, 20 FCC Rcd at 18353-54, para. 115; *Verizon/MCI Order*, 20 FCC Rcd at 18495, para. 116; AT&T/BellSouth Reply, Declaration of Marius Schwartz (AT&T/BellSouth Schwartz Reply Decl.) at 8-12.

[360] *See* AT&T/BellSouth Schwartz Reply Decl. at 2 n.4.

[361] *SBC/AT&T Order*, 20 FCC Rcd at 18354, para. 117; *Verizon/MCI Order*, 20 FCC Rcd at 18496, para. 118; *see also DOJ-WorldCom/Sprint Complaint* at para. 36; Jacques Crèmer *et al*., *Connectivity in the Commercial Internet*, 48 J. IND. ECON. 433, 458-60 (2000).

backbone market into monopoly and then raise prices for all transit services.[362] By contrast, in a market where each backbone provider derives roughly equal benefit from settlement-free access to the other backbone providers' customers, the incentive to cooperate will predominate and the market participants will peer with each other. Thus, because of these strong network effects, the Commission and the DOJ have focused on whether a merger between two Tier 1 IBPs is likely to lead the Internet backbone market to tip into a situation in which one or two backbones dominate.[363]

131. We begin our horizontal analysis by examining the relative market share of AT&T and BellSouth in the Tier 1 IBP service market. We then examine the record evidence in this proceeding and conclude that the proposed merger would not create a backbone provider of sufficient size to cause tipping, either directly because of the addition to AT&T of BellSouth's Internet revenues and traffic, or indirectly after AT&T engaged in a strategy of targeted de-peering, as some commenters allege will occur.

132. *Market Shares*. As the Commission previously noted,[364] no complete and reliable data sources are available to measure relative shares of Internet backbone providers. Although the Applicants and commenters have provided three measures of market share – "eyeballs" (*i.e.*, an IBP's immediate customers); traffic; and revenues[365]– it does not appear that any single measure uniquely captures the relative size and importance of competing Internet backbone providers.[366]

133. The Applicants argue that the best measure of market share is "eyeballs."[367] They further contend however that we should only consider an IBP's "installed base" *(i.e.*, its share of small business and residential customers) and ignore large customers who, the Applicants contend, can easily switch providers.[368] The Applicants claim that, after the merger, they would have 23 percent of all residential and small-business customers.[369] TWTC responds that the Applicants do not provide the number of medium and large business lines they would have after the merger, and that the Applicants may therefore

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[362] *See DOJ-WorldCom Sprint Complaint* at para. 41; *SBC/AT&T Order*, 20 FCC Rcd at 18354, para. 117; *Verizon/MCI Order*, 20 FCC Rcd at 18496, para. 118; *WorldCom/MCI Order*, 13 FCC Rcd at 18108-09, para. 150.

[363] *See DOJ-WorldCom Sprint Complaint*; *SBC/AT&T Order*, 20 FCC Rcd at 18354, para. 117; *Verizon/MCI Order*, 20 FCC Rcd at 18496, para. 118.

[364] *SBC/AT&T Order*, 20 FCC Rcd at 18356, para. 122; V*erizon/MCI Order*, 20 FCC Rcd at 18498, para. 123.

[365] AT&T/BellSouth Schwartz Reply Decl. at 5-12. "Eyeballs" are the number of an IBP's direct customers, the customers of the ISPs to whom it provides transit and its dedicated Internet access (DIA) customers, typically larger businesses. *Id*. Traffic is determined by measuring the amount of data that is transferred during a certain length of time (*e.g.*, gigabytes per month). The Applicants have submitted data provided by RHK, Inc. for the industry as a whole. AT&T/BellSouth Schwartz Reply Decl. at 7-8 and Table 1. Revenues are the revenues earned from providing transit to ISPs and from providing connectivity to DIA customers. *See* AT&T/BellSouth Schwartz Reply Decl. at 8-9.

[366] *See* AT&T/BellSouth Schwartz Reply Decl. at 5-8.

[367] *Id.* at 7.

[368] *Id*. at 5-6.

[369] *Id.* at 6.

understate their share of the market.[370] Although ease of switching is a factor in determining the competitive effects of a large market share, standard competitive analysis includes all of a company's current customers in determining its share of the market. Moreover, we are measuring here the Applicants' post-merger share of the *Tier 1 IBP market*. The number of small business and residential end-user customers would appear to be a better measure for *ISP mass market* services. We therefore conclude that the number of small users is not a good measure of a Tier 1 IBP's size and relative strength.[371]

134. The Applicants contend that traffic figures provide the next best measure of a firm's size,[372] although they argue that, because much of this traffic can easily be switched to alternative IBPs, traffic market shares may paint a distorted picture of a company's true market power.[373] The Applicants assert that, post-merger, they would carry approximately 20 percent of all Internet traffic, [374] though they also present data showing AT&T's share of Tier 1 Internet traffic.[375] As the Commission did in the *SBC/AT&T Order*, we reject the Applicants' attempt to calculate market share by examining their share of all Internet traffic rather than their share of Tier 1 IBP traffic.[376] Although the Tier 1 traffic data is imperfect, we conclude that the traffic shares of Tier 1 IBPs offer some insight as to the relative size (and possible market power) of the Tier 1 IBPs.[377]

135. Various commenters, following the Commission's analysis in the *SBC/AT&T Order* and the *Verizon/MCI Order*, rely on revenue estimates to estimate market share.[378] Although AT&T presented revenue data in its earlier merger application,[379] the Applicants here argue that the revenue estimates

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[370] TWTC Petition at 31.

[371] Consumer Federation *et al*. argue that the inability of a significant number of customers to switch easily from the Applicants' DSL service to another provider may also be a matter of concern. Consumer Federation *et al*. Cooper/Roycroft Reply Decl. at 60-61. We discuss this contention below. *See infra* para. 146.

[372] AT&T/BellSouth Schwartz Reply Decl. at para. 14.

[373] *Id*.

[374] *Id.* at para. 15.

[375] AT&T/BellSouth Schwartz Reply Decl. at para. 16 and Table 1. In addition to 2004 traffic data submitted in their Application and Reply, the Applicants have submitted traffic data for Tier 1 IBPs for 2005. Letter from Scott Feira, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Aug. 16, 2006). **[REDACTED]** *See id.* at 2-3; AT&T/BellSouth Schwartz Reply Decl. at para. 15.

[376] *SBC/AT&T Order*, 20 FCC Rcd at 18356, para. 122; *see also Verizon/MCI Order*, 20 FCC Rcd at 18498, para. 123.

[377] *See, e.g.*, *SBC/AT&T Order*, 20 FCC Rcd at 18356, para. 122; *Verizon/MCI Order*, 20 FCC Rcd at 18498, para. 123.

[378] *See* TWTC Petition at 28-29; Consumer Federation *at al*. Cooper/Roycroft Reply Decl. at 59. In the *SBC/AT&T* Order, the Commission determined that AT&T had approximately a **[REDACTED]** share of the Tier 1 IBP market based on 2003 revenues. *See SBC/AT&T Order*, 20 FCC Rcd at 18356, para. 123.

[379] *See SBC/AT&T Order*, 20 FCC Rcd at 18355-56, paras. 121-122.

relied upon in the *SBC/AT&T Order* and the *Verizon/MCI Order* suffer from a number of shortcomings.[380] In an attempt to rectify these alleged shortcomings, the Applicants adjusted the IDC revenue data developed by IDC by substituting internal revenue data for their two companies and then recalculated the Applicants' pre- and post-merger market shares.[381]

136. Consistent with our most recent decisions, we reaffirm our conclusion that, in principle, revenue is the most informative measure of the three proposed metrics.[382] In light of concerns regarding the revenue data in the record, however, we consider all three measurements as we analyze the competitive effects of this transaction. We also are mindful, however, that market share is only the beginning of the competitive analysis, not the end.[383] Market share is only one indicator of the likely anti-competitive effects of a proposed merger.[384]

137. *Unilateral Effects – Tipping.* In the proposed *WorldCom/MCI* merger, the Commission and the DOJ concluded that the merged entity, absent divestiture, would have been so large relative to other Tier 1 IBPs as to raise a significant danger of "tipping" the market to monopoly.[385] In contrast, in the recent *SBC/AT&T Order* and *Verizon/MCI Order*, the Commission found that the Tier 1 market had since become less concentrated and that the proposed mergers were not likely to cause the IBP market to tip to either monopoly or duopoly.[386]

138. Various commenters contend that this merger would create a dominant Tier 1 backbone monopoly or duopoly, threatening the currently competitive market for Internet backbone services.[387] These commenters claim that the merger will increase the merged firm's market share and reduce the Internet backbone market shares of competing Tier 1 providers. TWTC argues that, in evaluating the risk

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[380] AT&T/BellSouth Schwartz Reply Decl., paras. 17-25. First, they argue that revenue is a poor proxy for the size of the customer base because large customers pay lower prices per end-user. *Id.* at paras. 17-18. The Applicants also contend that companies often categorize revenues differently, thus making it difficult for third parties to accurately determine the true amount of revenues attributable to a company's IBP business. *Id.* Finally, they contend that the IBP revenues reported by IDC (a market research company that provided the data used by the Applicants) greatly overstate their own revenues. *Id.* at paras. 20-22.

[381] *Id*. at paras. 10-12 and Table 2. The data reveal that BellSouth's Internet revenues are approximately **[REDACTED]**% of AT&T's. *Id.*

[382] *SBC/AT&T Order*, 20 FCC Rcd at 18356, para. 122; *Verizon/MCI Order*, 20 FCC Rcd at 18498, para. 123.

[383] *Cingular/AT&T Wireless* Order, 19 FCC Rcd at 21564, para. 96; *WorldCom/MCI Order*, 13 FCC Rcd at 18050, 18100-01, paras. 39, 135.

[384] *See DOJ/FTC Guidelines* § 2.0.

[385] The DOJ also reached this conclusion with respect to the *WorldCom/Sprint* merger. *DOJ-WorldCom/Sprint Complaint* at para. 35.

[386] *SBC/AT&T Order*, 20 FCC Rcd at 18355-66, paras. 119-39; *Verizon/MCI Order*, 20 FCC Rcd at 18492-507, paras. 109-38.

[387] *See, e.g.*, TWTC Petition at 25-32; Consumer Federation *et al*. Reply at 17; Consumer Federation *et al.* Cooper/Roycroft Reply Decl. at 57-62; NTCA Reply at 2-3; OPASTCO June 16 *Ex Parte* Letter at 3; Oregon Companies Reply at 3. The commenters' arguments regarding the risk of duopoly are discussed in the Coordinated Effects section below. *See infra* para. 148 *et seq.*

of tipping, we should be concerned if AT&T's post-merger share would exceed 37 percent, which is the share that the merged entity would have had in the rejected WorldCom/Intermedia merger.[388]

139. The Applicants deny that the proposed merger will reduce competition in the Internet backbone market.[389] They first argue that BellSouth has only a modest regional backbone network and is not a Tier 1 IBP. Thus, as was the case in the SBC/AT&T transaction, the proposed merger will not remove an existing Tier 1 IBP, and several Tier 1 IBP competitors with significant market shares will remain.[390] The Applicants also argue that a strategy of global de-peering of other Tier 1 IBPs would require a far larger customer base than AT&T will possess, whether measured by "eyeballs", traffic, or revenues.[391] Finally, they argue that a strategy of targeted de-peering would not be effective.[392] They contend that a market share of at least 50 percent is needed for any of these strategies to be successful, and they claim that they will not have such a share post-merger.[393]

140. We are satisfied that the proposed merger will not increase horizontal concentration to such an extent that it is likely to result in anticompetitive effects in the Internet backbone market. Examining revenue data, we find that AT&T has a pre-merger share of the Tier 1 IBP services market between **[REDACTED]** percent and **[REDACTED]** percent and, adding BellSouth's IBP revenues to AT&T's, will have a post-merger share between **[REDACTED]** percent and **[REDACTED]** percent.[394] The pre-merger HHI is between **[REDACTED]** and the post-merger HHI is between **[REDACTED]**.[395] The change in HHI is between **[REDACTED]**.[396] Alternatively, looking at traffic data, we find that AT&T has a pre-merger share of **[REDACTED]** percent and, adding BellSouth's traffic to AT&T's, will have a post-merger share of **[REDACTED]** percent.[397] The pre-merger HHI is **[REDACTED]**; the post-merger

[388] *See* TWTC Petition at 28-29 (citing *United States v. WorldCom, Inc. and Intermedia Communications, Inc.*, Case No. 1:00-CV-02789, Competitive Impact Statement at 9-10 (D.D.C. filed Dec. 21, 2000)).

[389] *See* AT&T/BellSouth Reply at 74-82; AT&T/BellSouth Schwartz Reply Decl. at paras. 4-29.

[390] AT&T/BellSouth Schwartz Reply Decl. at paras. 4-5.

[391] *Id*. at paras. 6-9.

[392] *Id*. at paras. 26-29.

[393] *Id*. at para. 8.

[394] *See* Appendix E, Tables 1 and 2. Table 1 is based on actual 2003 revenue data for the Applicants and IDC's revenue estimates for the other Internet backbone providers tracked by IDC. In contrast, Table 2 is based entirely on IDC's 2003 revenue estimates for the Internet backbone providers tracked by IDC. The results reported in Tables 1 and 2 may overstate or understate the carriers' relative standings depending upon the extent to which the carriers' actual revenues differ from IDC's revenue estimates. *See* AT&T/BellSouth Schwartz Reply Decl. at paras. 20-25. As discussed further below, we note that BellSouth is not a Tier 1 IBP, and thus its IBP revenues are not currently part of the Tier 1 IBP market. With respect to AT&T's post-merger market share, we reject TWTC's argument that we should adopt 37% as a tipping point trigger. The Tier 1 IBP market has become more competitive since the proposed *WorldCom/Intermedia* transaction. *SBC/AT&T Order*, 20 FCC Rcd at 18355-66, paras. 119-39; *Verizon/MCI Order*, 20 FCC Rcd at 18497-507, paras. 120-38. The Commission has since approved the mergers of SBC/AT&T and Verizon/MCI where the parties had a combined market share above that level.

[395] Appendix E, Tables 1 and 2.

[396] *Id*.

HHI is **[REDACTED]**; and the change in HHI is **[REDACTED]**.[398] It is noteworthy that, using either set of data, the change in the HHI is relatively small.

141. In addition, we note that BellSouth is not a Tier 1 backbone itself; thus, the merger will not reduce the number of Tier 1 providers. Second, BellSouth currently has peering agreements with both Tier 1 and non-Tier 1 backbones and **[REDACTED]**.[399] **[REDACTED]**.[400]

142. Even if AT&T were to route all of BellSouth's traffic over AT&T's backbone (*i.e.*, both its transit traffic and the traffic currently routed through peering agreements), we find that competition in the Tier 1 IBP market would not be significantly affected. BellSouth is relatively small compared to AT&T (*e.g.*, its Internet revenues that are only **[REDACTED]** percent of AT&T's). Thus, even if all of its traffic and revenues were added to AT&T's, AT&T's market share would not increase significantly.

143. We further find that the merger does not change the market ranking of the Tier 1 backbones, and that several Tier 1 competitors with significant market shares will remain in the market post-merger. In addition, we note that some backbone providers appear to have higher shares of traffic than of revenue. In particular, we note that the 2004 traffic data show that Level 3's share of Internet traffic had surpassed old AT&T's.[401] Finally, we observe that the market shares for Tier 1 backbones have fluctuated over time, suggesting that the market is both competitive and dynamic. Therefore, we agree with the Applicants that the proposed merger is unlikely to create a single dominant Tier 1 Internet backbone provider with a market share that is overwhelmingly disproportionate to its rivals, which was the key concern in prior backbone mergers.

144. We also conclude that the merged entity will not have sufficient market share and negotiating leverage to engage in targeted de-peering of rival Tier 1 IBPs. We find that AT&T's post-merger market share is too small for it to be able to engage in targeted de-peering of rival Internet backbones, particularly when viewed in light of the significant market shares of other Tier 1 backbones. While AT&T might have some increased negotiating leverage over smaller backbone providers, we conclude that it will lack the ability to target its larger rivals, including Verizon, Sprint, Level 3, and Qwest, all of which command significant revenue shares of the backbone market.[402] These providers each have unique advantages in the backbone services marketplace and likely would provide significant counterweight to the merged entity. For example, as the Commission noted in the *SBC/AT&T Order* and the *Verizon/MCI Order*, the recent merger of Sprint and Nextel created a stronger backbone and wireless competitor.[403] Sprint/Nextel since has teamed with several large cable companies to offer video, broadband Internet

(Continued from previous page)

[397] Appendix E, Table 3.

[398] *Id*.

[399] *See* BellSouth Info. Req., Exh. 28e.

[400] **[REDACTED]** *See* BellSouth Info. Req., Exh. 28e.

[401] *SBC/AT&T Order*, 20 FCC Rcd at 18363-64, para. 135.

[402] For example, Verizon has a revenue market share of **[REDACTED]**. *See* Appendix E, Tables 1 and 2.

[403] *SBC/AT&T Order*, 20 FCC Rcd at 18364, para. 135; *Verizon/MCI Order*, 20 FCC Rcd at 18505-06, para. 136; *see also, e.g.*, Sprint News Release "Sprint Extends Mobility Leadership with Aggressive Broadband Network Expansion" (Mar. 30, 2006).

access, VoIP and wireless service together (a "quadruple play").[404] Based on the foregoing, we conclude that there is not a significant risk that AT&T would be able to dominate the Tier 1 IBP service market through a strategy of targeted de-peering.

145. *"Eyeballs."* Certain commenters also ask that the Commission examine whether AT&T's increased control of "eyeballs" after the merger would give it significant market power. Commenters claim that the proposed merger would give AT&T an increased ability to serially de-peer its rivals, degrade the quality of interconnection among backbones, and increase transit prices to disadvantage its backbone rivals and retail competitors served by competing Internet backbones (even at the expense of its wholesale backbone business).[405]

146. The Applicants acknowledge that small business and residential customers may be more "sticky" than other customers (*i.e.*, they may be more reluctant to change providers than other customers in response to an increase in price or decrease in quality). In the *SBC/AT&T Order* and the *Verizon/MCI Order*, however, the Commission questioned the extent of that "stickiness" in practice.[406] Moreover, as the Applicants point out, after the merger, AT&T will have only 23 percent of the country's residential and small business lines.[407] Further, as the Commission found in the *SBC/AT&T Order* and the *Verizon/MCI Order*, there are other Tier 1 backbones with access to significant numbers of their own "eyeball" customers that plan to expand that customer base (*e.g.*, by offering broadband and 3G wireless services).[408] Thus, even if "eyeballs" confer additional leverage in peering negotiations, as some commenters claim, other Tier 1 backbones besides AT&T (or Verizon) either currently have, or have the potential to acquire, significant numbers of broadband "eyeballs." We therefore are not persuaded by opponents' arguments that AT&T's ability to de-peer other Tier 1 IBPs or its market power generally would increase significantly because of the additional "eyeballs," which AT&T's backbone will acquire as a result of this merger.

147. More generally, and consistent with the Commission's conclusion in the *SBC/AT&T Order* and the *Verizon/MCI Order*,[409] we are not convinced that the merged firm would gain enough by disadvantaging its Internet access and retail competitors to alter the pre-merger calculus that led to the current peering equilibrium. If AT&T were to de-peer one or more of its Tier 1 peers, it could not be certain that the targeted backbone would become a transit customer of AT&T or that the customers of the former peer would switch to the AT&T backbone. The former peer might instead choose to purchase transit from a competing Tier 1 backbone, which would tend to increase the rival's market significance

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[404] *See* Sprint News Release, "Sprint Nextel, Comcast, Time Warner Cable, Cox Communications and Advance/Newhouse Communications to Form Landmark Cable and Wireless Joint Venture" (Nov. 2, 2005).

[405] *See* Consumer Federation *et al.* Cooper /Roycroft Reply Decl. at 60-61; TWTC Petition at 31.

[406] *SBC/AT&T Order*, 20 FCC Rcd at 18359, para. 128; *Verizon/MCI Order*, 20 FCC Rcd at 18501-02, para. 129.

[407] AT&T/BellSouth Application at 103. TWTC contends that the Applicants did not provide a figure for the percentage of medium and large business lines they will control following the merger. TWTC Petition at 31. As discussed above, however, concerns regarding "eyeball" customers apply primarily to small business and residential customers.

[408] *SBC/AT&T Order*, 20 FCC Rcd at 18359, para. 127 n.374; *Verizon/MCI Order*, 20 FCC Rcd at 18500, para. 128 n.377.

[409] *SBC/AT&T Order*, 20 FCC Rcd at 18360-61, para. 129; *Verizon/MCI Order*, 20 FCC Rcd at 18502, para. 130.

relative to AT&T, and thus, a decision to de-peer could end up primarily benefiting one of AT&T's rivals. We also find that disaffected Internet access providers or retail competitors that were customers of the former peer could choose from a wide range of competing IBPs. As the Commission previously observed, peering and de-peering decisions are driven by a backbone's incentives to maximize network efficiency and lower interconnection costs, and we do not see how the proposed merger would materially alter this calculus.[410]

148. *Coordinated Effects*. Commenters also suggest that, after the merger, AT&T and Verizon together might come to dominate the Tier 1 IBP market and then engage in coordinated interaction.[411] We conclude that the proposed merger will likely not result in competitive harms due to coordinated interaction among Tier 1 backbone providers. First, because the acquisition of BellSouth does not significantly increase AT&T's share of the Tier 1 IBP services market, we find it unlikely that the merger will increase significantly the probability of coordinated interaction compared with conditions before the merger. Moreover, we find no evidence in the record that would cause us to reach a conclusion different from the Commission's conclusion in the *SBC/AT&T Order* and the *Verizon/MCI Order* that such coordinated interaction is unlikely.[412] More specifically, in those orders, the Commission concluded that "[b]ecause sufficient vigorous Tier 1 backbone competitors would remain (even if some current backbone providers were de-peered), the feasibility of such coordinated strategies is questionable."[413] Or put differently, the argument that the merger will result in coordinated effects appears premised on the assumption that AT&T or other firms will be able to de-peer a sufficient number of Tier 1 backbones so as to make coordinated effects likely. We find this assumption to be speculative and not supported by the record, however. Accordingly, we conclude that this transaction is unlikely to result in anticompetitive coordinated effects in the Tier 1 Internet backbone market.

149. For the reasons given in the *SBC/AT&T Order* and the *Verizon/MCI Order*,[414] we also are unpersuaded that, after the merger, AT&T and Verizon will be able to coordinate to de-peer a sufficient number of their backbone rivals – either through targeted and serial de-peering or global de-peering – to effectively "tip" the market to duopoly. We conclude that it would be difficult for AT&T and Verizon to agree tacitly on the specifics of these de-peering strategies, such as which peers to target, and in which sequence, without reaching an express agreement in clear violation of antitrust laws.[415] For the reasons given in the *SBC/AT&T Order* and the *Verizon/MCI Order*, we also find it highly unlikely that, even together, AT&T and Verizon would be able successfully to engage in global de-peering.[416]

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[410] *SBC/AT&T Order*, 20 FCC Rcd at 18360-61, para. 129; *Verizon/MCI Order*, 20 FCC Rcd at 18502, para. 130.

[411] *See* TWTC Petition at 27; Consumer Federation *et al.* Cooper/Roycroft Reply Decl. at 59-61.

[412] *SBC/AT&T Order*, 20 FCC Rcd at 18364-65, para. 136; *Verizon/MCI Order*, 20 FCC Rcd at 18506, para. 137.

[413] *SBC/AT&T Order*, 20 FCC Rcd at 18365, para. 136; *Verizon/MCI Order*, 20 FCC Rcd at 18506, para. 137.

[414] *SBC/AT&T Order*, 20 FCC Rcd at 18375, para. 137; *Verizon/MCI Order*, 20 FCC Rcd at 18507, para. 138.

[415] *See DOJ/FTC Guidelines* § 2.1 (noting that successful coordinated interaction entails reaching terms of coordination that are profitable to the firms involved and an ability to detect and punish deviations that would undermine the coordinated interaction).

[416] *SBC/AT&T Order*, 20 FCC Rcd at 18375, para. 137; *Verizon/MCI Order*, 20 FCC Rcd at 18507, para. 138.

b. Vertical Effects (Raising Rivals' Costs)

150. We reject commenters' assertions that the vertical integration resulting from the merger of AT&T and BellSouth could allow the merged entity to raise the costs of its VoIP and retail broadband rivals by: (a) using its backbone to discriminate against IP packets transmitted by its broadband Internet access and VoIP competitors, and other Internet content, service, and application providers; and/or (b) leveraging bottleneck control over special access to gain a competitive advantage in the backbone markets.[417] For the reasons given below, we conclude that the proposed merger is not likely to have such adverse effects on competition.

151. *Packet Discrimination and Traffic Degradation.* We are not persuaded by commenters' assertions that the merger gives rise to an increased incentive and/or ability for the merged company to use its Internet backbone to degrade or otherwise discriminate against competitors' IP traffic. Commenters claim that the merger increases the potential for three forms of backbone "broadband discrimination" with respect to competing VoIP, IP video, and other IP-enabled services with limited tolerance for latency and packet loss: (i) giving the merged entity's IP packets priority over the packets generated by third party providers; (ii) affirmatively injecting latency or otherwise degrading the packets sent by third-party Internet application providers; and (iii) blocking certain transmissions.[418] Such actions by the merged entity, if undertaken, conceivably could place competing providers at a significant competitive disadvantage as to quality of service.

152. We are not persuaded that commenters' concerns are sufficiently merger specific or that the merged entity is likely to pursue the alleged strategies. First, we note that no commenter has alleged that AT&T (or BellSouth) currently engages in packet discrimination or degradation. Second, to the extent that commenters allege that packet degradation or discrimination could occur using the merged entity's backbone, we find it unlikely that the merged entity would have the incentive to engage in such conduct. We acknowledge that, in theory, the merger could give the merged entity an increased incentive to degrade or discriminate against the IP traffic of its retail competitors. We find, however, that the merged entity will likely have strong incentives to provide VoIP (and to make others' VoIP services available to its broadband customers), in order to retain customers that seek a VoIP alternative to circuit-switched

[417] Some commenters contend that AT&T currently could leverage its control over last mile facilities, on which VoIP traffic terminates, to block or degrade access and that the merger increases AT&T's incentive to do so. *See, e.g.*, Consumer Federation *et al.* Petition at 50 (asserting that with Cisco's product offerings, the owner of last-mile broadband networks could present third-party content and application providers with an "ultimatum – pay-up through our 'revenue sharing scheme, or else'"); New Jersey Ratepayer Advocate Baldwin/Bosley Decl. at para. 219 (opposing a "'tiered' Internet where large carriers could act as gatekeepers"); New Jersey Ratepayer Advocate Reply at 17-18 (asserting that "[t]he concentration of market power gives the incumbents a monopoly over transmission and potentially content and could harm the evolution of Internet related applications") (emphasis omitted). These issues are addressed in Part V.E (Mass Market High-Speed Internet Access Competition).

[418] *See, e.g.*, Access Point *et al.* Petition at 30-31 (asserting that "both AT&T and BellSouth have in recent months expressed an intent to engage in [IP] discrimination") (emphasis omitted); CDD Petition at 4 (asserting that the scale of the merged enterprise "affords massive market power to a company with powerful motives and an expressed desire to leverage that power against Internet content providers, VOIP competitors and others"); Consumer Federation *et al.* Petition at 49-52 (asserting that AT&T is capable of traffic identification and prioritization and has declared intentions to do so); TWTC Petition at 32-42 (arguing that the merged entity will have a greater incentive "to deny, delay, and degrade competitors' access").

voice service.[419] Consequently, we believe that these countervailing incentives make it unlikely that the merged entity would choose to engage in packet discrimination or degradation of IP traffic over its backbone.

153. Third, as the Commission found in the *SBC/AT&T Order* and the *Verizon/MCI Order*, it is not clear that the merged entity would be able effectively to discriminate or degrade competitors' IP traffic using its Internet backbone.[420] Given the routing of VoIP calls today, for example, it does not appear that the backbone creates a new bottleneck for VoIP providers that use their own backbone or a virtual private network to deliver service to their customers by delivering the traffic directly to the public switched telephone network (PSTN), rather than routing it through the merged entity's backbone.[421] Further, while the merged entity may have an incentive to prioritize its own traffic using queuing or other such differentiated service mechanisms, by recent measures significant excess capacity remains on backbone networks.[422] Given this excess capacity and the number of Tier 1 backbone providers, competing providers of VoIP, IP video, and other IP-enabled services and applications are likely to be able to reroute traffic if discrimination were encountered. Thus, in the absence of affirmative efforts to degrade a competitor's traffic, queuing and packet prioritization are likely to yield only extremely small increases in latency and packet loss in many cases.

154. *Special Access and the Internet Backbone Market.* We also reject commenter suggestions that the merged entity will have an increased incentive and market power in the special access market to gain a competitive advantage in the backbone and broadband markets.[423] As noted above, the Commission is currently addressing the issue of competition in the special access market in two ongoing rulemaking proceedings, which will allow the Commission to address any competitive issues on a full record on an industry-wide basis.[424]

G. U.S. International Services Competition

155. In this section we consider the competitive effects of the proposed merger in the markets for U.S. international services.[425] We conclude that the merger is not likely to result in anticompetitive

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[419] *See SBC/AT&T Order*, 20 FCC Rcd at 18367, para. 142; *Verizon/MCI Order*, 20 FCC Rcd at 18508, para. 141.

[420] *See SBC/AT&T Order*, 20 FCC Rcd at 18367, para. 143; *Verizon/MCI Order*, 20 FCC Rcd at 18509, para. 142.

[421] *See* AT&T/BellSouth Reply at 82 (noting that "for the foreseeable future, VoIP traffic will be terminated via the PSTN, which will therefore remain a competitive bypass alternative, and a constraint on backbone providers' behavior").

[422] *See SBC/AT&T Order*, 20 FCC Rcd at 18367, para. 143; *Verizon/MCI Order*, 20 FCC Rcd at 18509, para. 142.

[423] *See, e.g.*, TWTC Petition at 32-33 (asserting that the merged entity will have a greater incentive to overprice, deny, delay, or degrade competitors' access to needed inputs); Consumer Federation *et al.* Reply at 6 (arguing that the merger will have a negative impact on the special access markets because, among other things, the merged AT&T/BellSouth will be able to exercise power to undermine competition).

[424] *See* discussion *supra* at Part V.B (Wholesale Special Access Competition).

[425] U.S. international services consist of all U.S.-billed telecommunications services, including calls that originate in the United States and terminate at a foreign point and calls that originate at a foreign point but are billed by a U.S. carrier, such as international calling card or prepaid card calls. The similarities and differences between domestic

(continued….)

effects for international services provided to mass market, enterprise, or global telecommunications customers. Additionally, we find that the merger will not result in anticompetitive effects in the international transport, facilities-based international message telecommunications service (IMTS),[426] or international private line markets.

156. There generally appear to be few barriers to entry into the U.S. international long distance telecommunications industry for either facilities-based or resale entrants. As of 2004, there were 42 facilities-based IMTS providers, and these carriers offer service to most international destinations.[427] Resale entrants, in particular, face relatively modest costs of market entry, as evidenced by the presence of 799 IMTS resellers.[428] These low entry barriers make it unlikely that the merger will result in anticompetitive effects in these international services markets.

157. We discuss below three separate end-user product markets: the mass market, enterprise, and global telecommunications markets. Before doing so, however, we also separately examine the international transport capacity market, which provides the physical transmission path that carriers use to deliver services in the end-user markets, and two wholesale (or intermediate) markets, namely, facilities-based IMTS and private line service. Input markets, particularly international transport capacity, are a significant component of the international services market. Wholesale markets for international service also are essential components to the delivery of end-user retail services.

1. Input Markets: International Transport Market

158. Consistent with the *Verizon/MCI Order*, we find that international transport, particularly submarine cable capacity, is a relevant market for purposes of this merger analysis.[429] International transport refers to the international physical transmission paths carriers use to offer services between the U.S. and other countries. International traffic can be transmitted via submarine cable, satellite or terrestrial links. Most U.S. international traffic, however, is transmitted over submarine cables.[430]

(Continued from previous page)
and international long distance telecommunications services are discussed in detail in the *SBC/AT&T Order*. *See SBC/AT&T Order*, 20 FCC Rcd at 18372, paras. 154-55.

[426] IMTS is "international message telecommunications service" and denotes international voice-grade services provided over the public switched network.

[427] *See* Strategic Analysis and Negotiations Division, FCC, *2004 International Telecommunications Data*, Table 5, Tables A2-31 (Mar. 2006) (*2004 Section 43.61 Report*), *available at* http://www.fcc.gov/ib/sand/mniab/traffic/files/CREPOR04.pdf.

[428] *See 2004 Section 43.61 Report*, Table D.

[429] *Verizon/MCI Order*, 20 FCC Rcd at 18514-15, paras. 157-58.

[430] In 2004, submarine cables accounted for 80% of the overall active transmission capacity. Terrestrial links accounted for 19% and satellites for 1%. *See* International Bureau, FCC, *2004 Section 43.82 Circuit Status Data* at 12 (Table 2), 18 (Table 3), and 24 (Table 4) (Dec. 2005) (*2004 Circuit Status Report*), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-262890A1.pdf; FCC, *International Bureau Releases 2004 Year-End Circuit Status Report for U.S. Facilities-Based International Carriers; Capacity Use Shows Healthy Growth*, News Release at 1 (Dec. 22, 2005), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-262888A1.pdf.

Because of this, and because neither of the Applicants owns international satellite capacity, we focus on how the merger will affect concentration of ownership of submarine cables.

159. The Commission employs a regional approach in analyzing the international transport market, although, at times, it also has examined international transport capacity on particular routes.[431] Typically, we evaluate submarine cable capacity in the Atlantic, Pacific, and the Americas Regions.[432] We examine ownership of U.S. half-circuits (including the U.S. half of whole-circuits), because AT&T and BellSouth predominantly own capacity on the U.S. end of cable systems. Our concern is whether the proposed merger could increase ownership concentration of U.S. half-circuits to such an extent that the combined entity would have the ability to exercise market power through unilateral or coordinated action.[433] We examine existing submarine cable capacity and take into account future capacity that may be achieved through the use of wavelength division multiplexing (WDM) technology within the next two years.[434]

160. We find that the merger will not increase concentration significantly in any of the international transport market regions, and is not likely to result in anticompetitive effects given the relatively low market shares of the Applicants, the low barriers to entry, and the substantial amount of transport capacity available now and upgradeable with WDM technology from carriers other than the Applicants. AT&T has interests in cables in all three regions.[435] BellSouth owns no cable capacity in the Pacific Region. In each of the other two regions, the Atlantic Region and the Americas Region, BellSouth holds less than **[REDACTED]** percent of the total capacity for 2006.[436] The combination of these interests will have

[431] *See Verizon/MCI Order*, 20 FCC Rcd at 18514-15, para. 158; *see also AT&T/British Telecom Order*, 14 FCC Rcd at 19161-64, para. 48 (1999); *BT/MCI Order*, 12 FCC Rcd at 15389-97, paras. 94-122.

[432] We note that several countries ("thin route" countries) are not linked to the United States by cable and are served only by satellites. *See, e.g., WorldCom/MCI Order*,13 FCC Rcd at 18073-74, para. 85. AT&T and BellSouth do not hold any ownership interest in satellite systems or satellite transponder capacity that would serve thin route countries. Thus, the merger will not increase concentration in the provision of transport capacity on these routes. Additionally, we note that traffic on the U.S.-Mexico and U.S.-Canada routes primarily uses terrestrial facilities. We are not aware of any shortage of capacity on these routes. *See, e.g., 2004 Circuit Status Report* at 21, Table 4 (on U.S.-Canada route, there were 473,701 active and 710,122 idle circuits; on U.S.-Mexico route, there were 279,577 active and 435,554 idle circuits). BellSouth has no traffic on these routes. Therefore, we do not review either the thin route markets or the U.S.-Mexico and U.S.-Canada routes as part of our transport capacity analysis in this proceeding.

[433] BellSouth holds ownership interests in the following cables: in the Atlantic Region, TAT-14; and in the Americas Region, Maya-1 and Pan American. *See* Submarine Cable Transfer Application, SCL-T/C-20060331-00003.

[434] *See, e.g., DOJ/FTC Guidelines* § 3.2 (Timeliness of Entry). WDM technology dramatically increases the carrying capacity of fiber infrastructure. For example, adding one wavelength to a 40 Gbps cable (four fiber pairs of ten Gbps each) will double the capacity of the cable to 80 Gbps, and upgrading to eight wavelengths will increase capacity to 320 Gbps.

[435] AT&T holds ownership interests in the following cables. In the Atlantic Region, Columbus II, Columbus III, TAT-12/13, TAT-14; in the Pacific Region, China-U.S., Guam-Philippines, Japan-U.S., PacRimEast, TPC-5; and in the Americas Region, Americas-1, Americas-2, Antillas-1, Arcos-1, Bahamas-2, Maya-1, Pan American, Taino-Carib. *See 2004 Circuit Status Report* at 34-35, Table 7 (listing various cable landing license orders).

[436] For the Atlantic Region, BellSouth and its affiliates own less than **[REDACTED]**% of total cable capacity. For the Americas Region, BellSouth and its affiliates own less than **[REDACTED]**%. *See* AT&T Info. Req., Exh. 45; *2004 Circuit Status Report*, Table 7.

almost no effect on the concentration of capacity in either of the Atlantic or Americas Regions. With respect to barriers to entry, we note that the planning and construction of a new cable system can be implemented within two years while WDM upgrades can be implemented in less than a year.[437] Thus we find entry barriers to be modest.

161. *Cable Landing Station Access*. Access to cable landing stations, both in the U.S. and abroad, is an essential input for the provision of U.S. international services and, therefore, constitutes a relevant market for the purpose of this merger proceeding. AT&T is a major owner of U.S. cable stations.[438] Because BellSouth does not have any ownership interests in cable landing stations,[439] the merger will not increase concentration in these markets. Therefore, we do not analyze cable landing station input markets as a part of this merger analysis.

2. Intermediate Facilities-Based Markets

a. Facilities-Based IMTS

162. IMTS consists of telecommunications services provided over the public switched networks of U.S. international carriers. In recent years, IMTS has evolved into a two-sector industry – a wholesale sector in which carriers can buy and sell bulk IMTS minutes, and a retail sector in which carriers sell minutes to "end users." The source of all wholesale IMTS minutes are IMTS minutes provided by facilities-based U.S. international carriers that terminate those minutes over their own networks through interconnection agreements with foreign correspondents.[440] As the basis for all IMTS provisioning, facilities-based IMTS is the fundamental international service provided over the public switched network.[441]

163. According to data filed pursuant to section 43.61 of the Commission's rules, as of 2004 – the most recent year for which data are available – there were 42 carriers that competed in the markets for facilities-based IMTS. These carriers generated revenues of $8.7 billion with sales of 63.7 billion U.S. billed facilities-based IMTS minutes for all international routes combined.[442] Overall, MCI and AT&T

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[437] *See, e.g.*, *WorldCom/MCI Order*, 13 FCC Rcd at 18084, para. 105 (stating that a firm can decide to construct and begin operating a new cable system in response to an exercise of market power within two years); *id*. at 18081, para. 101 (stating that WDM upgrades can be implemented in less than a year). With WDM technology, capacity can now be added to submarine cables at a fraction of the cost necessitated by older technologies, in large part because with WDM there is no need to lay additional cable to increase capacity.

[438] *See supra* note 435 (AT&T cable landing station information is contained in the joint applications for the relevant cable landing licenses).

[439] *See* BellSouth Info. Req. at 86.

[440] Approximately 61% of all facilities-based IMTS minutes are sold to other carriers which then resell them to end users or to other resellers. *See 2004 Section 43.61 Report*, Table A1, Table D. U.S. facilities-based carriers also sell IMTS services to foreign carriers, many of which find it profitable to terminate their international calls to third countries via the United States.

[441] Facilities-based IMTS is the first point in a supply chain of international inputs at which full end-to-end connectivity between the United States and any foreign point is available within the United States.

[442] These numbers include confidential as well as non-confidential data filed pursuant to section 43.61 of the Commission's rules. Unlike previous years, the carrier summary Table A1 in the *2004 Section 43.61 Report*

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were the largest providers,[443] with 26.7 percent and 26.3 percent, respectively, of U.S. billed facilities-based IMTS minutes.[444] Other carriers with large shares of U.S.-billed facilities-based IMTS minutes were IDT, with 12.9 percent, and Sprint, with 12.1 percent.[445] None of the remaining carriers had more than **[REDACTED]** percent of U.S.-billed minutes for 2004. SBC was not a facilities-based IMTS carrier in 2004 and BellSouth, which filed confidentially, provided only **[REDACTED]** percent of U.S.-billed facilities-based IMTS minutes.[446] Neither Cingular nor any other wireless carrier reported U.S. facilities-based IMTS minutes.[447]

164. In 2004, legacy AT&T had not yet merged with SBC. However, because SBC provided no facilities-based IMTS in 2004, AT&T (post-merger with SBC) would have provided the same share of U.S. facilities-based IMTS minutes as legacy AT&T, *i.e.*, 26.3 percent. Because BellSouth provided such a small share of facilities-based IMTS minutes, the percentage of U.S. billed facilities-based IMTS minutes provided by a combination of the current AT&T (including SBC) and BellSouth does not represent a significant increase over the percentage provided by AT&T alone, *i.e.*, **[REDACTED]** percent.

165. Because final 2005 section 43.61 data are not yet available to the FCC,[448] we cannot calculate the percentage of total facilities-based IMTS minutes provided by the Applicants in 2005. However, 2005 IMTS data provided by AT&T and BellSouth in their responses to the Information Request suggest that their shares in 2005 of total U.S. facilities-based IMTS are likely to be lower than their share in 2004.[449]

(Continued from previous page)
aggregates confidential and non-confidential data at the route-specific level. *See 2004 Section 43.61 Report*, Table A1. We also cite, however, where necessary in this order, specific 2004 section 43.61 filings for which the filing company requested confidential treatment pursuant to section 0.459 of the Commission's rules. *See* 47 C.F.R. § 0.459. Although facilities-based IMTS may be provisioned through switches serving local areas or regions, this product can be resold easily and at very little cost over national transmission facilities. Thus, the price of wholesale IMTS does not differ significantly, or at all, between locales in the United States. Data aggregated to the nationwide level for facilities-based IMTS are available in the Commission's *Section 43.61 Reports* for each U.S. international route and for the aggregation of all U.S. international routes, termed "world total" data.

[443] Neither the merger of Verizon and MCI, nor the merger of AT&T and SBC, had been approved as of the filing deadline for the *2004 Section 43.61 Report*. MCI's numbers are therefore reported separately from Verizon. Verizon had **[REDACTED]**% of U.S.-billed minutes for 2004. *See* Verizon's confidential 2004 section 43.61 filing. SBC had no facilities-based IMTS in 2004.

[444] These numbers were calculated using approximately 63.7 billion U.S.-billed minutes in 2004. *See 2004 Section 43.61 Report*, Table A1. The 63.7 billion minutes include confidential as well as non-confidential data filed pursuant to section 43.61 of the Commission's rules.

[445] *See id.*

[446] *See* BellSouth's confidential 2004 section 43.61 filing.

[447] These companies provided IMTS resale, exclusively.

[448] Carriers had until October 31, 2006 to submit a revised report correcting any inaccuracies included in their annual report. *See* 47 C.F.R. § 43.61(a)(2).

[449] *See* AT&T Info. Req., Exh. 46.1; BellSouth Info. Req., Exh. 47.1. **[REDACTED]**

166. Evaluation of route-specific data shows that BellSouth provides facilities-based IMTS on only seven of 247 international routes (Guatemala, Panama, Argentina, Chile, Ecuador, Peru, and Venezuela) and has only a small market share of U.S. billed minutes except on a few routes.[450] BellSouth's market share is less than **[REDACTED]** percent on each of these routes, except for Ecuador.[451] BellSouth's market share for Ecuador is **[REDACTED]** percent.[452] Post merger, the combined entity would have a market share of **[REDACTED]** percent on the Ecuador route.[453] With this exception, there are either no increases in market concentration or minor increases, reflecting the fact that BellSouth has either no traffic or only a very small portion of total traffic on all but this international route.

167. Moreover, we find that the absence of significant barriers to entry will serve to constrain any attempt by the merged entity to exercise market power on any of these eight routes. For facilities-based carriers, substantial international transport capacity exists in all regions. Foreign termination services are widely available on almost every route. Specifically, the *2004 Section 43.61 Report* shows that there are ten or more reporting facilities-based IMTS carriers on 217 of 247 international routes. More relevant, there are 21 or more U.S. facilities-based IMTS carriers offering service on each of the seven routes served by BellSouth (Guatemala, Panama, Argentina, Chile, Ecuador, Peru, and Venezuela). We also note that there is a growing "spot market" for international termination services whereby carriers with excess capacity to various foreign destinations can auction foreign termination services to any U.S. carrier seeking such services.[454] Given the presence of other facilities-based IMTS carrier and the absence of significant barriers to entry, any attempt by the merged entity to exercise market power on any international route would be frustrated by competitive entry.

168. Finally, as the Commission noted in the *Verizon/MCI Order*, the emergence of international VoIP services as a substitute for facilities-based IMTS should also constrain the market power of any provider of facilities IMTS. [455]

b. International Private Line Services

169. Facilities-based international private line services provide dedicated connectivity between points in the U.S. and foreign destinations.[456] AT&T is a major provider of international private line

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[450] *See* Letter from Bennett L. Ross, General Counsel – D.C., BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 1 (filed Sept. 8, 2006) (BellSouth Sept. 8 *Ex Parte* Letter); *2004 Section 43.61 Report*, Table A; *see also* BellSouth's 2004 section 43.61 confidential filing; Letter from Richard E. Wiley, Counsel for BellSouth, to Gary Remondino, Wireline Competition Bureau, FCC, WC Docket 06-74, Attach. at 2 (filed Aug. 22, 2006) (BellSouth Aug. 22 *Ex Parte* Letter) (supplemental information responsive to specification 47).

[451] BellSouth Info. Req., Exh. 47(1). These numbers were calculated using approximately 63.7 billion U.S.-billed minutes in 2004. *See* 2004 Section 43.61 Report, Table A1. The 63.7 billion minutes include confidential as well as non-confidential data filed pursuant to section 43.61 of the Commission's rules.

[452] BellSouth Info. Req., Exh. 47(1).

[453] *Id.*

[454] Arbinet is an example of a company bringing buyers and sellers of international termination services together. *See* Arbinet-Thexchange, Inc., SEC Form 10-K at 3 (filed Mar. 14, 2006), *available at* http://www.sec.gov/Archives/edgar/data/1136655/000119312506053757/d10k.htm.

[455] *Verizon/MCI Order*, 20 FCC Rcd at 18518-59, para. 167.

services.[457] Because BellSouth does not provide any facilities-based international private line services,[458] the merger will not increase concentration in these markets. We do not, therefore, analyze the wholesale facilities-based market as a part of this merger analysis.

3. End-User Markets

a. Mass Market

170. The mass market for international telecommunications services consists of international telecommunications services sold directly to residential and small business customers. The primary suppliers of such services are facilities-based IMTS carriers and IMTS resellers.[459] We find that the market is not highly concentrated and that the merger is not likely to have anticompetitive effects. We also find that structural characteristics of the mass market facilitate entry and will ensure that the market remains competitive post-merger.

171. Consistent with the *SBC/AT&T Order* and the *Verizon/MCI Order*, the record suggests that many consumers approach international IMTS as an "a la carte" service often purchased from providers other than their presubscribed carrier, including independent resellers.[460] The IMTS mass market is not highly concentrated. There are approximately 42 facilities-based carriers and approximately 799 resellers providing IMTS service.[461] Many of these carriers offer service on all or most international routes and sell directly to residential and small business customers. Major market participants include Verizon, AT&T, IDT Corporation, and Sprint, as well as a number of other highly active facilities-based carriers and resellers.[462] Within the last several years, AT&T, Verizon, and Sprint have begun focusing on the provision of wholesale IMTS to resale carriers. Many smaller, highly competitive resellers have entered

(Continued from previous page)

[456] Private lines are facilities that provide dedicated connectivity between two geographically distant customer points and are sold to customers as common carriage offerings. Private line services are offered to the public in sizes ranging from 64-Kbps circuits (DS0) up to very high-speed trunks equivalent to 1,890 64-Kbps circuits (STM-1), or higher. International private lines provided by U.S. carriers connect customer locations in the United States to locations abroad.

[457] *See 2004 Section 43.61 Report*, Tables B-1, B-2.

[458] *See* BellSouth Sept. 8 *Ex Parte* Letter at 1; BellSouth's 2004 section 43.61 confidential filing.

[459] Although we cannot identify precisely which VoIP providers should be included in the same market as mass market IMTS, we nevertheless find that certain VoIP providers should be also included as participants in this market. *Cf. supra* Part V.D (Mass Market Telecommunications Competition). We also find that wireless providers of IMTS are market participants to a limited degree. However, because of difficulty in evaluating precisely the participation of VOIP and CMRS providers in the IMTS market, we do not include these carriers in our market share analysis below.

[460] *See SBC/AT&T Order*, 20 FCC Rcd at 18374, para. 161; *Verizon/MCI Order*, 20 FCC Rcd at 18519-20, para. 171. In 2004, U.S. end-user customers purchased approximately 56.6 billion IMTS minutes. *See 2004 Section 43.61 Report*, Tables 34 and 35. Resellers reported approximately 38.6 billion IMTS minutes in 2003, although this figure may include substantial double-counting. *Id.*, Table D. Resold IMTS is mostly, but not entirely, provided as a non-presubscribed service, such as prepaid calling cards or "dial-around."

[461] *See supra* para. 156.

[462] *See 2004 Section 43.61 Report*, Tables A and D.

in recent years to compete against the traditional carriers in the provision of mass market IMTS. As a result, the traditional international carriers no longer hold the substantial market shares in mass market IMTS that they once held. Although BellSouth has the most presubscribed lines of any carrier within its region, the fact that BellSouth sold only **[REDACTED]** IMTS minutes to residential customers in 2004 and **[REDACTED]** minutes in 2005 is evidence that it possesses only a limited share of mass market IMTS within its region.[463] Given such a competitively dynamic environment, we find that the merger is not likely to result in anticompetitive effects in the IMTS mass market.

172. We also find that various structural characteristics of the IMTS mass market will ensure that the market remains competitive. Mass market IMTS customers have multiple access channels through which to obtain international service, including calling plans offered by their presubscribed long distance carrier, "dial-around" services, prepaid calling cards, as well as important emerging access channels such as discounted international calling plans offered by wireless carriers and VoIP providers. In addition, there are no significant barriers to entry in the provision of mass market IMTS. For facilities-based providers, substantial international transport capacity exists in all regions and foreign termination services are available on virtually every route. Because facilities-based IMTS minutes are a crucial input for resellers, their wide availability will continue to sustain a highly active resale sector. Indeed, the presence of approximately 799 resellers nationwide demonstrates that successful entry into the IMTS mass market is feasible even for smaller, non-facilities-based carriers.[464]

b. Enterprise Market

173. The enterprise market for international telecommunications services consists of international telecommunications services sold directly to medium and large business customers. As discussed above in the context of domestic enterprise services, we find that medium and large enterprise customers are sophisticated purchasers of telecommunications services likely to make informed choices based on expert advice about service offerings and prices. As we concluded above, so long as no structural barriers prevent carriers from offering services to such customers, they will seek out best-priced alternatives.[465] The provision of international services to larger business customers depends in large part on the ability to obtain critical inputs, such as international transport capacity and operating agreements with carriers on the foreign end, as well as the technical ability to provide the specific services demanded by larger

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[463] An extremely rough upper bound on BellSouth's market share can be derived as follows: Nationwide, end-user IMTS minutes provided by wireline carriers totaled approximately 54.4 billion minutes in 2004, the most recent year for which we have total industry data. *See 2004 Section 43.61 Report*, Tables A34, A35 (adjusted to exclude CMRS IMTS minutes in Table D and confidential section 43.61 filings). The proportion of residential minutes to total end-user minutes is approximately 60%, so that the residential market in 2004 consisted of approximately 32.6 billion minutes nationwide. Because BellSouth has approximately 13% of total U.S. local loops in its region, we estimate that approximately 4.2 billion residential minutes were sold by all carriers in the BellSouth region in 2004. *See* FCC, *Statistics of Communications Common Carriers* at Tables 2.4, 2.6, 5.7 (Nov. 2005) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-262086A1.pdf. BellSouth reported **[REDACTED]** residential IMTS minutes in 2004. *See* BellSouth Aug. 22 *Ex Parte* Letter, Attach. at 3 (supplemental information responsive to specification 49). Thus, BellSouth's approximate share of residential IMTS minutes in its region was only **[REDACTED]**%, which we assume to be representative of small business IMTS as well and thus indicative of its market share of the IMTS mass market in its region.

[464] *See 2004 Section 43.61 Report*, Table D.

[465] *See supra* para. 82.

business customers. The combined entity would not have the ability to exercise market power over these critical inputs. Moreover, we find that many carriers have the technical capability to provide business services. In light of these facts, we conclude that the merger is unlikely to reduce competition in this market.

c. Global Telecommunications Services

174. The global telecommunications services (GTS) market, also known as the global seamless services market, is a segment of the enterprise market that is focused on large multi-national customers that require connectivity to multiple locations throughout the world, not just within the U.S.[466] These customers are generally large multi-national corporations that have significant expertise in telecommunications issues.[467] Although AT&T is a competitor in the GTS market,[468] BellSouth does not provide any GTS services;[469] thus the merger will not increase concentration in these markets. Therefore, we do not analyze the GTS market as a part of this merger analysis.

H. Wireless Broadband Services Competition

175. Commenters allege that the aggregation of AT&T's and BellSouth's holdings of Broadband Radio Service (BRS) spectrum in the 2.5 GHz band and Wireless Communications Services (WCS) spectrum in the 2.3 GHz band will result in competitive harms.[470] Consistent with the Commission's analysis in the *Sprint/Nextel Order*, we assess the potential effects of the proposed BRS and WCS transfers on competition in the product markets where BRS and WCS spectrum seem most likely to be used: (1) the mobile data services market and (2) the fixed broadband services market.[471] For the reasons

[466] The Commission has defined the global seamless services market as "a combination of voice, data, video, and other telecommunications services that are offered by a single source or multiple sources over an integrated global or regional international network of owned or leased facilities, and that have equivalent (though not identical) quality, characteristics, features and capabilities wherever they are provided." *AT&T/British Telecom Order*, 14 FCC Rcd at 19153, para. 28; *see also, e.g.*, *Sprint Corporation, Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended*, File No. I-S-P-95-002, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1864, para. 84 (1996) (*Sprint Declaratory Ruling*); United States v. Sprint Corp., Civil Action No. 95-1304, Complaint at paras. 18, 29, 39 (D.D.C. filed July 13, 1995) (defining market of "seamless international telecommunications services" that is distinct for purposes of antitrust law).

[467] *AT&T/British Telecom Order*, 14 FCC Rcd at 19151-57, paras. 22-39.

[468] *See* AT&T Info. Req. at 101-102.

[469] *See* BellSouth Info. Req. at 94.

[470] *See, e.g.*, CDD Petition at 6; Clearwire Petition at 2-3, 6-8, 15-18; COMPTEL Petition at 16-24; Consumer Federation *et al*. Petition at 20-25; Rubin Comments at 16-18; Clearwire Reply at 9-10; Clearwire Reply to Joint Opposition at 9-10, 19 (filed June 27, 2006) (Clearwire June 27 Reply); Consumer Federation *et al.* Reply at 20-24.

[471] *Sprint/Nextel Order* at 14021-22, para. 150. WCS and BRS spectrum, though licensed under different rules, appears to be suitable for the provision of some form of fixed or mobile wireless broadband service. *See id*. at 14024-25, paras. 154-156; *see also* Clearwire June 27 Reply at 9; *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10798-99, 10816-17, paras. 27-28, 67 (1997) (*WCS Order*); *Eleventh CMRS Competition Report*, paras. 29-33. We therefore treat those bands as substitutable for the purposes of this analysis. In doing so, we do not opine as to the actual substitutability of the WCS and BRS bands, or any services offered therein.

discussed below, we find that there is unlikely to be a merger-specific competitive effect on the mobile data services market, the fixed broadband services market, or the merged entity's incentive and/or ability to "warehouse" spectrum.

176. *Mobile Data Services Market.* Several petitioners and commenters raise concerns about the amount of WCS and BRS spectrum that the merged entity would control, both in local markets and in the aggregate, and its position as a provider with a national footprint in the WCS and BRS bands.[472] In particular, Clearwire argues that the merged entity will prevent competitive entry in local markets and will use its BRS spectrum holdings in BellSouth's territory to prevent Clearwire from becoming a "national" competitor in the provision of mobile data services.[473] We reject these arguments.

177. There are only three circumstances in which the proposed transfer of WCS and BRS spectrum could have a merger-specific competitive effect on the mobile data services market:[474] (1) if AT&T and BellSouth both hold WCS or BRS licenses in overlapping geographic areas outside of their respective in-region territories, (2) if AT&T licensed or controlled spectrum overlaps BellSouth licensed or controlled spectrum in BellSouth's territory, or (3) if BellSouth licensed or controlled spectrum overlaps AT&T licensed or controlled spectrum in AT&T's territory. Only the first of the three circumstances exists here. The record shows that AT&T holds no BRS spectrum,[475] and that AT&T's WCS holdings overlap BellSouth's BRS holdings only in a small portion of one county in Indiana with a total population of 2,022.[476] This overlap involves a 5 MHz WCS license held by AT&T, KNLB325, and BRS spectrum held by BellSouth.[477] We do not believe this overlap rises to a level of merger-specific competitive harm because its geographic scope is extremely limited, encompassing less than one percent of the population of RSA410 Indiana 8-Brown, and there is a wide variety of spectrum available in that overlap area that is suitable for the provision of mobile data services that is licensed to parties other than the Applicants.[478]

178. Further, notwithstanding Clearwire's arguments to the contrary,[479] significant blocks of spectrum are available, or soon will be available, to competitors wishing to provide competing wireless mobile broadband services. As we noted in the *Sprint/Nextel Order*, BRS spectrum does not appear to be uniquely suitable for any specific wireless service, and we anticipate that, if BRS spectrum is used for the

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[472] *See, e.g.*, Clearwire Petition at 4-5, 7-9, 14, 17; Clearwire June 27 Reply at 12.

[473] Clearwire Petition at 8, 12; Clearwire June 27 Reply at 12-13, 16-18.

[474] We note that any spectrum held by Cingular would not affect this analysis because Cingular is jointly owned by the applicants. In any event, Cingular does not hold WCS, BRS or EBS licenses or lease or otherwise own or control WCS, BRS, or EBS spectrum. *See* AT&T Info. Req. at 55.

[475] *See* AT&T/BellSouth Reply at 65; Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 n.2 (filed Oct. 2, 2006) (AT&T/BellSouth Oct. 2 *Ex Parte* Letter); Joint *Ex Parte* of AT&T Inc. and BellSouth Corporation, WC Docket No. 06-74 at 2 (Aug. 4, 2006); (AT&T/BellSouth Aug. 4 *Ex Parte*); AT&T Info. Req. at 55.

[476] AT&T/BellSouth Reply at 65 n.265. The area is a circle with a radius of 35 miles in RSA8, with a population of 2,022 according to the 2002 census. AT&T Info. Req. at 55.

[477] AT&T/BellSouth Reply at 65 n.265; AT&T Info. Req. at 55.

[478] *See, e.g.*, *Sprint/Nextel Order*, 20 FCC Rcd at 14025-26, para. 158.

[479] Clearwire July 27 Reply at 5-11.

provision of mobile data service, it will be one of several existing and potential inputs for the mobile data services market.[480] For example, we believe the 90 MHz of bandwidth made available in the Advanced Wireless Service (AWS) auction will enable entry into either mobile or fixed broadband markets.[481] We therefore continue to believe that "[w]hat is clear, at this point in the development of these nascent services, is that there is meaningful competition among current mobile data service providers and that substantial opportunities exist for service providers to develop and offer even higher speed services over numerous spectrum blocks that will become available in the future."[482]

179. *Fixed Broadband Services.* Consistent with the *Sprint/Nextel Order*, we define the fixed broadband services market as the market for fixed advanced telecommunications capability, *i.e.*, "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications capability using any technology."[483] Although we are uncertain as to the exact nature of services that will be provided in the WCS and BRS bands, we expect that these spectrum bands may be used to provide fixed or portable wireless broadband services that will provide alternative service platforms for last mile connections to residences and

[480] *Sprint/Nextel Order*, 20 FCC Rcd at 14022, 14025, paras. 151, 157. The same holds true for WCS spectrum. *WCS Order*, 12 FCC Rcd at 10816-17, para. 63.

[481] *See Sprint/Nextel Order*, 20 FCC Rcd at 13980, para. 29. The auction of 90 MHz of Advanced Wireless Services spectrum (AWS-1), Auction No. 66, concluded on Sept. 18, 2006. *See* Factsheet for Auction 66, Advanced Wireless Services (AWS-1), *available at* http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=66; *Auction of Advanced Wireless Services Licenses Closes*, Public Notice, Report No. AUC-06-66-F, 21 FCC Rcd 10521 (2006). There are a variety of other bands which may be suitable for the provision of mobile or fixed wireless broadband services. *See* AT&T/BellSouth Reply at 67-68; AT&T/BellSouth Oct. 2 *Ex Parte* Letter at 2; *but see* Clearwire July 27 Reply at 5-9 (arguing that some bands identified by AT&T and BellSouth are not now suitable for the provision of mobile wireless broadband services).

[482] *Sprint/Nextel Order*, 20 FCC Rcd at 14025, para. 156. We reject for the same reasons Clearwire's argument that the merged entity's holdings in the 2.5 GHz band and "nearly national" footprint in the 2.3 GHz band will prevent Clearwire or other competitors from becoming national competitors. Clearwire Petition at 8, 12; Clearwire June 27 Reply 16-18. We also reject for the same reasons Clearwire's contention that the merged entity will hold "key" spectrum that can be used to block development of a nationwide mobile wireless broadband network by a competitor. *See, e.g.*, Clearwire June 27 Reply at 12-13. The fact that the merger causes no significant concentration coupled with the availability of alternative spectrum renders such arguments implausible.

[483] *Sprint/Nextel Order*, 20 FCC Rcd at 14029, para. 167 (citing 47 U.S.C. § 706); *see also* Availability of Advanced Telecommunications Capability in the United States, *Fourth Report to Congress*, 19 FCC Rcd 20540 (2004).

businesses.[484] Operators providing such services will likely compete with digital subscriber line (DSL) and cable modem service providers that already hold significant market share.[485]

180. There are only three circumstances in which the proposed transfer of WCS and BRS spectrum will have a merger-specific effect on fixed broadband services: (1) if AT&T and BellSouth both hold WCS or BRS licenses in overlapping geographic areas outside of their respective in-region territories, (2) if AT&T licensed or controlled spectrum overlaps BellSouth's territory, or (3) if BellSouth licensed or controlled spectrum overlaps AT&T's territory. All three circumstances exist here.[486]

181. As discussed above, AT&T's WCS holdings overlap BellSouth's BRS holdings in a small portion of one county in Indiana, which county is outside AT&T's and BellSouth's in-region territory.[487] The record further shows that AT&T has three WCS licenses which overlap very slightly with BellSouth's territory in **[REDACTED]**,[488] and BellSouth has **[REDACTED]** licenses which overlap with AT&T's territory.[489] Such overlaps, especially given the wide variety of spectrum allocations held by parties other than the Applicants, do not rise to the level of a cognizable competitive harm.[490] As discussed in para. 178 above, significant blocks of spectrum are available, or soon will be available, to competitors wishing to provide competitive wireless broadband services. Further, the Commission has noted that, in the future, there will be a wide variety of technologies that will be available to provide broadband services to consumers and businesses, including fiber, broadband over power line, unlicensed wireless technologies, and satellite.[491] We continue to believe that, to the extent that uses of BRS and

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[484] *Sprint/Nextel Order*, 20 FCC Rcd at 14022, 14025, paras. 151, 157. The same holds true for WCS spectrum. WCS Order, 12 FCC Rcd at 10816-17, para. 63. *See* WCS Coalition, Consolidated Request for Limited Extension of Deadline for Establishing WCS Compliance with Section 27.14 Substantial Service Requirement at 10-11, filed Mar. 22, 2006 (noting that 802.16e WI-Max equipment is expected to be developed for use in the 2.3 GHz WCS band); Comments of Motorola, Inc., WT Docket No. 06-102, filed June 9, 2006 (noting that WI-Max technology is widely held to be the most promising technology for a successful broadband service for WCS consumers).

[485] *See Sprint/Nextel Order*, 20 FCC Rcd at 14027-28, para. 162. *See also High-Speed Services Dec. 2005 Report*, Tables 7-9.

[486] For the sake of clarity, we note that the circumstances in which the proposed transfers will have a merger-specific effect on the fixed broadband services market differ from those circumstances germane to the mobile data services market, discussed *supra* para. 176. A merger-specific effect in the mobile data services market occurs only where there is an overlap of the Applicants' spectrum holdings, whereas a merger-specific effect in the fixed broadband services market will occur where there is a newly created overlap of the Applicants' spectrum *or* one Applicant's spectrum with the other Applicant's in-region territory. As noted above, Cingular does not affect this analysis because Cingular is jointly owned by the applicants, and does not otherwise own, lease, or otherwise control WCS, BRS or EBS spectrum. *See* AT&T Info. Req. at 55.

[487] *See supra* para. 177.

[488] **[REDACTED]**. *See* AT&T Info. Req., Exh. 23.1.

[489] The overlapping areas and spectrum are as follows: **[REDACTED]**. *See* BellSouth Info. Req., Exh. 23.a.1.

[490] *See, e.g., Sprint/Nextel Order*, 20 FCC Rcd at 14025-26, para. 158.

[491] *Sprint/Nextel Order*, 20 FCC Rcd at 14025-26, para. 162; *Section 706 Fourth Annual Report to Congress*, 19 FCC Rcd at 20553-62, 20583.

WCS spectrum evolve into a fixed broadband service, it will be just one of several broadband services and that no competitive harm is likely to result from the merger in this product market.[492]

182. *Warehousing*. Finally, we reject commenters' arguments regarding the merged entity's incentive and/or ability to "warehouse" spectrum.[493] The Commission recently required all BRS licensees to demonstrate substantial service by May 1, 2011 and established safe harbors that licensees could use to make a substantial service showing.[494] We concluded that "establishing a substantial service standard with safe harbors will ensure prompt delivery of service to rural areas, . . . prevent stockpiling or warehousing of spectrum by licensees or permittees, and . . . promote investment in and rapid deployment of new technologies and services."[495] In this case, based upon our review of the record, we conclude that none of the commenters have made a showing that the recently adopted substantial service standards would be insufficient to prevent warehousing.[496] Since WCS licensees are required to demonstrate substantial service at renewal, the same logic applies to WCS spectrum.[497]

I. Effect of the Enlarged Local Footprint

183. Citing the Commission's *SBC/Ameritech Order* and *Bell Atlantic/GTE Order*,[498] certain commenters argue that the merged entity's expanded geographic scope (*i.e.*, its "big footprint") will increase its incentive to discriminate in the provision of wholesale inputs to rivals in various retail markets.[499] Commenters further assert that the merger will increase the merged entity's incentive to discriminate by reducing the number of companies against which the merged entity's practices can be

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[492] *Sprint/Nextel Order*, 20 FCC Rcd at 14025-26, para. 162.

[493] *See, e.g.*, CDD Petition at 6; Clearwire Petition at 17; Clearwire Reply at 19; Clearwire June 27 Reply at 19; Consumer Federation *et al.* Reply at 23-24; AAI Condition Comments at 5; Clearwire Condition Comments at 3-6. *but see* AT&T/BellSouth Oct. 2 *Ex Parte* Letter at 3.

[494] *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Third Memorandum Opinion and Order and Second Report and Order, WT Docket No. 03-66, 21 FCC Rcd 5606, 5718-36, paras. 274-310 (2006).

[495] *Id.* at 5720, para. 278.

[496] *See, e.g.*, CDD Petition at 6; Clearwire Petition at 17-18; Consumer Federation *et al.* Petition at 9, Consumer Federation *et al.* Cooper/Roycroft Decl. at 67; Rubin Comments at 16-18; Clearwire Reply at 10; Consumer Federation *et al.* Reply at 21-24; Telephone USA Reply at 2; Letter from Larry Day, Director, Wireless Pathways, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 27, 2006); AAI Condition Comments at 5; Clearwire Condition Comments at 15-18.

[497] *See* 47 C.F.R. § 27.14(a). *See* WCS Coalition, Consolidated Request for Limited Extension of Deadline for Establishing WCS Compliance with Section 27.14 Substantial Service Requirement at 10-11, filed Mar. 22, 2006.

[498] *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14115-16, paras. 176-178; *SBC/Ameritech Order*, 14 FCC Rcd at 14797-98, paras. 192-193.

[499] *See, e.g.*, Access Point *et al.* Petition at 20-24; Cbeyond *et al.* Comments at 88-90; TWTC Petition at 42-45; TWTC Reply Attachment B, Joint Declaration of Stanley M. Besen and Bridger M. Mitchell, CRA International, at 19-25 (filed Aug. 8, 2006) (TWTC Besen/Mitchell Reply Decl.); Cable Companies Sept. 27 *Ex Parte* Letter at 7; b*ut see* AT&T/BellSouth Application at 115-120, 230; AT&T/BellSouth Reply at 90-100.

compared, or "benchmarked."[500] For the reasons given below, we do not find that these broad, generalized, quasi-theoretical arguments justify the imposition of conditions.

1. Big Footprint

184. The "big footprint" theory postulates that, where an incumbent LEC possesses market power over certain essential wholesale inputs, that incumbent LEC may not discriminate against rivals to the full extent of its ability, because the benefits of full discrimination may not justify the costs (which include the risk that the discrimination may be detected and punished by regulators). The theory further assumes that, when an incumbent LEC (incumbent LEC A) does discriminate against a rival that competes not only in its in-region service territory, but also in that of another incumbent LEC (incumbent LEC B), the benefits of incumbent LEC A's discrimination may "spill-over" and benefit incumbent LEC B. If incumbent LECs A and B subsequently merge, the theory postulates that these spill-over effects, or externalities, will be internalized by the merged entity, which should increase to some degree the incentive of the merged incumbent LEC to discriminate.[501]

185. Consistent with past Commission decisions, we find that this "big footprint" theory is theoretically valid.[502] We are not persuaded, however, that the general arguments presented by commenters justify the imposition of burdensome conditions in this proceeding. First, commenters present no rigorous theoretical model that generates even a rough estimate of the merger's incremental impact on AT&T's incentive to discriminate, whether through price or non-price methods. Second, although there have been several mergers of large incumbent LECs, including BOCs, in recent years, commenters present no convincing empirical evidence showing that such mergers led to increased post-merger discrimination against rivals.[503] Third, the "big footprint" theory assumes that each incumbent LEC operates only within its own service territory, but AT&T, unlike parties in earlier large-incumbent LEC mergers, already is a major competitor in BellSouth's territory. Commenters fail to address how and whether the merged entity's incentives are affected by the fact that AT&T, through its out-of-region operations, should already be internalizing some of the externalities of any discriminatory activity.[504]

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[500] *See, e.g.*, Access Point *et al.* Petition at 13-20, Cbeyond *et al.* Comments at 78-88; MSV LLC Comments at 7; TWTC Petition at 51-71; Cbeyond *et al.* Reply at 13-15; Consumer Federation *et al.* Reply at 27-30; *see generally Bell Atlantic/GTE Order*, 15 FCC Rcd at 14099-114, paras. 127-72, *SBC/Ameritech Order*, 14 FCC Rcd at 14760-95, paras. 101-85. *But see* AT&T/BellSouth Application at 120-24; AT&T/BellSouth Reply at 100-10; Cable Companies Sept. 27 *Ex Parte* Letter at 8-9.

[501] *Bell Atlantic/GTE Order*, 15 FCC Rcd 14116, para. 178; *SBC/Ameritech Order*, 14 FCC Rcd at 14798, para. 193.

[502] *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14115-16, paras. 176-178; *SBC/Ameritech Order*, 14 FCC Rcd at 14797-98, paras. 192-93.

[503] Indeed, only the Applicants cite a case study of incumbent LEC mergers – one that finds no reduction in competitive LEC competition in areas served by merged incumbent LECs. *See* AT&T/BellSouth Application at 115-16, citing Dennis Carlton, *Case Study: ILEC Mergers*, *in* Econometrics: Legal, Practical, and Technical Issues 378 (Am. Bar. Ass'n. Section of Antitrust Law, ed. 2005).

[504] Cbeyond *et al.* cite evidence of lingering inconsistencies in AT&T's in-region and out-of-region policies. Cbeyond *et al.* Aug. 30 *Ex Parte* Letter at 12. It is true that AT&T may not be fully capturing externalities in BellSouth's region. Nevertheless, AT&T's pre-merger presence in BellSouth region must reduce, to some extent, the theoretical post-merger effect on AT&T's incentive to discriminate.

Finally, we note that AT&T made certain commitments in the SBC/AT&T proceeding which the Commission adopted as conditions to its approval of that merger.[505] Those conditions, which remain effective and which include price commitments and performance metrics, should reduce any incremental effect of the pending merger on the incentive to discriminate. For these reasons,[506] we do not find that the "big footprint" theory justifies the imposition of burdensome conditions.

186. S*pread of "Worst Practices."* Commenters also contend that the merged entity will be better able to coordinate and rationalize discriminatory conduct through the "spread of worst practices" throughout the merged entity's region.[507] We find this argument unpersuasive. First, AT&T and BellSouth currently are free to adopt whatever legal terms, conditions and practices they deem appropriate, including those that may currently be employed by their merger counterpart, whether they be a "best practice" or "worst practice."[508] Second, and relatedly, opponents fail to present a clear and persuasive explanation as to why the merger will cause the merged entity to adopt worse practices than the Applicants adopted prior to the merger.[509] Thus, we question whether this argument represents a merger-specific concern. Finally, vague speculation about steps the merged entity might take to impair

[505] *SBC/AT&T Order*, 20 FCC Rcd at 18411-21, Appendix F.

[506] We note that we are not persuaded by AT&T's argument that "full implementation" of sections 251 and 271 of the Act offsets any concerns about AT&T's market power in the context of special access. *See, e.g.*, AT&T Aug. 21 *Ex Parte* Letter at 2-3. The implementation status of sections 251 and 271, however, has no bearing on the empirical question of whether AT&T and BellSouth possess market power in the special access market. We also are not persuaded by the Applicants' argument that the availability of UNEs offsets any concerns about the effect of the merged entity's enlarged footprint on its incentives to discriminate in the provision of special access services. *See, e.g.*, AT&T Aug. 21 *Ex Parte* Letter at 3. As the Commission explained in the *Triennial Review Order*, "[t]he purposes of a market power analysis are not the purposes of section 251(d)(2) . . . the Act requires only that network elements be unbundled if competing carriers are impaired without them, regardless of whether the incumbent LEC is exercising market power or the unbundling would eliminate this market power." *Triennial Review Order*, 18 FCC Rcd at 17051, para. 109; *see also SBC/AT&T Order*, 20 FCC Rcd at 18310, para. 39 n.105.

[507] *See, e.g.*, TWTC Petition at 42-43, 46-47 (alleging that AT&T's less-favorable Ethernet prices, terms, and conditions will spread throughout the merged entity); TWTC Taylor Decl. at 14-15, 17, paras. 32-34, 39; TWTC Besen/Mitchell Reply Decl. at paras. 19-20 (objecting to AT&T's special access volume commitment and **[REDACTED]**); Cbeyond *et al*. Comments at 83-85, 93-95; Cbeyond *et al*. Comments, Attach. 1, Declaration of James C. Falvey on Behalf of Xspedius Communications at paras. 7-8, 12-13 (Cbeyond *et al.* Falvey Decl.) (alleging that the merged entity will adopt anti-competitive terms and conditions of both AT&T and BellSouth); Access Point *et al.* Petition at 36-38, 69-70 (alleging that AT&T's unfavorable policies regarding interconnection with competitive tandem switching and transit services will spread throughout the merged entity); *but see* AT&T/BellSouth Reply at 96 (alleging that TWTC attempts to use the merger to gain leverage in on-going contract negotiations).

[508] Cbeyond *et al.* also argue that, pre-merger, policies towards competitive LECs vary not only between the merging entities but also within them, and that, after the merger, any variations that benefit competitive LECs will likely be eliminated. *See* Cbeyond *et al.* Comments at 83-84; Cbeyond *et al.* Aug. 30 *Ex Parte* at 12. Cbeyond *et al.* fail to demonstrate, however, that such streamlining, should it occur, would be adverse to competitive LECs.

[509] The "Big Footprint" theory would provide one explanation for why the merged entity would be more likely to adopt worst practices, but for the reasons given above, we do not find this theory justifies the imposition of conditions.

entrants offering new or advanced services does not serve as a reasonable basis for imposing conditions, much less for denying the merger.[510]

2. Benchmarking

187. Commenters also argue that the merged entity will have a greater ability to discriminate against its competitors because the merger will reduce the number of similarly situated companies against which it will be possible to compare, or "benchmark," practices.[511]

188. Benchmarking was a regulatory tool developed in the years following the creation of the BOCs. In decisions rendered in 1990 and 1993, the U.S. Court of Appeals for the D.C. Circuit recognized that the ability to benchmark one BOC's practices against the others' made regulating the seven BOCs easier than regulating pre-divestiture AT&T.[512] The Commission endorsed benchmark comparison as a means of establishing technical feasibility when it first implemented the 1996 Act.[513] In addition, in late 1999 and early 2000, the Commission, in the *SBC/Ameritech Order* and *Bell Atlantic/GTE Order*, expressed concern about the potential loss of its ability to benchmark, particularly in the context of disputes relating to the introduction of new technologies and services.[514]

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[510] AT&T and TWTC are currently involved in contract negotiations for a custom agreement with many elements, including Ethernet loops. AT&T contends that TWTC attempts to use this proceeding to gain negotiating leverage in these negotiations. *See, e.g.*, AT&T/BellSouth Reply at 96; AT&T/BellSouth Casto Reply Decl.; Letter from Gary L. Phillips, AT&T Inc. and Bennett L. Ross, BellSouth Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 5, 2006). We find AT&T's argument plausible, and we decline to consider or discuss in the context of this proceeding terms and conditions included in those negotiations. TWTC also claims that "there are no stable regulatory arrangements established for access to Ethernet local transmission facilities." TWTC Petition at 46. We decline the implied invitation to create Ethernet standards in the context of this merger proceeding, and direct TWTC to the Commission's rules that provide for a petition for rulemaking. 47 C.F.R. §§ 1.401-1.407. We also dismiss Cbeyond *et al.*'s argument that BellSouth is or might emerge as a maverick with respect to business practices. Cbeyond *et al.* Comments at 83. The record contains no empirical evidence suggesting that BellSouth is or will become a maverick. We also note that Cbeyond *et al.* elsewhere complain that where BellSouth's policies differ from AT&T's, the comparison is unfavorable. *See* Cbeyond *et al.* Comments at 93-95; *see also* Ochshorn Condition Comments (urging that BellSouth be required to adopt AT&T's Lifeline and Linkup program provisions).

[511] *See, e.g.*, Access Point *et al.* Petition at 13-20; Cbeyond *et al.* Comments at 78-85, 94-95; EarthLink Comments at 32-36; MSV LLC Comments at 6-7, 16; TWTC Petition at 51-71; TWTC Reply at 35-36; TWTC Besen/Mitchell Reply Decl. at paras. 63-121; New Jersey Ratepayer Advocate Comments at 15-16; Sprint Nextel Comments at 8-9; Consumer Federation *et al.* Reply at 27-30; MSV LLC Reply at 4-5; *but see* AT&T/BellSouth Application at 120-124; AT&T/BellSouth Reply at 100-110; Cable Companies Sept. 27 *Ex Parte* Letter at 8-9; Letter from Thomas Jones, Counsel for TWTC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 9-10 (filed Nov. 20, 2006).

[512] *U. S. v. Western Electric Co*., 900 F.2d 283, 299 (D.C. Cir. 1990); *U.S. v. Western Electric Co*., 993 F.2d 1572, 1580 (D.C. Cir. 1993), *cert. denied*, 510 U.S. 984 (1993).

[513] *Local Competition Order*, 11 FCC Rcd at 15606, para. 204 (1996).

[514] *See, e.g.*, *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14101-03, paras. 132-137, *SBC/Ameritech Order*, 14 FCC Rcd at 14770-80, paras. 125-143.

189. With the benefit of six additional years of regulatory history and experience, we come to a different conclusion with respect to the value of benchmarking. Specifically, we find that benchmarking does not represent as useful or important a regulatory tool as the Commission previously believed. First, we agree with AT&T and BellSouth that measuring a company's performance over time is the most appropriate way to detect and evaluate reversion to discriminatory practices, *i.e.*, "backsliding."[515] Since 2000, BOCs have been subjected to comprehensive performance plans containing thousands of metrics and numerous self-executing remedies to measure the success of the competition-opening provisions of the 1996 Act.[516] The performance of other companies is not germane to the question of whether the performance of the company under scrutiny is improving, deteriorating, or staying the same. If closer monitoring were to become necessary, the Commission would more likely evaluate an incumbent LEC's performance over time, and specifically compare the carrier's current performance against previous performance measurements, rather than compare the incumbent LEC against another BOC carrier.[517] Similarly, when an incumbent LEC provides the same service to itself as it does to carrier-customers, we use performance metrics to measure functional equality of treatment or "parity."[518] Finally, we note that, in the years since the Commission issued the *SBC/Ameritech* and *Bell Atlantic/GTE* orders, the Commission has rarely used benchmarking in either rulemaking or enforcement proceedings. In fact, commenters fail to cite any enforcement decisions or rulemaking orders where the Commission relied on, or even cited, benchmarking evidence.[519]

J. Qualifications to Acquire Control of BellSouth's Licenses

190. As previously noted, section 310(d) of the Communications Act provides that no station license may be transferred, assigned, or disposed of in any manner except upon a finding by the Commission that the "public interest, convenience and necessity will be served thereby."[520] Among the factors that the

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[515] AT&T/BellSouth Reply at 105-106.

[516] AT&T/BellSouth Reply at 102-103; AT&T/BellSouth Dysart/Watkins/Kissel Reply Decl. at paras. 16-18; AT&T/BellSouth Pate/Graulich Reply Decl. at paras. 7-37. For example, a 2004 review of BellSouth's Georgia performance plan revealed 464 metrics with "meaningful volume," *i.e.*, more than 30 transactions. The Georgia plan includes a total of 1631 metrics. AT&T/BellSouth Pate/Graulich Reply Decl. at para. 11. The New Jersey Ratepayer Advocate endorses the theory of benchmarking but cites no instance where New Jersey or any other state has relied on it. New Jersey Ratepayer Advocate Comments at 18-19; New Jersey Ratepayer Advocate Baldwin/Bosley Decl. at paras. 199-212. The Florida and Georgia Public Service Commissions are the only other state regulators commenting in this proceeding, and neither mentions benchmarking. We believe that the rough justice of BOC benchmarking pales in comparison to the detailed examination that state regulators apply when they arbitrate section 252 interconnection agreements. Such arbitrated agreements permit competitive LECs to compare charges and findings of technical feasibility. *But see* TWTC Petition at 53-55 (citing instances where state commissions have used benchmarking).

[517] *Cf.* 47 U.S.C. § 271(d)(6) (granting enforcement authority if the Commission determines that a BOC has ceased to meet conditions for approval).

[518] *See Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321, Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001).

[519] *See* TWTC Petition at 55-56 (stating the Commission cited benchmarking in the *Virginia Arbitration* and in the New York, Texas, and Georgia-Louisiana section 271 proceedings – none of which are enforcement or rulemaking proceedings).

[520] 47 U.S.C. § 310(d).

Commission considers in its public interest inquiry is whether the applicant for a license or license transfer has the requisite "citizenship, character, financial, technical, and other qualifications."[521] Therefore, as a threshold matter, the Commission must determine whether the parties meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.[522]

191. We recognize that the standard for evaluating the qualifications of the transferor is less stringent than that applied to the transferee.[523] Section 310(d) requires the Commission to consider whether AT&T, the proposed transferee, is qualified to hold a Commission license.[524] The Commission has previously determined that, in deciding character issues, it will consider certain forms of adjudicated, non-FCC related misconduct that includes: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition.[525] With respect to Commission-related conduct, the Commission has stated that it would treat any violation of any provision of the Act, or of the Commission's rules, as predictive of an applicant's future truthfulness and reliability and, thus, as having a bearing on an applicant's character qualifications.[526] In prior merger orders, the Commission has used the Commission's character policy in the broadcast area as guidance in resolving similar questions in transfer of licenses proceedings.[527] For expositional simplicity, we will apply the higher standard applicable to transferees to both AT&T and BellSouth.

192. We disagree with commenters that suggest that we should reevaluate concerns regarding the Applicants' character qualifications that were addressed in previous Commission actions.[528] Additionally,

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[521] *SBC/SNET Order*, 13 FCC Rcd at 21305, para. 26.

[522] *See* 47 U.S.C. § 310(d); 47 C.F.R. §§ 1.948, 25.119.

[523] The Commission does not, as a general rule, reevaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing. *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171.

[524] *See SBC/BellSouth Order*, 15 FCC Rcd at 25465, para. 14.

[525] *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20092-93, para. 236.

[526] *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209-10, para. 57 (1986) (*Character Qualifications*), *modified*, 5 FCC Rcd 3252 (1990) (*Character Qualifications Modification*), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992) (*Further Character Qualifications Modification*); *MCI Telecommunications Corp.*, Order and Notice of Apparent Liability, 3 FCC Rcd 509 (1988) (stating that character qualifications standards adopted in the broadcast context can provide guidance in the common carrier context). The Commission has also determined that allegations that an applicant has engaged in unreasonable or anticompetitive conduct are relevant to the Commission's public interest analysis. *SBC/SNET Order*, 13 FCC Rcd at 21306-07, paras. 28-30.

[527] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18739, para. 172; *SBC/SNET Order*, 13 FCC Rcd at 21305, para. 26; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20092-93, para. 236; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21548-51, paras. 47-56; *Sprint/Nextel Order*, 20 FCC Rcd at 13979-80, paras. 24-25.

[528] *See, e.g.*, Earthlink Petition at 27-32, Exh. C (arguing that AT&T and BellSouth have a demonstrated practice of violating FCC rules and attaching a list of a number of FCC orders as examples); Fones4All Comments at 21 (repeating Telscape's comments from the SBC/AT&T merger proceeding regarding allegations that AT&T engages in efforts to stifle competition); *see also* AT&T/BellSouth Reply at 112 (stating that virtually all of the character challenges rely on charges that the Commission has addressed in other proceedings and rejected).

the Commission has previously stated that voluntarily entered consent decrees do not call into question a carrier's authority to hold Commission licenses and authorizations.[529] We also reject the ACLU's and other commenters' argument that we must investigate allegations of AT&T providing assistance to the NSA.[530] As the Commission determined previously, these allegations are outside the scope of the FCC's investigative powers.[531]

193. We likewise reject commenter claims expressing concerns about the Applicants' character qualifications based on their exercise of their legal rights, such as petitioning courts and regulatory bodies.[532] As the Commission previously has concluded, an applicant's lawful exercise of its rights does not raise character concerns, even if the activity arguably has "the effect of delaying and minimizing the emergence of competition."[533]

194. We also do not agree with commenters' alleged character concerns based upon specific, unresolved disputes with AT&T or BellSouth.[534] Some of the alleged violations of the Act or

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[529] *See SBC/AT&T Order*, 20 FCC Rcd at 18379-80, para. 173; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21550, paras. 53-54. As we have stated before, "the Commission does not consider matters resolved in consent decrees adjudicated misconduct for the purposes of assessing an applicant's character qualifications." *See Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21550, para. 53 (citing *1986 Character Qualifications Policy Statement*, 102 FCC 2d at 1205).

[530] *See, e.g.*, ACLU Comments at 2-3; Letter from Linda G. Ackerman, to Marlene H. Dortch, Secretary, FCC, Docket No. 06-74 at 1-2 (filed June 28, 2006); s*ee also* Leslie Cauley, *NSA Has Massive Database of Americans' Phone Calls*, USA Today, May 11, 2006, at A1.

[531] Letter from Kevin J. Martin, Chairman, FCC, to The Honorable Edward J. Markey, Ranking Member, Subcommittee on Telecommunications and the Internet, Energy and Commerce Committee, United States House of Representatives at 1 (filed May 22, 2006).

[532] *See, e.g.*, Earthlink Petition at 25; Letter from Ross A. Buntrock, Counsel for Fones4All, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-74 at 1-2 (filed May 9, 2006); Letter from Ross A. Buntrock, Counsel for Fones4All, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-74 at 1-3 (filed May 19, 2006); Letter from Ross A. Buntrock, Counsel for Fones4All, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-74 at 1-4 (filed May 24, 2006); Letter from Ross A. Buntrock, Counsel for Fones4All, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-74 at 1-7 (filed Sept. 1, 2006); *but see* Letter from Gary L. Phillips, Gen. Atty and Asst. Gen. Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 1-7 (filed June 22, 2006); Letter from Gary L. Phillips, Gen. Atty and Asst. Gen. Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 4, 2006).

[533] *SBC/Ameritech Order*, 14 FCC Rcd at 14950, para. 571.

[534] *See, e.g.*, ACCESS Comments at 3 (asserting that BellSouth's retail prices are substantially lower than wholesale rates that ACCESS must pay under its agreement); Cbeyond *et al.* Comments at 7-8, 83, 95; Cbeyond *et al.* Falvey Decl. at paras. 4-6, 10-14; Cbeyond *et al.* Youngers Decl. at paras. 6-7 (alleging that the merger will result in the standardization of unfair and anticompetitive practices because of various AT&T and BellSouth practices); Concerned Mayors Alliance Petition at 13-20, 26-7 (arguing that AT&T has engaged in the practice of redlining); Earthlink Petition at 30 (claiming that AT&T stalled or refused to negotiate on any broadband transmission arrangements); FISPA Comments at 1 (claiming that BellSouth refused to provide certain wholesale DSL agreements); Fones4All Comments at 16 (alleging that AT&T used its monopoly power to exclude Fones4All from marketing at the 2006 Fiesta Broadway Show); New Jersey Ratepayer Advocate Comments at 20-21 (arguing that AT&T's and BellSouth's service quality is declining); Resale Joint Commenters Comments at 7-10 (arguing that BellSouth's customer retention and winback practices are discriminatory and designed to eliminate competition);

(continued….)

Commission rules involve legal interpretations that would apply to numerous companies in the industry. The Commission previously has declined to address in merger proceedings matters in which the public interest would be better served through consideration and resolution in broader proceedings of general applicability.[535] Moreover, we note that the Applicants have specifically rebutted the majority of the allegations concerning the Applicants' conduct.[536] We therefore conclude that none of the foregoing allegations provides a basis for finding that AT&T lacks the fitness to acquire licenses and authorizations currently held by BellSouth or that BellSouth lacks the fitness to transfer the licenses.

VI. OTHER ISSUES

195. *Wholesale Long Distance*. The record does not support the contention that the merger will adversely affect the viability of the wholesale interexchange market by eliminating BellSouth as a purchaser of wholesale long distance services.[537] While the merger likely will gradually eliminate BellSouth as a purchaser of wholesale long distance service,[538] BellSouth does not appear to be a significant purchaser of wholesale long distance service,[539] nor is there any record evidence to indicate that the loss of BellSouth as a customer will cause any of its current suppliers to exit the market.[540] Further, as this process will take some time, affected carriers will have an opportunity to seek other

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STS Comments at 13-14 (claiming that BellSouth sought to harm STS by forcing it to spend large amounts of money on a network solution); Swiftel Comments at 2 (arguing that its relationship with BellSouth has been plagued with problems by BellSouth's unwillingness to adhere to contract terms); Letter from David Lockwood, President, Telecom 555, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Oct. 19, 2006).

[535] *See SBC/AT&T Order*, 20 FCC Rcd at 18380-81, para. 175; *SBC/Ameritech Order*, 14 FCC Rcd at 14950, para. 571; *see also SBC/SNET Order*, 13 FCC Rcd at 21306, para. 29.

[536] *See, e.g.*, AT&T/BellSouth Reply at 112, App. A at A-16-19 (stating that Cbeyond *et al.*'s allegations are either unfounded or untrue); AT&T/BellSouth Reply at 114 (responding to CMA's argument for redlining conditions and arguing that there is no evidence that AT&T has engaged or will engage in "discriminatory conduct based on income or other impermissible factors"); AT&T/BellSouth Reply, App. A at A-3-4 (stating that Earthlink is attempting improperly to gain leverage through the merger proceeding with its commercial dealings with AT&T and that once AT&T reassesses its product portfolio for broadband transmissions it looks forward to negotiating with Earthlink); AT&T/BellSouth Reply at 112 (disputing New Jersey Ratepayer Advocate's arguments); AT&T/BellSouth Reply, App. A at A-7 (responding to STS's complaint); AT&T/BellSouth Reply, App. A at A-8 (arguing that BellSouth worked with Swiftel to resolve its complaints); Letter from Bennett L. Ross, General Counsel-D.C., BellSouth D.C., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed June 27, 2006) (arguing that BellSouth is working with STS to develop a "mutually acceptable plan" to resolve their issues).

[537] *See, e.g.*, Access Point *et al.* Petition at 34-36.

[538] *See* AT&T/BellSouth Application at 54.

[539] AT&T/BellSouth Reply at 62.

[540] *See* AT&T/BellSouth Reply at 63 (noting that BellSouth purchases the majority of its wholesale long distance services from Sprint Nextel, Verizon and Qwest).

customers.[541] As the Commission has noted previously, "[o]ur statutory duty is to protect efficient competition, not competitors."[542]

196. *Retirement of Copper Loops.* A number of commenters argue that incumbent LECs have incentives to retire copper loops to hinder the ability of competitive LECs to provide advanced services over such loops.[543] Rules governing the circumstances under which a carrier may retire copper loops are more appropriately addressed in the context of a rulemaking proceeding.[544]

197. *Access to IP-Enabled Services by Disabled Americans.* One commenter seeks conditions relating to ensuring disabled Americans have access to IP video and VoIP services offered by the merged company.[545] Rules governing disability accessibility requirements for IP-enabled services such as IP video and VoIP have been raised, and are appropriately addressed in the *IP-Enabled Services* proceeding.[546]

198. *Minority Ownership.* Commenters have sought conditions intended to increase minority ownership of telecommunications assets.[547] Concerns regarding the level of minority ownership in the telecommunications industry are not appropriately addressed in the context of this merger review.[548]

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[541] AT&T/BellSouth Reply at 62 (stating that "BellSouth will continue to honor existing contractual obligations").

[542] *Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company*, File Nos. 00762-CL-AL-1-95 through 00803-CL-AL-1-95; 00804-CL-TC-1-95 through 00816-CL-TC-1-95; 00817-CL-AL-1-95 through 00824-CL-AL-1-95; and 00825-CL-TC-1-95 through 00843-CL-TC-1-95, Memorandum Opinion and Order, 12 FCC Rcd 22280, 22288, para. 16 (1997) (citing *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1491-92 (D.C. Cir. 1995)).

[543] *See, e.g.*, Letter from Patrick J. Donovan, Counsel for FDN Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (dated Oct. 2, 2006); Letter from David L. Sieradzki, Counsel for SouthEast Telephone, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 1 (filed Oct. 24, 2006); Letter from Brad E. Mutschelknaus and John J. Heitmann, Counsel for XO Communications, NuVox, Inc. and Talk America, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 27, 2006); Letter from Andrew D. Lipman, Eric J. Branfman, and Patrick J. Donovan, Counsel for Access Point *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Nov. 14, 2006); Letter from Patrick J. Donovan, Counsel for Cavalier Telephone, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket 06-74, Attach. at 6-8 (filed Dec. 11, 2006).

[544] We note that the Commission previously has addressed the issue of copper loop retirement. *See, e.g.*, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17145, para. 278 (2003) (*Triennial Review Order*), corrected by Errata, 18 FCC Rcd 19020 (2003) (*Triennial Review Order Errata*), *vacated and remanded in part, affirmed in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (USTA II) *cert. denied*, 125 S.Ct. 313, 316, 345 (2004); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Order on Reconsideration, 19 FCC Rcd 20293 (2004) .

[545] *See* American Association of People with Disabilities Condition Comments.

[546] *IP-Enabled Services NPRM*, 19 FCC Rcd at 4901-02, para. 58

[547] *See generally* Telephone USA Reply.

199. *Rate Integration Waiver*. AT&T has petitioned for a waiver of the rate integration and averaging rules adopted by the Commission pursuant to section 254 of the Act for a period of 120 days after consummation of the proposed merger.[549] AT&T states that a waiver will permit it to "evaluate BellSouth's various rate plans and the contractual obligations that BellSouth has incurred under those plans, to rationalize the BellSouth and AT&T plans, and to make any changes necessary to ensure compliance with all applicable requirements of section 254 and the Commission's rules."[550] We find that grant of such petition will serve the public interest.

VII. POTENTIAL PUBLIC INTEREST BENEFITS

A. Introduction

200. In addition to assessing the potential harms of the proposed transaction, we also consider whether the combination of these companies' operations is likely to generate verifiable, merger-specific public interest benefits.[551] In doing so, we ask whether the combined entity will be able, and is likely, to pursue business strategies resulting in demonstrable and verifiable benefits that could not be pursued but for the combination. As discussed below, we find that the proposed transaction is likely to generate several significant merger-specific public interest benefits, although it is difficult to quantify precisely the magnitude of some of these benefits.

B. Analytical Framework

201. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."[552] Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential public interest harms.[553]

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[548] The Commission previously has initiated rulemakings addressing minority ownership issues. *See, e.g., 2006 Quadrennial Regulatory Review; 2002 Biennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules*, MB Docket Nos. 06-121, 02-277, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834, 8837, para. 5 (2006) (addressing proposals to foster minority ownership of broadcast stations).

[549] *See* Letter from Gary L. Phillips, Gen. Atty and Asst. Gen. Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, CC Docket No. 96-61 (filed Aug. 28, 2006) (AT&T Rate Integration Waiver Petition); 47 U.S.C. § 254; 47 C.F.R. § 64.1801.

[550] AT&T Rate Integration Waiver Petition at 1.

[551] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18384, para. 182; *Verizon/MCI Order*, 20 FCC Rcd at 18530, para. 193; *Bell Atlantic/GTE Order*, 15 FCC Rcd at 14130, para. 209; *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255; *WorldCom/MCI Order*, 13 FCC Rcd at 18134-35, para. 194.

[552] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18384, para. 183; *Verizon/MCI Order*, 20 FCC Rcd at 18530, para. 194; *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 188; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 158; *see also DOJ/FTC Guidelines* § 4.

[553] *See, e.g., SBC/AT&T Order*, 20 FCC Rcd at 18384, para. 183; *Verizon/MCI Order*, 20 FCC Rcd at 18530, para. 194; *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 188; *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 256; *see also Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157.

202. There are several criteria the Commission applies in deciding whether a claimed benefit is cognizable. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit "must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects."[554] Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each benefit claim so that the Commission can verify the likelihood and magnitude of the claimed benefit.[555] In addition, as the Commission has noted, "the magnitude of benefits must be calculated net of the cost of achieving them."[556] Furthermore, speculative benefits that cannot be verified will be discounted or dismissed. Thus, as the Commission explained in the *EchoStar/DirecTV Order*, "benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present."[557] Third, the Commission has stated that it "will more likely find marginal cost reductions to be cognizable than reductions in fixed cost."[558] The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.[559]

203. Finally, the Commission applies a "sliding scale approach" to evaluating benefit claims. Under this sliding scale approach, where potential harms appear "both substantial and likely, the Applicants' demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."[560] On the other hand, where potential harms appear less likely and less substantial, as in this case, we will accept a lesser showing to approve the merger.

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[554] *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 189; *see also Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063-64, para. 158 ("Pro-competitive efficiencies include only those efficiencies that are merger-specific, *i.e.*, that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.") (footnote omitted); *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255 ("Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger. . ."); *BellSouth/Comcast Order*, 17 FCC Rcd at 23313, para. 173 (Commission considers whether benefits are "merger-specific"); *cf. DOJ/FTC Guidelines* § 4.

[555] *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 190; *see also Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157 ("These pro-competitive benefits include any efficiencies arising from the transaction if such efficiencies . . . are sufficiently likely and verifiable . . . ."); *BellSouth/Comcast Order*, 17 FCC Rcd at 23313, para. 173 (Commission considers whether benefits are "verifiable"); *SBC/Ameritech Order*, 14 FCC Rcd at 14825, para. 255; *DOJ/FTC Guidelines* § 4 ("[T]he merging firms must substantiate efficiency claims so that the Agency can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), [and] how each would enhance the merged firm's ability to compete. . . .").

[556] *EchoStar/DirecTV Order*, 17 FCC Rcd at 20630, para. 190.

[557] *Id.*

[558] *Id.* at 20631, para. 191; *see also DOJ/FTC Guidelines* § 4.

[559] *See EchoStar/DirecTV Order*, 17 FCC Rcd at 20631, para. 191; *see also DOJ/FTC Guidelines* § 4.

[560] *EchoStar/DirecTV Order*, 17 FCC Rcd at 20631, para. 192 (quoting *SBC/Ameritech Order*, 14 FCC Rcd at 14825); *cf. DOJ/FTC Guidelines* § 4 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an

(continued….)

C. Accelerated Broadband Deployment

204. In section 706 of the 1996 Act, Congress directed the Commission to encourage, without regard to transmission media or technology, the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis through, among other things, removing barriers to infrastructure investment.[561] By virtue of the voluntary commitments that the Applicants have offered, we are persuaded that consumers will benefit from the deployment of broadband in the merged entity's territory more rapidly than might otherwise have occurred absent the merger.[562]

D. Benefits of Unifying Cingular's Ownership

205. We agree with the Applicants that unifying the ownership of Cingular will result in public interest benefits, such as a quicker rollout of new converged services and enhanced efficiency.[563] Currently, AT&T and BellSouth each have negative control of Cingular.[564] The Applicants explain that the interests of Cingular's parents are not fully aligned,[565] and that "[a]ll of Cingular's key strategic decisions" must be approved by a committee composed of three representatives each from AT&T and

(Continued from previous page)
anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

[561] Section 706 is reproduced in the notes to section 157 of the Act. *See* 47 U.S.C. § 157 nt.

[562] *See* Appendix F.

[563] *See* AT&T/BellSouth Application at 6-19; AT&T/BellSouth Kahan Decl. at paras. 17-32; AT&T/BellSouth Rice Decl. at paras. 18-28; AT&T/BellSouth Carlton/Sider Decl. at paras. 42-53; AT&T/BellSouth Carlton/Sider Reply Decl. at paras. 154-68. We reject the notion raised by certain commenters that the merger will result in a reduction of competition in retail and wholesale markets due to the loss of Cingular as an "independent competitor." *See* Cbeyond *et al.* Comments at 76-78; MSV LLC Comments at 7. Because AT&T and BellSouth already jointly and wholly own and control Cingular, *see infra* note 564, the proposed merger will not change the structure of competition in the wireless market and is unlikely to result in any diminishment of competition in either retail or wholesale markets. We above address claims that the present merger will give the Applicants the incentive and ability to raise Cingular's rivals' costs. *See supra* Part V.B (Wholesale Special Access Competition).

[564] AT&T and BellSouth each have negative control of Cingular both because each Applicant holds a 50% voting interest in Cingular Wireless Corp. (*i.e.*, Cingular's manager) and because of specific provisions in the Applicants' joint venture agreement. Thus, AT&T and BellSouth each have the ability to exercise what amounts to a veto over Cingular's decisions. *See* AT&T/BellSouth Application, App. A at A-4 (describing the ownership structure of Cingular); *see also Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21522, para. 26; *Applications of SBC Communications and BellSouth Corp.*, WT Docket No. 00-81, Memorandum Opinion and Order, 15 FCC Rcd 25459, 25462, para. 7 (WTB/IB 2000).

[565] *See* AT&T/BellSouth Application at 9-10 (stating that "the operating profiles of Cingular's parents have diverged during the five years since its creation" and providing evidence that the Applicants have different incentives in marketing integrated services that would involve the migration of traffic off Cingular's network); AT&T/BellSouth Carlton/Sider Reply Decl. at para. 155-66 (discussing how the integration of Cingular and its parents would align the interests of these entities and allow the merged entity to provide enhanced converged wireline/wireless offerings more cost-effectively).

BellSouth.[566] Given the facts presented in the record and the well-recognized inefficiencies associated with joint control, we find persuasive Applicants' contentions that unifying the ownership of Cingular will align the Applicants' incentives, facilitating a more efficient decision making structure.[567] In particular, we believe the more streamlined ownership structure will enable the Applicants and Cingular more quickly and efficiently to bring – among other products and services – new IP Multimedia Subsystems (IMS) networks and services to market, which will speed to enterprise and mass market customers the significant improvements in integration of services offered across multiple IP networks that such systems provide.[568]

206. We find that by streamlining the ownership of Cingular, the Applicants' ability to provide converged wireline/wireless services will be enhanced. We are persuaded that as a result of the merger, customers will benefit not only from new services, but also will benefit from the improvements in performance and reliability resulting from the network integration, and will benefit from improved converged offerings sooner.

E. Enhancement of MVPD and Programming Competition

207. We find that the present transaction is likely to hasten competition in the MVPD marketplace in BellSouth's region, bringing to consumers in this territory the benefits of MVPD competition faster and

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[566] *See* AT&T/BellSouth Application at 9; AT&T/BellSouth Kahan Decl. at paras. 18, 21 (stating that the different priorities of AT&T and BellSouth have "rendered the joint decision-making process required by the Cingular joint venture more cumbersome and time-consuming than would be the case with a single point of control. Decisions relating to technology choices, utilization of multiple networks, control of and access to information, and timing of investments of resources are made more difficult and result in time-consuming delays."). The Applicants also state that AT&T and BellSouth have equal representation on Cingular's Board of Directors. *See* AT&T/BellSouth Application at 9; AT&T/BellSouth Kahan Decl. at para. 18; AT&T/BellSouth Carlton/Sider Decl. at para. 23.

[567] *See* AT&T/BellSouth Application at 10 (stating that, under the current structure, "decisions relating to technology choices, utilization of multiple networks and when and where to make certain essential investment" are more difficult and happen more slowly than they would if the present merger is consummated); *see also* AT&T/BellSouth Carlton/Sider Reply Decl. at paras. 155-161 (discussing difficulties that have arisen related to certain proposed enterprise offerings due to the current nonalignment of interests between Cingular and its parents). We disagree with certain commenters who challenge the Applicants' contention that a unified ownership structure would be more efficient by citing the Applicants' claims that they face competition from joint venture participants. *See* Consumer Federation *et al*. Cooper/Roycroft Decl. at 29-31. The Applicants neither allege nor imply that the current ownership structure of Cingular, or any other joint venture competitor, is so inefficient or cumbersome that an entity so structured would be utterly unable to compete in the wireless market. *See, e.g.*, AT&T/BellSouth Application at 9 ("Even though Cingular has been successful, it increasingly is facing challenges due to its joint venture management structure.").

[568] *See* AT&T/BellSouth Application at 12-17. Applicants and Cingular currently are constructing three separate IMS platforms over which these entities likely eventually would roll out new integrated services. *See, e.g.*, AT&T/BellSouth Reply at 3-5. Therefore, while we agree with Access Point *et al.* and the other commenters who argue that the Applicants "can deploy IMS via an intercarrier agreement providing for the combination of services and networks and the ability of the customer to be easily switched between services and networks" – *see* Access Point *et al.* Petition at 52; *see also* Rubin Comments at 19 – we disagree with such commenters that this proves that the construction of one IMS network rather than three separate IMS networks will not result in any public interest benefits. *See, e.g.*, AT&T/BellSouth Rice Decl. at para. 24 (noting that AT&T, BellSouth, and Cingular currently are "investing in and building out three separate IMS networks, each with somewhat different architecture and functionality").

more efficiently than would occur but for the merger.[569] The Applicants contend that BellSouth is investing $2.2 billion over a five-year period to upgrade its broadband access and core network infrastructure – upgrades that will permit BellSouth and the merged entity to offer a wide range of IP-based interactive services, including IPTV.[570] While BellSouth has taken some preliminary steps toward offering IPTV service,[571] AT&T has been at the forefront of telecommunications carriers' efforts to develop and market such video services, and has been a particularly aggressive competitor in this

[569] *See* AT&T/BellSouth Application at 20-28; AT&T/BellSouth Kahan Decl. at paras. 33-39; AT&T/BellSouth Carlton/Sider Decl. at paras. 54-63; AT&T/BellSouth Reply at 5-7. In addition, based on the record evidence, we find that the merger likely will result in scale economies related to IPTV service, which likely will benefit consumers in AT&T's region as well as BellSouth's region. *See, e.g.*, AT&T/BellSouth Application at 24-26 (stating among other things that the merger will eliminate the need for BellSouth to construct and equip two "super hub office" facilities, saving tens of millions of dollars; that the merged entity will be likely to obtain video programming on more favorable terms in the future; that BellSouth will be able to benefit from AT&T's scalable back office systems – which cost several hundred million dollars – to support IPTV service; and that the merger will improve the ability of the merged entity to attract national advertisers); AT&T/BellSouth Kahan Decl. at paras. 36-39 (stating, for example, that currently "AT&T's cost of programming is higher than most cable operators and DBS providers, which have very large existing customer bases and which therefore have an advantage over a new entrant such as AT&T"); AT&T/BellSouth Smith Decl. at paras. 4-28 (discussing the Applicants' efforts to develop IPTV service and noting that many of the costs of such service "are correlated with the scale of the service"). We disagree with TWTC's assertion that the merger would have no material effect on many of the costs BellSouth must incur to provide video service. *See* Letter from Thomas Jones and Jonathan Lechter, Counsel for Time Warner Telecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 2-3, 5-6 (filed Oct. 6, 2006) (TWTC Oct. 6 *Ex Parte* Letter); *see also* Letter from Gary L. Phillips, AT&T Inc., and Bennett L. Ross, BellSouth Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket 06-74 (filed Oct. 24, 2006).

[570] *See* AT&T/BellSouth Application at 23; AT&T/BellSouth Smith Decl. at 8 (stating that the fiber upgrade will allow BellSouth to achieve speeds of 24 Mbps and higher, which will be available to 50% of the households within the BellSouth region by the end of 2007, and to approximately 75% of such households by the end of 2009).

[571] We decline to base our decision on the Applicants' assertion that BellSouth has not yet decided whether to offer a commercial IPTV service. *See, e.g.*, AT&T/BellSouth Application at 23 (stating that BellSouth has not decided whether to make the substantial additional investment that would be required to offer a commercial IPTV service); AT&T/BellSouth Smith Decl. at 14, 21; Letter from Bennett L. Ross, General Counsel – D.C., BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. at para. 1 (filed May 31, 2006) (AT&T/BellSouth Smith Suppl. Decl.). The evidence in the record suggests that, if the merger were not consummated, BellSouth would continue to take steps toward offering IPTV service. *See, e.g.*, AT&T/BellSouth Smith Decl. at para. 8 ("For several years, BellSouth has recognized the importance of being able to provide high quality competitive video service to residential customers in order to compete with the 'triple play' offering that cable companies were planning and have now implemented across its region."); *id*. at para. 16 (stating that BellSouth has begun construction of one of two super headend facilities that it could use to provide IPTV service, each of which will cost $25-$30 million); AT&T/BellSouth Smith Suppl. Decl. at paras. 1-4 (stating that, after the Applicants filed the Application in this proceeding, BellSouth "made the decision to pursue video business opportunities in a small number of newly constructed, multi-family communities" which may, at least in part, be provided using IPTV technology, and that BellSouth has begun negotiating carriage agreements with programmers); *see also* Access Point *et al.* Petition at 48 (predicting that BellSouth eventually would deploy IPTV service in its region in light of the "substantial investment" BellSouth has made in fiber upgrades); *see also* TWTC Oct. 6 *Ex Parte* Letter at 1-4. As explained in the text above, notwithstanding the preliminary steps BellSouth has taken toward possibly eventually offering IPTV service, we nevertheless agree with the Applicants that the merger will enable the combined company to deploy IPTV more quickly and inexpensively than BellSouth could do alone. *See* AT&T/BellSouth Smith Suppl. Decl. at 2.

regard.[572] We therefore agree with Applicants and find that the merger likely will enable the combined company to deploy IPTV in BellSouth's territory more quickly and at lower cost than BellSouth could do on its own.[573] The GAO has found that cable rates are from 15 to 41 percent lower where the incumbent cable company faces competition from a wireline video provider.[574] But for the merger, consumers in BellSouth's territory likely would have to wait longer for the benefits of IPTV competition.[575]

F. Enhancements to National Security, Disaster Recovery, and Government Services

208. We take considerations of national security and disaster recovery extremely seriously, and we find that the merger has the potential to generate significant benefits by enhancing national security, improving services to U.S. government customers, and enhancing the Applicants' disaster recovery capabilities. Specifically, we find that the merger will enable a unified, end-to-end, IP-based network that can provide the government with additional security and routing efficiency for vital and sensitive

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[572] *See, e.g.*, AT&T/BellSouth Application at 21-22 (enumerating some of the steps AT&T has taken over the past three years to prepare for the widespread commercial launch of AT&T's Project Lightspeed IPTV service); AT&T/BellSouth Kahan Decl. at paras. 33-35. The Concerned Mayors Alliance argues that the Commission should not approve the present merger until it is satisfied that the Applicants will not engage in redlining as they roll out new video services. *See* Concerned Mayors Alliance Comments at 12, 19. We disagree and believe that the issues raised by the Concerned Mayors Alliance are not merger specific and would be more appropriately addressed in a more general fashion. We note that Congress currently is considering new franchising legislation that could address this issue, and that currently pending before the Commission is a rulemaking addressing telecommunications carriers' provision of video services and the franchising process, as well as other issues arising under section 621(a) of the Cable Act. *See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as Amended*, Docket No. 05-311, *Notice of Proposed Rulemaking*, 20 FCC Rcd 18581 (2005); *see also* AT&T/BellSouth Reply at 113-15 (arguing that the franchising and redlining issues raised by the Concerned Mayors Alliance are "addressed in existing federal and state laws and are the subject of pending legislation, administrative proceedings, including proceedings pending at the FCC, and court cases").

[573] Because we believe the consumer benefits of increased video competition will occur more quickly if the merger is consummated than if it is not, we reject the arguments of Access Point *et al*. that such benefits could be "achieved by BellSouth's provision of video programming even if it remains independent of AT&T." *See* Access Point *et al.* Petition at 49 (arguing that the merged entity will need to make additional infrastructure investments and renegotiate portions of AT&T's programming agreements before providing IPTV service in BellSouth's region). Similarly, for the reasons set forth in the text above, we reject TWTC's argument that faster BellSouth entry into the IPTV market is not a cognizable benefit of the merger. *See* TWTC Oct. 6 *Ex Parte* Letter at 3-5.

[574] *See* U.S. General Accounting Office, Wire-Based Competition Benefited Consumers in Selected Markets, Report to the Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, U.S. Senate, at 4 (Feb. 2004), *available at* http://www.gao.gov/new.items/d04241.pdf. *See also* AT&T/BellSouth Application at 20 nn.63-64 (reporting lower cable costs where cable operators are subject to competition); AT&T/BellSouth Carlton/Sider Decl. at paras. 56-62 (discussing the consumer benefits of video competition); AT&T/BellSouth Carlton/Sider Reply Decl. at 174-76 (citing various studies supporting the contention that competition for video services significantly reduces prices for such services).

[575] *See* AT&T/BellSouth Carlton/Sider Reply Decl. at paras. 175-82 (estimating that a 15% to 20% decline in cable prices in BellSouth's territory would result in $1 billion to $2.5 billion in consumer welfare benefits if the merger results in IPTV being deployed in BellSouth's region between 12 and 24 months sooner than it otherwise would be, even ignoring the effect that lower prices would likely have on video service take rates and ignoring the benefits of competition on other aspects of cable service other than price, such as improvements to customer service and programming offerings).

government communications.[576] In addition, we find that the merger will enhance the Applicants' abilities to prepare for, and respond to, disasters.

209. We agree with the Applicants and find that the merger will "provide significant benefits to government customers and strengthen national security by creating a stronger, more efficient, U.S.-owned and U.S.-controlled supplier of critical communications capabilities."[577] Both AT&T and BellSouth provide substantial telecommunications and technology services to federal and state government agencies involved in national security.[578] We find that the merger will create a stable, reliable, U.S.-owned company that will provide improved service to government customers.[579] Moreover, we find that the merger will help BellSouth and Cingular improve communications security and network efficiency, which in turn should benefit national defense and homeland security.[580]

210. We also find that the merger has the potential to increase the Applicants' ability to respond to disasters.[581] By operating as a single company, the Applicants will be able to eliminate many of the processes that currently contribute to delay in deploying resources under existing voluntary aid agreements and other support that AT&T and BellSouth provide each other in emergencies.[582]

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[576] *See* AT&T/BellSouth Application at 30-31. Because we find that the networks of AT&T and BellSouth largely are non-overlapping – *see, e.g.*, AT&T/BellSouth Rice Decl. at para. 44 (stating that "BellSouth has only a regional network, and does not own network assets outside of its nine state" in-region territory); *see also infra* Part V.B (Wholesale Special Access Competition) (discussing the limited extent to which AT&T has constructed a local network in BellSouth's territory) – we reject commenters' concerns that the merger could reduce network redundancy. *See, e.g.*, Access Point *et al.* Petition at 55-57 (arguing that integrating AT&T's and BellSouth's currently interconnected networks will be "materially different" from the current network structure and could make communications less reliable); ScanSource Reply at 7 (arguing that large telecommunications users require "two providers for each of the telecommunications services they intend to purchase – one to provide service on a day-to-day basis, and another to act as a back-up").

[577] AT&T/BellSouth Application at 28; *see also id*. at 17-18, 28-40; AT&T/BellSouth Rice Decl. at paras. 35-43; AT&T/BellSouth Smith Decl. at paras. 29-41; AT&T/BellSouth Reply at 7-8.

[578] *See* AT&T/BellSouth Application at 30.

[579] For example, we find credible the Applicants' assertion that the merger, *inter alia*, will: "provide more efficient routing for government communications, with fewer hops, reducing network latency and a lower rate of packet loss," (AT&T/BellSouth Application at 30); "allow the reengineering of separate local, long-distance and wireless networks into integrated end-to-end IP networks" which will provide better security for government communications, (*id*. at 30-31); allow for streamlined channels of communication during emergencies (*id*. at 31); and "allow government customers in BellSouth's region to take advantage of AT&T's unique expertise in addressing classified issues of national security" (*id*. at 30 n.88, 32) (noting that AT&T performs various classified contracts, and thousands of its employees hold government security clearances).

[580] *See, e.g.*, AT&T/BellSouth Rice Decl. at para. 45 (explaining that, after the merger is consummated, BellSouth and Cingular customers will benefit from the advanced security solutions that are incorporated into AT&T's IP backbone). We disagree with the allegation of Access Point *et al*. that the applicants have not explained how the companies' merged network will provide improved security. *See* Access Point *et al.* Petition at 53-55.

[581] *See* AT&T/BellSouth Application at 32-40; AT&T/BellSouth Rice Decl. at paras. 35-43; AT&T/BellSouth Smith Decl. at paras. 29-41; AT&T/BellSouth Reply at 7-8.

[582] *See, e.g.*, AT&T/BellSouth Rice Decl. at para. 36 (explaining that, in the case of Hurricane Katrina, BellSouth first had to determine its specific needs before it formally requested help from SBC, which in turn needed to

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Furthermore, the combined company will be able to benefit from the unique disaster response expertise and equipment of each of the Applicants. For instance, the Applicants explain that "AT&T has invested hundreds of millions of dollars to develop a truly unique disaster response capability."[583] Not only can AT&T "deploy custom-built emergency vehicles with satellite uplink facilities, providing a critical command center as a first response to a disaster," but it also has the ability to "deploy as many as 150 mobile central offices from its own fleet of trucks," allowing quick restoration of service if one or more central offices or related critical infrastructure is destroyed.[584] Currently, BellSouth's customers are unable to benefit from these and other resources possessed by AT&T due to equipment incompatibility and other issues – a situation the Applicants contend will change following the consummation of the proposed merger.[585]

G. Efficiencies Related to Vertical Integration

211. As the Commission previously has recognized, vertical transactions may generate significant efficiencies.[586] For example, vertical integration may produce a more efficient organizational form, which can reduce transaction costs, limit free-riding by internalizing incentives, and take advantage of technological economies.[587] Vertical integration also may reduce prices in the downstream market by eliminating "double marginalization."[588]

212. We find that significant benefits are likely to result from the vertical integration of the complementary networks and facilities of AT&T and BellSouth.[589] The Applicants assert that their

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determine whether it had an inventory of compatible equipment and parts and, if so, needed to determine how much could be shared with BellSouth without risk to SBC's network, and how many personnel could be loaned consistent with SBC's own network support obligations in a manner that complied with various labor agreements); AT&T/BellSouth Application at 34-39.

[583] AT&T/BellSouth Rice Decl. at para. 39; *see also* AT&T/BellSouth Application at 37-38.

[584] *See, e.g.,* AT&T/BellSouth Rice Decl. at para. 39 (noting that AT&T also has "350 trailers with generators, HVAC systems and other resources needed to provide power and cooling to facilities that have lost power, enabling the facilities to be brought back on line quickly").

[585] *See* AT&T/BellSouth Rice Decl. at para. 42 (noting that because AT&T could not image the BellSouth switch and node databases in advance of Hurricane Katrina nor access BellSouth customer data, AT&T's proprietary software could not be used rapidly to rebuild the databases required to make the replacement switches operational, and stating that "[h]ad these recovery technologies been available to BellSouth and Cingular then, as they would be post-merger, more of the service disrupted by Hurricane Katrina would have been restored much more rapidly"); AT&T/BellSouth Smith Decl. at para. 33 ("BellSouth does not have the same scale of equipment or expertise, and the merger would make [AT&T's disaster response resources] available to customers in BellSouth's region.").

[586] *News Corp./Hughes Order*, 19 FCC Rcd at 507-08, para. 70.

[587] *Id*.

[588] *Id*. *See also SBC/AT&T Order*, 20 FCC Rcd at 18387, para. 190, n.537.

[589] We reject the argument of Access Point *et al*. that the Applicants have failed to demonstrate significant efficiencies resulting from vertical integration. *See* Access Point *et al.* Petition at 58-60. Because Applicants currently operate complementary and largely non-overlapping networks, we find the merger will allow the merged entity to realize vertical efficiencies that could not be realized through the means Access Point *et al*. suggest, such as migration to separate IP networks, and through "appropriate service agreements." *See id*.

wireline networks are complementary, with BellSouth and AT&T each providing a non-overlapping extensive local network with substantial amounts of fiber, and AT&T providing a global fiber optic long distance network and global data capabilities.[590] The Applicants claim that the combined company will be able to offer services over a centrally managed network and provide customers with end-to-end communications and comprehensive network management.[591] They further maintain that the combination of their services will benefit large enterprise and wholesale customers by enhancing the merged entity's ability to make available the broad range of communications services and global reach that those customers demand.[592]

213. We find that the merger will permit the integration of the complementary networks and assets of AT&T and BellSouth, giving each carrier facilities it previously lacked, and enabling the merged entity to offer a wider range of services to its broad range of customers.

H. Economies of Scope and Scale

214. We find that the merger of AT&T and BellSouth is also likely to give rise to significant economies of scope and scale, although these are difficult to quantify. While AT&T and BellSouth compete in some of the same markets, the focus and success of their efforts has often come in different segments of these markets.[593] The merger thus not only gives the combined company a larger total

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[590] *See, e.g.*, AT&T/BellSouth Application at 42-44 (stating that, "AT&T has deployed, and is continuing to deploy, a substantial nationwide and worldwide MPLS network that facilitates the efficient transport and routing of traffic in numerous protocols (*e.g.*, IP, ATM, Frame Relay, Ethernet), all over the same backbone" in 127 countries but "lacks broadly deployed last mile facilities of its own to reach customers in BellSouth's region" while "BellSouth has deployed, and is continuing to deploy, fiber optic facilities deeper into its last mile networks to enable the efficient delivery of advanced services in a variety of protocols" but "lacks the extensive nationwide MPLS network necessary to serve efficiently customers that need service both inside and outside BellSouth's region"); AT&T/BellSouth Rice Decl. at paras. 44-51; AT&T/BellSouth Smith Decl. at para. 42; AT&T/BellSouth Boniface Decl. at paras. 5-8, 11, 17.

[591] *See, e.g.*, AT&T/BellSouth Application at 44-46, 48-51; AT&T/BellSouth Kahan Decl. at paras. 12-32; AT&T/BellSouth Rice Decl. at para. 8; AT&T/BellSouth Boniface Decl. at para. 21.

[592] *See, e.g.*, AT&T/BellSouth Smith Decl. at para. 42 (stating that, while BellSouth can meet the needs of customers who do not require significant out-of-region connectivity, "[b]ecause BellSouth does not have its own long-distance facilities with a national reach, the company by itself will not be able to realize and deploy for its customers the full measure of benefits that spring from an integrated IP-based network" and that "[b]y allowing BellSouth to integrate its network with AT&T's long-distance and IP facilities, and by bringing Cingular's network under the umbrella of the combined company, the merger will allow the combined company to realize more efficiencies and take advantage of an IP-based network faster and more efficiently than AT&T, BellSouth, or Cingular could standing alone"); *see also* AT&T/BellSouth Kahan Decl. at paras. 41-42; AT&T/BellSouth Smith Decl. at para. 47.

[593] *See, e.g.*, AT&T/BellSouth Application at 64-68 ("AT&T concentrates on serving the full range of complex telecommunications needs of the largest retail business customers, both nationally and globally, while BellSouth focuses predominantly on meeting the local and regional voice and data needs of businesses, most of them significantly smaller than AT&T's target customer, whose operations are concentrated within its nine-state region."); AT&T/BellSouth Carlton/Sider Decl. at paras. 87-90; AT&T/BellSouth Boniface Decl. at para. 6 (stating that, because BellSouth's "primary value proposition stems from [its] extensive local network in [its] incumbent territory, [it] principally focus[es] on serving different customer requirements than the full suite of national and international voice and data services for very large customers that is legacy AT&T's competitive focus"); *see also*

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customer base, but also significant shares of customers across a wider range of communications markets than either carrier had before the merger. In addition, we agree with the Applicants that, by broadening its customer base, the merged entity will have an increased incentive to engage in basic research and development.[594] The Commission has recognized in the past that, when a "transaction enables the parties to combine their R&D efforts and to spread the cost of those R&D efforts over" a more extensive customer base, this "could result in new products and services that would not have been introduced absent the proposed transaction."[595] We further find that continued intense competition from other carriers will provide sufficient incentives for the merged company to continue to invest in more applied research and product development. We also find that BellSouth will benefit from the substantial investment AT&T has made to ensure that its networks, including critical national defense networks, remain robust and technologically advanced.[596] Finally, we agree with the Applicants that the transaction will accelerate service innovations, such as advanced IP services and converged wireline/wireless services.[597]

I. Cost Synergies

215. As discussed below, we credit certain cost reductions as benefits resulting from the merger. The Applicants assert that the merger will result in over $16 billion in savings for both fixed and variable operations costs.[598] They contend that the cost savings would include the elimination of duplicative network facilities, staff, and operation systems; greater utilization of network assets by combining the

(Continued from previous page)
id. at paras. 7-22; AT&T/BellSouth Reply at 47 (stating that "numerous enterprise level retail business customers explain that they do not consider BellSouth a viable alternative for their national telecommunications needs").

[594] *See, e.g.*, AT&T/BellSouth Application at 46-48; AT&T/BellSouth Carlton/Sider Decl. at para. 68; AT&T/BellSouth Rice Decl. at paras. 29-34; AT&T/BellSouth Smith Decl. at paras. 52-60. Access Point *et al.* argue that the merger will not result in more research and development because the merged entity will have less incentive to develop new services to help it obtain a local service presence than the Applicants do now; and because the merged entity will have greater incentive to avoid costly mistakes and cannibalization of its existing services than the Applicants do now. *See* Access Point *et al.* Petition at 60-63. We find these arguments unsupported and unpersuasive. We find, to the contrary, that the increase in scale and scope arising from the merger will help the merged entity to better spread the costs of, and internalize the benefits of, its R&D, thus increasing its incentives to invest.

[595] *News Corp./Hughes Order*, 19 FCC Rcd at 619, para. 342. The Commission also has found that, "if the merged entity can secure larger volume discounts from suppliers, and then pass those lower costs through to consumers in the form of lower end-user prices, this likewise would constitute a public interest benefit that should be considered in balancing the potential harms and benefits of the proposed transaction." *See id*. at 620, para. 343. This is another benefit of the present merger. *See* AT&T/BellSouth Kahan Decl. at para. 45 (claiming that merger will result in "improved pricing from equipment and service providers").

[596] *See, e.g.*, AT&T/BellSouth Application at 48-51 (listing numerous innovations developed by AT&T Labs that will benefit BellSouth customers). We reject the claim of Access Point *et al*. that the Applicants have not adequately explained why the merger would permit the more effective sharing of these innovations with BellSouth. *See* Access Point *et al.* Petition at 60.

[597] *See, e.g.*, *supra* note 568 (discussing converged wireline/wireless offerings). As discussed above, we also find the merger will result in customers in BellSouth's region benefiting from the competition of accelerated deployment of IPTV services. *See supra* para. 207.

[598] *See, e.g.*, AT&T/BellSouth Application at 52 (projecting $18 billion in total synergies with cost reductions accounting for over 90% of this figure); AT&T/BellSouth Kahan Decl. at para. 42.

companies' traffic streams; reduced network center and network planning costs; and elimination of duplicative information technology (IT) projects.[599] As support for these claims, the Applicants filed a synergies model in the record, which estimated both cost and revenue synergies.[600]

216. No commenter discusses the synergy model itself.[601] However, Access Point *et al*. argue that the Applicants fail to provide adequate support for their claimed synergies, and argue that Applicants' claimed cost savings are not necessarily a public interest benefit because the merged entity may not pass those costs savings on to consumers.[602] Similarly, EarthLink contends that the synergies claimed by Applicants are speculative and should be balanced against any public interest harms.[603]

217. After careful examination of the Applicants' synergy model, we find that we cannot credit the $16 billion savings in its entirety. First, the model's calculations assume that all the model's synergies continue in perpetuity.[604] As mentioned above, benefits that are to occur in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present. We thus evaluate the evidence of synergy benefits over shorter and more reasonable timeframes included in the model. Therefore, we will examine the claimed **[REDACTED]** in cost synergies that the Applicants expect to accrue through **[REDACTED]**.

218. We are skeptical of some of the Applicants' cost-savings calculations. For instance, the Applicants contend that by merging three brands into one, the combined entity will save up to $500 million on advertising annually.[605] According to its synergy model spreadsheet, however, in 2006 AT&T's estimated advertising costs will be **[REDACTED]** annually, while the estimates for Cingular and BellSouth's advertising cost are estimated to be **[REDACTED]** and **[REDACTED]**, respectively.[606]

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[599] *See, e.g.*, AT&T/BellSouth Application at 52-54; AT&T/BellSouth Carlton/Sider Reply Decl. at paras. 134-37.

[600] *See* AT&T Info. Req., Exh. 53 at 12 (presenting the synergies model in hard copy).

[601] Drs. Sumit Majumdar, Rabih Moussawi, and Ulku Yaylacicegli submitted comments which purport to analyze mergers in the "local exchange sector" that took place between 1988 and 2001. *See* Majumdar Condition Comments. The authors claim that their analysis shows that these mergers did not create expected synergy effects, but rather increased market power. Unfortunately, the paper does not provide sufficient information regarding, among other things, the scope of their analysis (*e.g.*, the universe of carriers studied), all of the variables that were used in their regressions, or all the assumptions that were made. As a result, staff was unable to critically evaluate or replicate their results and, accordingly, we cannot give weight to the paper's results.

[602] We agree with Access Point *et al*. in part, and only credit Applicants with synergies that are supported and are likely to result in public interest benefits. *See, e.g.*, *supra* para. 202 (explaining that the Commission gives greater weight to reductions in variable or marginal costs than in fixed costs).

[603] *See* EarthLink Petition at 31-32.

[604] The synergy model calculates the synergies as the present value of the infinitely-lasting stream of extra income and reduced costs. The Commission does not dispute the use of the net present value concept (to quantify future incomes and cost reductions) itself, but only the length of the time horizon considered.

[605] *See* AT&T/BellSouth Application at 53; *see also* letter from Gary L. Phillips, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 1 (filed Aug. 21, 2006) (AT&T Aug. 21 *Ex Parte* Letter).

[606] *See* Letter from Scott Feira, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. at 93 (filed Aug. 10, 2006) (Synergies Model).

Thus, the Applicants contend that they can reduce their combined advertising by approximately **[REDACTED]** times the amount that BellSouth itself spends on advertising.[607] We are also skeptical of the cited advertising savings because there is no information on the record supporting AT&T's quantification of the potential reductions in its advertising expenditures.[608] While we accept that the Applicants likely will marginally reduce their advertising expenses by consolidating three brands into one, we believe the combined firm will face largely the same incentive to advertise as before, and most of the same advertising costs.

219. According to the synergy model, much of the cost savings are from headcount reductions, and those calculations seem reasonable.[609] We have no reason to doubt that many overhead positions can be eliminated after the merger. We recognize that some of the headcount savings are likely to come from positions where compensation is based primarily on commission; savings in those positions should reduce variable costs.[610] We find that the remainder of the claimed headcount savings represent primarily savings in overhead, to which the Commission generally has given less weight than marginal cost reductions.[611]

220. Certain other claimed cost synergies are unexplained. The synergy model explains very little of the nature of the capital expenditure and operations expenditure reductions.[612] AT&T adds some explanation in its response to the Information Request, but in most cases, the synergy amounts are simply inserted into the model without comment.[613] Accordingly, we give little weight to these claimed cost synergies.

221. In summary, we find that the proposed transaction is likely to generate several significant public interest benefits, although it is difficult to quantify precisely the magnitude of some of these benefits.

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[607] *See* AT&T Aug. 21 *Ex Parte* Letter at 3 (clarifying certain claimed advertising synergies).

[608] The Applicants contend that the **[REDACTED]**% annual advertising cost savings rate set forth in the synergy model will result from eliminations of current advertising overlap and increases in advertising buying power. *See* AT&T Aug. 21 *Ex Parte* Letter at 1-2. However, Applicants' wireline services primarily are concentrated in different geographic markets, and although Cingular's territory overlaps with the Applicants' wireline territories, we find no specific evidence in the record to show why Cingular would market its wireless services less if it is rebranded than if it continues to operate under its current brand. Further, we find that any increased buying power the merged firm enjoys is unlikely to approach the cost savings rate cited by the Applicants.

[609] *See* Synergies Model at 31-40.

[610] *See id*. at 29-30.

[611] *EchoStar/DirecTV Order*, 17 FCC Rcd at 20631, para. 191; *see also DOJ/FTC Guidelines* § 4.

[612] *See* Synergies Model at 31, 36, 41, 50.

[613] Moreover, we note that Applicants claim approximately the same level of synergies in this merger as they claimed in the SBC/AT&T merger proceeding, despite the fact that this is a significantly smaller transaction, which casts additional doubt on unsupported synergy values.

222. In addition, on December 28, 2006, AT&T made a series of voluntary commitments that are enforceable by the Commission and attached as Appendix F.[614] These conditions are voluntary, enforceable commitments by AT&T but are not general statements of Commission policy and do not alter Commission precedent or bind future Commission policy or rules.

VIII. CONCLUSION

223. We find that several significant public interest benefits are likely to result from the proposed transaction and that, with one exception, the merger is not likely to have anticompetitive effects in any relevant markets. As discussed above, we recognize that there will be an increase in market concentration with respect to certain services, including special access services, retail enterprise services, mass market services, and Internet backbone services. We do not find, however, that these increases in concentration are likely to result in anticompetitive effects. In addition, we find that the merger will result in a reduction from two to one in the number of competitors with direct connections to 31 buildings where other competitive entry is unlikely. We find, however, that AT&T's voluntary commitment to divest at least eight fiber strands in the form of ten-year IRUs for these two-to-one buildings where entry is unlikely, which we accept and make an express condition of our approval of this merger, adequately remedies this potential special access harm.[615]

224. We also find potential public interest benefits from the proposed merger that, taken as a whole, outweigh the relatively limited possible public interest harms. These public interest benefits relate to: accelerated broadband deployment; enhancements to MVPD and programming competition; national security, disaster recovery, and government services; unification of Cingular's ownership; efficiencies related to vertical integration; economies of scope and scale; and cost savings.

225. We therefore conclude that, on balance, the positive public interest benefits likely to arise from this transaction are sufficient to support the Commission's approval of AT&T's and BellSouth's application under the public interest test of sections 214 and 310(d) of the Communications Act.

IX. ORDERING CLAUSES

226. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), section 2 of the Cable Landing License Act, 47 U.S.C. § 35, and Executive Order No. 10530, the applications for the transfer of control of licenses and authorizations from BellSouth to AT&T as discussed herein and set forth in Appendix B ARE GRANTED subject to the conditions stated below.

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[614] *See* Appendix F. AT&T filed on December 28, 2006, a letter describing its voluntary commitments. *See* Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Dec. 28, 2006). On January 4, 2007, AT&T filed an erratum to make two minor corrections to the commitment language and to correct certain building identification codes set forth in the attachment to the Dec. 28, 2006 letter. *See* Letter from Joan Marsh, Executive Director – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Jan. 4, 2007) (AT&T Jan. 4, 2007 *Ex Parte* Letter). Appendix F includes the corrections set forth in the AT&T Jan. 4, 2007 *Ex Parte* Letter, as that letter accurately reflects the voluntary commitments offered by AT&T.

[615] *See* Appendix F.

227. IT IS FURTHER ORDERED that as a condition of this grant AT&T and BellSouth shall comply with the conditions set forth in Appendix F of this Order.

228. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses and authorizations from BellSouth to AT&T filed by Access Point, Inc. *et al*., the Center for Digital Democracy, Clearwire Corporation, COMPTEL, the Concerned Mayors Alliance, Consumer Federation *et al*., Earthlink and Time Warner Telecom, Inc. ARE DENIED for the reasons stated herein.

229. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), and sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, the request by AT&T for a 120 day waiver of section 64.1801 of the Commission's rules, 47 C.F.R. § 64.1801, effective as of the merger closing date, IS GRANTED.

230. IT IS FURTHER ORDERED that pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this Memorandum Opinion and Order IS EFFECTIVE upon adoption. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within 30 days of the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Commenters	Abbreviation
ACCESS Integrated Networks, Inc.	ACCESS
American Civil Liberties Union	ACLU
Access Point, Inc. ACN Communications Services, Inc. Deltacom, Inc. Florida Digital Network, Inc. d/b/a FDN Communications, Inc. Globalcom Communications, Inc. Lightyear Network Solutions, Inc. McLeodUSA Telecommunications Services, Inc. Pac-West Telecom, Inc. Smart City Networks, Inc. US LEC Corp.	Access Point *et al*.
Alliance for Public Technology	APT
Cbeyond Communications Grande Communications New Edge Networks NuVox Communications Supra Telecom Talk America, Inc. XO Communications, Inc. Xspedius Communications	Cbeyond *et al*.
Center for Digital Democracy	CDD
Clearwire Corporation	Clearwire
Communications Workers of America	CWA
COMPTEL	COMPTEL
Concerned Mayors Alliance	Concerned Mayors Alliance
Consumer Federation America Consumers Union Free Press U.S. Public Interest Research Group	Consumer Federation *et al*.
Earthlink, Inc.	Earthlink
Federation of Internet Solution Providers of the Americas, Inc.	FISPA
Fones4All Corp.	Fones4All
Georgia Public Service Commission	Georgia PSC
Global Crossing North America, Inc.	Global Crossing
Image Access, Inc. d/b/a NewPhone dPi Teleconnect Express Phone Service, Inc. ABC Telecom d/b/a Home Phone Budget Phone Quality Telephone AmeriMex Communications Corp. Ganoco, Inc. d/b/a American Dialtone The National Alternative Local Exchange Carrier	Resale Joint Commenters

Commenters	Abbreviation
Association/Prepaid Communications Association	
Jonathan L. Rubin, J.D., Ph.D	Rubin
Mobile Satellite Ventures Subsidiary LLC	MSV LLC
National Association of State Utility Consumer Advocates	NASUCA
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
PAETEC Communications, Inc.	PAETEC
Saturn Telecommunication Services, Inc.	STS
Sprint Nextel Corporation	Sprint Nextel
SwifTel Communications, Inc.	SwifTel
Time Warner Telecom, Inc.	TWTC

Reply Commenters	Abbreviation
Ad Hoc Telecom Manufacturer Coalition	Ad Hoc Telecom Manufacturer
Ad Hoc Telecommunications Users Committee	Ad Hoc Telecom Users
Beaver Creek Cooperative Telephone Company Canby Telephone Association Cascade Utilities, Inc. Clear Creek Mutual Telephone Company Colton Telephone Company Gervais Telephone Company Helix Telephone Co. Molalla Communications Company Monitor Cooperative Telephone Company Monroe Telephone Company Mount Angel Telephone Company Oregon Telephone Corporation Pine Telephone System, Inc. Pioneer Telephone Cooperative Roome Telecommunications Inc. St. Paul Cooperative Telephone Association Scio Mutual Telephone Association	Oregon Companies
Cbeyond Communications Grande Communications New Edge Networks NuVox Communications Supra Telecom Talk America, Inc. XO Communications, Inc. Xspedius Communications	Cbeyond *et al*.
Clearwire Corporation	Clearwire
Concerned Mayors Alliance	Concerned Mayors Alliance
Consumer Federation America Consumers Union Free Press U.S. Public Interest Research Group	Consumer Federation *et al*.
Florida Public Service Commission	Florida PSC
Mobile Satellite Ventures Subsidiary LLC	MSV LLC
National Association of State Utility Consumer Advocates	NASUCA

Reply Commenters	Abbreviation
National Telecommunications Cooperative Association	NTCA
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
ScanSource, Inc.	ScanSource
Telephone USA Investments, Inc.	Telephone USA
T-Mobile USA, Inc.	T-Mobile

Condition Commenters	Abbreviation
ACCESS Integrated Networks, Inc.	ACCESS
Access Point, Inc. ACN Communications Services, Inc. Deltacom, Inc. Florida Digital Network, Inc. d/b/a FDN Communications, Inc. Globalcom Communications, Inc. Lightyear Network Solutions, Inc. McLeodUSA Telecommunications Services, Inc. Pac-West Telecom, Inc. Smart City Networks, Inc. US LEC Corp.	Access Point *et al.*
Advance/Newhouse Communications Cablevision Systems Corporation Charter Communications Cox Communications Insight Communications Company	Advance/Newhouse *et al.*
Alliance for Public Technology	APT
American Antitrust Institute, Inc.	
American Association of People with Disabilities	
Benjamin Ochshorn	
Center for Creative Voices in Media	
Center for Digital Democracy	CDD
Chickasaw Telephone Company	
Clearwire Corporation	Clearwire
Communications Workers of America	CWA
COMPTEL	COMPTEL
Computer & Communications Information Association	
Concerned Mayors Alliance	Concerned Mayors Alliance
Consumer Federation America Consumers Union Free Press U.S. Public Interest Research Group	Consumer Federation *et al.*
Disability Coalition	
Earthlink, Inc.	Earthlink
Federation of Internet Solution Providers of the Americas, Inc.	FISPA
Georgia Public Service Commission	Georgia PSC
Global Crossing North America, Inc.	Global Crossing
Image Access, Inc. d/b/a NewPhone dPi Teleconnect Express Phone Service, Inc.	Resale Joint Commenters

Condition Commenters	Abbreviation
ABC Telecom d/b/a Home Phone Budget Phone Quality Telephone AmeriMex Communications Corp. Ganoco, Inc. d/b/a American Dialtone The National Alternative Local Exchange Carrier Association/Prepaid Communications Association	
It's Our Net Coalition	
M/C Venture Partners Meritage Funds McCullen Capital Wachovia Capital Partners	M/C Venture Partners *et al*.
Michigan Communication Carriers Association	
National Association of State Utility Consumer Advocates	NASUCA
National Emergency Number Association	
Netzero, Inc.	
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
NTS Communications	
Raw Bandwidth Communications, Inc.	
Special Access Coalition	
Sprint Nextel Corporation	Sprint Nextel
TeleTruth (Parts 1 & 2)	
Texaltel	
Time Warner Telecom, Inc.	TWTC
T-Mobile USA, Inc.	T-Mobile
United States Internet Industry Association	
Sumit Majumdar, Ph.D.	Majumdar
UTEX Communications Corporation d/b/a Feature Group IP	UTEX
XO Communications, Inc.	XO

APPENDIX B

List of Licenses and Authorizations Subject to Transfer of Control

Domestic Section 214 Authority

BellSouth Affiliates and Subsidiaries Holding Domestic 214 Authority

BellSouth Long Distance, Inc.
BellSouth Telecommunications, Inc.

International Section 214 Authorizations

File No.	Authorization Holder	Authorization Number
ITC-T/C-20060331-00182	Cingular Wireless LLC	ITC-214-20011031-00547
ITC-T/C-20060331-00183	Acadiana Cellular General Partnership	ITC-214-20010412-00193
ITC-T/C-20060406-00190	Decatur RSA Limited Partnership	ITC-214-20010412-00219
ITC-T/C-20060406-00191	Florida RSA No. 2B (Indian River) Limited Partnership	ITC-214-20010412-00205
ITC-T/C-20060406-00192	Cingular Wireless of Texas RSA #11, Limited Partnership	ITC-214-20000713-00776
ITC-T/C-20060406-00193	Cingular Wireless of Galveston, L.P.	ITC-214-19960516-00196
ITC-T/C-20060406-00194	Cingular Wireless of Texas RSA #16, Limited Partnership	ITC-214-20000713-00777
ITC-T/C-20060406-00195	CCPR of the Virgin Islands, Inc.	ITC-214-20001101-00664
ITC-T/C-20060406-00196	CCPR Paging, Inc.	ITC-214-19930315-00040
ITC-T/C-20060406-00197	Cincinnati SMSA Limited Partnership	ITC-214-20010412-00199
ITC-T/C-20060406-00198	CCPR Services, Inc.	ITC-214-19940107-00011
ITC-T/C-20060406-00199	Champaign CellTelCo	ITC-214-20010412-00198
ITC-T/C-20060406-00200	Georgia RSA No. 3 Limited Partnership	ITC-214-20010412-00201
ITC-T/C-20060406-00201	Houma-Thibodaux Cellular Partnership	ITC-214-20000721-00430
ITC-T/C-20060406-00202	Houston Cellular Telephone Company, L.P.	ITC-214-20000713-00779 *et al.*
ITC-T/C-20060406-00203	Louisiana RSA No. 7 Cellular General Partnership	ITC-214-20010412-00197
ITC-T/C-20060406-00204	Lubbock SMSA Limited Partnership	ITC-214-2001412-00196
ITC-T/C-20060406-00205	Madison SMSA Limited Partnership	ITC-214-20010412-00225
ITC-T/C-20060406-00206	Missouri RSA 8 Limited Partnership	ITC-214-20010412-00200
ITC-T/C-20060406-00207	McAllen-Edinburg-Mission SMSA, Limited Partnership	ITC-214-20010412-00208
ITC-T/C-20060406-00208	Milwaukee SMSA Limited Partnership	ITC-214-20010412-00231
ITC-T/C-20060406-00209	Northeastern Georgia RSA Limited Partnership	ITC-214-20010412-00223
ITC-T/C-20060406-00210	Missouri RSA 11/12 Limited Partnership	ITC-214-20010412-00203
ITC-T/C-20060406-00211	Missouri RSA 9B1 Limited Partnership	ITC-214-20010412-00191
ITC-T/C-20060406-00212	Oklahoma RSA 9 Limited Partnership	ITC-214-20010412-00215
ITC-T/C-20060406-00213	Oklahoma City SMSA Limited Partnership	ITC-214-20010412-00229

File No.	Authorization Holder	Authorization Number
ITC-T/C-20060406-00214	Oklahoma RSA 3 Limited Partnership	ITC-214-20010412-00207
ITC-T/C-20060406-00215	Texas RSA 19 Limited Partnership	ITC-214-20010412-00216
ITC-T/C-20060406-00216	Pine Bluff Cellular, Inc.	ITC-214-20031017-00481
ITC-T/C-20060406-00217	Texas RSA 18 Limited Partnership	ITC-214-20010412-00224
ITC-T/C-20060406-00218	Texas RSA 7B1 Limited Partnership	ITC-214-20010412-00204
ITC-T/C-20060406-00219	Texas RSA 20B1 Limited Partnership	ITC-214-20010412-00228
ITC-T/C-20060406-00220	Texas RSA 6 Limited Partnership	ITC-214-20010412-00218
ITC-T/C-20060406-00221	Texas RSA 9B1 Limited Partnership	ITC-214-20010412-00190
ITC-T/C-20060406-00222	Topeka SMSA Limited Partnership	ITC-214-20010412-00226
ITC-T/C-20060406-00223	New Cingular Wireless PCS, LLC	ITC-214-20010412-00211 *et al.*
ITC-T/C-20060406-00224	Louisiana No. 8 Limited Partnership	ITC-214-20010412-00232
ITC-T/C-20060406-00225	BellSouth Long Distance, Inc.	ITC-214-20021009-00500 *et al.*
ITC-T/C-20060406-00226	BellSouth International, LLC	ITC-214-19971017-00638

Cable Landing Licenses

File No.	Authorization Holder	Authorization Number
SCL-T/C-20060331-00003	BellSouth Long Distance Inc.[616]	SCL-LIC-19990303-00004 *et al.*

Satellite Earth Station Authorization Applications

File No.	Licensee	Lead Call Sign
SES-T/C-20060404-00562	BellSouth Wireless Cable, Inc.	E920001
SES-T/C-20060404-00563	BellSouth Entertainment, LLC	E990020
SES-T/C-20060412-00646	BellSouth Telecommunications, Inc.	E990021
SES-T/C-20061222-02237[617]	New Cingular Wireless PCS, LLC	E060408

[616] *See Actions Taken Under Cable Landing License Act*, Public Notice, Report No. SCL-00017, DA No. 06-1236 (rel. June 8, 2006) (noting grant on June 7, 2006 of application in file no. SCL-ASG-20060419-00006 for *pro forma* assignment of the submarine cable ownership interests held by BellSouth International, Inc. (now BellSouth International, LLC) (BSI) to BellSouth Long Distance, Inc. (BSLD)).

[617] The International Bureau granted New Cingular Wireless PCS, LLC, a wholly owned subsidiary of Cingular Wireless LLC, a license for satellite earth station (call sign E060408) on December 20, 2006. *See Satellite Communications Services Information re: Actions Taken*, Public Notice, Report No. SES-00883 (rel. Dec. 20, 2006). AT&T requested approval "to acquire control of any authorization issued to the respective licensees/transferors during the pendency of the transaction and the period required for consummation of the transaction." AT&T/BellSouth Application at 125-26.

Wireless Radio Service Applications

Licenses held by BellSouth

File No.	Licensee	Lead Call Sign
0002545739[618]	BellSouth Advertising & Publishing Corporation	WPSH611
0002546993	BellSouth Mobile Data, Inc.	KNLB202
0002546732[619]	BellSouth Telecommunications, Inc.	KA2187
0002547740	BellSouth Telecommunications, Inc.	WPMP702
0002548734	BellSouth Telecommunications, Inc.	WNZL596
0002548969	BellSouth Telecommunications, Inc.	WPFH766
0002545782[620]	BellSouth Wireless Cable, Inc	B024
0002545755	South Florida Television, Inc.	WHJ893
0002545777	Stevens Graphics, Inc.	WPTF978

Licenses held by Cingular

File No.	Licensee	Lead Call Sign
0002550321	Acadiana Cellular General Partnership	KNKN499
0002828728[621]	Appaloosa Newco, LLC	KNKN762
0002560497	Arkansas 11 RSA Newco, LLC	KNKQ353
0002550346[622]	Bellingham Cellular Partnership	KNKA572
0002550347[623]	Bloomington Cellular Telephone Company	KNKA654

[618] File No. 0002550321 was designated the lead application for the wireless radio services. Thus, for convenience, when referring to these applications in this attachment, we only cite to the lead Application. We note that the lead Application was amended on several occasions. Specifically, the exhibits referenced in the footnotes below were filed as follows: Exhibit 4 was filed on October 12, 2006; Exhibit 6 was filed on November 2, 2006; Exhibit 7 was filed on November 17, 2006; Exhibit 8 was filed on December 1, 2006; and Exhibit 9 was filed on December 22, 2006.

[619] *See* Application at Exhibit 4, Exhibit 6, Exhibit 9 (updating File No. 0002546732 to indicate relinquished or assigned licenses (to be deleted) and licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[620] *See* Application at Exhibit 4 (updating File No. 0002545782 to indicate relinquished or assigned licenses (to be deleted)).

[621] *See* Application at Exhibit 8 (filing File No. 0002828728 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction).

[622] *See* Application at Exhibit 4 (updating File No. 0002550346 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[623] *See* Application at Exhibit 4 (updating File No. 0002550347 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

File No.	Licensee	Lead Call Sign
0002550364[624]	Blue Licenses Holding, LLC	KNKA247
0002550348[625]	Blue Texas Licenses Holding, L.P.	KNKA372
0002550345[626]	Bradenton Cellular Partnership	KNKA647
0002550351[627]	Bremerton Cellular Telephone Company	KNKA679
0002550350	Cagal Cellular Communications Corporation	KNKA697
0002550369	CCPR of the Virgin Islands, Inc.	KNKN523
0002550352	CCPR Paging, Inc.	WQBN422
0002551244[628]	CCPR Services, Inc.	KNKA451
0002550357[629]	Champaign CellTelco	KNKA478
0002550358[630]	Chattanooga MSA Limited Partnership	KNKA289
0002550372	Cincinnati SMSA Limited Partnership	KNKA222
0002832969[631]	Cingular AWS, LLC	WQGA742
0002556120	Cingular Wireless of Galveston, L.P.	KNKA676
0002550361	Cingular Wireless of Texas RSA #11 Limited Partnership	KNKN538
0002550359[632]	Cingular Wireless of Texas RSA #16 Limited Partnership	KNKN608
0002550363	Decatur RSA Limited Partnership	KNKN903
0002550379[633]	Florida RSA No. 2B (Indian River) Limited Partnership	KNKN990

[624] *See* Application at Exhibit 4, Exhibit 7 (updating File No. 0002550364 to indicate relinquished or assigned licenses (to be deleted)).

[625] *See* Application at Exhibit 4 (updating File No. 0002550348 to indicate relinquished or assigned licenses (to be deleted)).

[626] *See* Application at Exhibit 4 (updating File No. 0002550345 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[627] *See* Application at Exhibit 4 (updating File No. 0002550351 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[628] *See* Application at Exhibit 4 (updating File No. 0002551244 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[629] *See* Application at Exhibit 4 (updating File No. 0002550357 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[630] *See* Application at Exhibit 4 (updating File No. 0002550358 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[631] *See* Application at Exhibit 8 (filing File No. 0002832969 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction).

[632] *See* Application at Exhibit 4 (updating File No. 0002550359 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[633] *See* Application at Exhibit 4 (updating File No. 0002550379 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

File No.	Licensee	Lead Call Sign
0002550356[634]	Georgia RSA No. 3 Limited Partnership	KNKN765
0002550362[635]	Hood River Cellular Telephone Company, Inc.	KNKN461
0002550368	Houma-Thibodaux Cellular Partnership	KNKA686
0002550371[636]	Houston Cellular Telephone Company, L.P.	KNKA229
0002550385	Jacksonville MSA Limited Partnership	KNKA287
0002550360[637]	Lafayette MSA Limited Partnership	KNKA492
0002550366	Louisiana RSA No. 7 Cellular General Partnership	KNKN614
0002550375	Louisiana RSA No. 8 Limited Partnership	KNKQ454
0002550376	Lubbock SMSA Limited Partnership	KNKA421
0002550389[638]	Madison SMSA Limited Partnership	KNKA414
0002550365	McAllen-Edinburg-Mission SMSA Limited Partnership	KNKA430
0002550380	Medford Cellular Telephone Co., Inc.	KNKA722
0002550384[639]	Melbourne Cellular Telephone Company	KNKA406
0002550382[640]	Milwaukee SMSA Limited Partnership	KNKA214
0002550373[641]	Missouri RSA 8 Limited Partnership	KNKN575
0002550386	Missouri RSA 9B1 Limited Partnership	KNKN907
0002550392[642]	Missouri RSA 11/12 Limited Partnership	KNKN726
0002550394[643]	New Cingular Wireless PCS, LLC	KNKA218

[634] *See* Application at Exhibit 4 (updating File No. 0002550356 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[635] *See* Application at Exhibit 4 (updating File No. 0002550362 to indicate relinquished or assigned licenses (to be deleted)).

[636] *See* Application at Exhibit 4 (updating File No. 0002550371 to indicate relinquished or assigned licenses (to be deleted)).

[637] *See* Application at Exhibit 4 (updating File No. 0002550360 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[638] *See* Application at Exhibit 4 (updating File No. 0002550389 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[639] *See* Application at Exhibit 4 (updating File No. 0002550384 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[640] *See* Application at Exhibit 4 (updating File No. 0002550382 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[641] *See* Application at Exhibit 4 (updating File No. 0002550373 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[642] *See* Application at Exhibit 4 (updating File No. 0002550392 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[643] *See* Application at Exhibit 4, Exhibit 6, Exhibit 8, Exhibit 9 (updating File No. 0002550394 to indicate relinquished or assigned licenses (to be deleted) and licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)). Application File No. 0002552209

(continued….)

File No.	Licensee	Lead Call Sign
0002550427[644]	New Cingular Wireless Services of Nevada, LLC	KNKA657
0002550378[645]	Northeastern Georgia RSA Limited Partnership	KNKN875
0002550388	Ocala Cellular Telephone Company, Inc.	KNKA753
0002550399	Oklahoma City SMSA Limited Partnership	KNKA296
0002550428[646]	Oklahoma RSA 3 Limited Partnership	KNKN821
0002550400[647]	Oklahoma RSA 9 Limited Partnership	KNKN981
0002550387	Olympia Cellular Telephone Company, Inc.	KNKA589
0002550391[648]	Orange Licenses Holding, LLC	KNKA208
0002550410	Orange Texas Licenses Holding, L.P.	KNKA279
0002550429[649]	Orlando SMSA Limited Partnership	KNKA253
0002550405	Pine Bluff Cellular, Inc.	KNKA746
0002550390[650]	Provo Cellular Telephone Company	KNKA704
0002550396	Reno Cellular Telephone Company	KNKA516
0002550412	Salem Cellular Telephone Company	KNKA754
0002550753[651]	Salmon PCS Licensee LLC	WPTI719
0002550402[652]	San Juan Cellular Telephone Company	KNKA785

(Continued from previous page)

transferring a license held by Cingular Wireless LCC to AT&T Inc. was withdrawn when the license was assigned to New Cingular Wireless PCS, LLC and added to File No. 0002550394. *See* Application at Exhibit 4.

[644] *See* Application at Exhibit 4, Exhibit 6, Exhibit 8 (updating File No. 0002550427 to indicate relinquished or assigned licenses (to be deleted) and licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[645] *See* Application at Exhibit 4 (updating File No. 0002550378 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[646] *See* Application at Exhibit 4 (updating File No. 0002550428 to indicate relinquished or assigned licenses (to be deleted)).

[647] *See* Application at Exhibit 4 (updating File No. 0002550400 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[648] *See* Application at Exhibit 4, Exhibit 8 (updating File No. 0002550391 to indicate relinquished or assigned licenses (to be deleted) and licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[649] *See* Application at Exhibit 4 (updating File No. 0002550429 to indicate relinquished or assigned licenses (to be deleted)).

[650] *See* Application at Exhibit 4 (updating File No. 0002550390 to indicate relinquished or assigned licenses (to be deleted)).

[651] *See* Application at Exhibit 4. Application File No. 0002550753 was listed in the Accepted for Filing Public Notice under the category of applications transferring control of non-controlling interests held by Cingular. During the pendency of this transaction, Salmon PCS Licensee LLC became a wholly-owned and controlled subsidiary of Cingular. *See* Application at Exhibit 4.

[652] *See* Application at Exhibit 4 (updating File No. 0002550402 to indicate relinquished or assigned licenses (to be deleted)).

File No.	Licensee	Lead Call Sign
0002550411[653]	Santa Barbara Cellular Systems, Ltd.	KNKA493
0002550397[654]	Sarasota Cellular Telephone Company	KNKA494
0002550398	St. Cloud Cellular Telephone Company, Inc.	KNKA808
0002550415[655]	TeleCorp Communications, LLC	WQBN423
0002550403	Texas RSA 6 Limited Partnership	KNKN369
0002550416	Texas RSA 7B1 Limited Partnership	KNKN730
0002550413	Texas RSA 9B1 Limited Partnership	KNKN905
0002550408	Texas RSA 18 Limited Partnership	KNKN696
0002550414[656]	Texas RSA 19 Limited Partnership	KNKN525
0002550401[657]	Texas RSA 20B1 Limited Partnership	KNKN945
0002550417[658]	Topeka SMSA Limited Partnership	KNKA442
0002550407	Triton License Newco, LLC	WPOI204
0002550406[659]	Visalia Cellular Telephone Company	KNKA781

Non-controlling interests in Commission licensees held by Cingular

File No.	Licensee	Lead Call Sign
0002552323	ABC Wireless, LLC	WPOK608
0002552332	Arnage Wireless, L.L.C.	KNLG714
0002552557	Cascade Wireless, LLC	KNLG842
0002553087	Cordova Wireless	WPOL372
0002552311	Edge Mobile, LLC	WQDU923
0002552326	Indiana Acquisition, L.L.C.	WPQY739
0002552336	Lone Star Wireless, LLC	WPOJ700
0002552120	Muskegon Cellular Partnership	KNKA552
0002552333	Panther Wireless, LLC	KNLG251

[653] *See* Application at Exhibit 6 (updating File No. 0002550411 to indicate relinquished or assigned licenses (to be deleted)).

[654] *See* Application at Exhibit 4 (updating File No. 0002550397 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[655] *See* Application at Exhibit 4, Exhibit 6 (updating File No. 0002550411 to indicate relinquished or assigned licenses (to be deleted)).

[656] *See* Application at Exhibit 4 (updating File No. 0002550414 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[657] *See* Application at Exhibit 4 (updating File No. 0002550401 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[658] *See* Application at Exhibit 4 (updating File No. 0002550417 to indicate licenses acquired, after notifying the Commission or receiving Commission approval, during the pendency of the transaction (to be added)).

[659] *See* Application at Exhibit 6 (updating File No. 0002550406 to indicate relinquished or assigned licenses (to be deleted)).

File No.	Licensee	Lead Call Sign
0002552329	Royal Wireless, L.L.C.	KNLF456
0002552556	Sabre Wireless, LLC	KNLG243
0002552312	Southwest Wireless, L.L.C.	KNLF761
0002552124	St. Joseph CellTelco	KNKA772
0002552316	THC of Houston, Inc.	KNLH625
0002552315	THC of Melbourne, Inc.	KNLH627
0002552314	THC of Orlando, Inc.	KNLH630
0002552321	THC of San Diego, Inc.	KNLG655
0002552313	THC of Tampa, Inc.	KNLH631
0002552328	Wireless Acquisition, L.L.C.	KNLF587
0002552330	Zuma/Lubbock, Inc.	WPOJ840
0002552331	Zuma/Odessa, Inc.	WPOJ842

***De facto* transfer spectrum leases held by New Cingular Wireless PCS, LLC**

File No.	Licensee	Lead Call Sign
0002555817	Cook Inlet/VS GSM IV PCS, LLC	KNLF510
0002555823	Omnipoint NY MTA License, LLC	WPSL621
0002555835[660]	T-Mobile License LLC	WPOL258

Spectrum manger leases held by New Cingular Wireless PCS, LLC, Orange Licenses Holding, LLC, and Cingular Wireless of Galveston, L.P.

File No.	Licensee	Lead Call Sign
0002779369[661]	T-Mobile License LLC	L000001281
0002779375[662]	T-Mobile License LLC	L000001283
0002779382[663]	Blue Texas Licenses Holding, L.P.	L000001282

[660] *See* Application at Exhibit 4 (updating File No. 0002555835 to indicate termination of leases (to be deleted)).

[661] *See* Application at Exhibit 4 (filing File No. 0002779369 to indicate new leases entered into during the pendency of the transaction).

[662] *See* Application at Exhibit 4 (filing File No. 0002779375 to indicate new leases entered into during the pendency of the transaction).

[663] *See* Application at Exhibit 4 (filing File No. 0002779382 to indicate new leases entered into during the pendency of the transaction).

Experimental Radio Service Applications

File No.	Licensee	Call Signs
0009-EX-TU-2006	New Cingular Wireless PCS, LLC	WA2XIG WC2XUG WB2XHJ KA2XBT
0010-EX-TU-2006	New Cingular Wireless Services, Inc.	KA2XAC

APPENDIX C

Enterprise Data

Table 1A - Local Voice - Large Business Customers (Syndicated State Data)										
	Median	**AL**	**FL**	**GA**	**KY**	**LA**	**MS**	**NC**	**SC**	**TN**
Pre-Merger BellSouth Market Share	**[REDACTED]**									
Post-Merger BellSouth/AT&T Market Share										
Post-Merger HHI										
Delta										
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.										

Table 1B - Long Distance Voice - Large Enterprise Customers (Syndicated State Data)										
	Median	**AL**	**FL**	**GA**	**KY**	**LA**	**MS**	**NC**	**SC**	**TN**
Pre-Merger BellSouth Market Share	**[REDACTED]**									
Post-Merger BellSouth/AT&T Market Share										
Post-Merger HHI										
Delta										
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.										

Table 1C - Frame Relay - Large Business Customers (Syndicated State Data)										
	Median	**AL**	**FL**	**GA**	**KY**	**LA**	**MS**	**NC**	**SC**	**TN**
Pre-Merger BellSouth Market Share	**[REDACTED]**									
Post-Merger BellSouth/AT&T Market Share										
Post-Merger HHI										
Delta										
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.										

Table 1D - T1 - Large Business Customers (Syndicated State Data)										
	Median	**AL**	**FL**	**GA**	**KY**	**LA**	**MS**	**NC**	**SC**	**TN**
Pre-Merger BellSouth Market Share	**[REDACTED]**									
Post-Merger BellSouth/AT&T Market Share										
Post-Merger HHI										
Delta										
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.										

Table 2A - Local Voice - Medium Business Customers (Syndicated State Data)										
	Median	**AL**	**FL**	**GA**	**KY**	**LA**	**MS**	**NC**	**SC**	**TN**
Pre-Merger BellSouth Market Share	**[REDACTED]**									
Post-Merger BellSouth/AT&T Market Share										
Post-Merger HHI										
Delta										
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.										

Table 2B - Long Distance Voice- Medium Enterprise Customers (Syndicated State Data)										
	Median	**AL**	**FL**	**GA**	**KY**	**LA**	**MS**	**NC**	**SC**	**TN**
Pre-Merger BellSouth Market Share	**[REDACTED]**									
Post-Merger BellSouth/AT&T Market Share										
Post-Merger HHI										
Delta										
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.										

Table 2C - Frame Relay - Medium Business Customers (Syndicated State Data)										
	Median	**AL**	**FL**	**GA**	**KY**	**LA**	**MS**	**NC**	**SC**	**TN**
Pre-Merger BellSouth Market Share	**[REDACTED]**									
Post-Merger BellSouth/AT&T Market Share										
Post-Merger HHI										
Delta										
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.										

Table 2D - T1 - Medium Business Customers (Syndicated State Data)										
	Median	**AL**	**FL**	**GA**	**KY**	**LA**	**MS**	**NC**	**SC**	**TN**
Pre-Merger BellSouth Market Share	**[REDACTED]**									
Post-Merger BellSouth/AT&T Market Share										
Post-Merger HHI										
Delta										
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.										

Table 3A - Local Voice - Small Enterprise Customers (Syndicated State Data)										
	Median	**AL**	**FL**	**GA**	**KY**	**LA**	**MS**	**NC**	**SC**	**TN**
Pre-Merger BellSouth Market Share	**[REDACTED]**									
Post-Merger BellSouth/AT&T Market Share										
Post-Merger HHI										
Delta										
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.										

Table 3B - Long Distance Voice - Small Enterprise Customers (Syndicated State Data)										
	Median	**AL**	**FL**	**GA**	**KY**	**LA**	**MS**	**NC**	**SC**	**TN**
Pre-Merger BellSouth Market Share	**[REDACTED]**									
Post-Merger BellSouth/AT&T Market Share										
Post-Merger HHI										
Delta										
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded										

Table 4A - Local Voice - Large Enterprises (Syndicated MSA Data)				
MSA Name	**Pre-Merger BellSouth Market Share**	**Post-Merger BellSouth And AT&T Market Share**	**Post-Merger HHI**	**Delta**
Asheville NC	**[REDACTED]**			
Atlanta-Sndy Spr GA				
Augusta-Rchmnd GA-SC				
Baton Rouge LA				
Birmingham-Hoover AL				
Charleston SC				
Charlotte-Gstn NC-SC				
Chattanooga TN-GA				
Cincinnati OH-KY-IN				
Columbia SC				
Columbus GA-AL				
Deltona-Daytona FL				
Durham NC				
Evansville IN-KY				
Greensboro-HighPt NC				
Greenville SC				
Hickory-Lenoir NC				
Huntsville AL				
Jackson MS				
Jacksonville FL				
Knoxville TN				
Lafayette LA				
Lexington-Fayette KY				
Louisville KY-IN				
Memphis TN-MS-AR				
Miami-Ft Lauderdl FL				
Mobile AL				
Montgomery AL				
Nashville-Davidsn TN				
New Orleans-Mtrie LA				
Orlando FL				
Palm Bay-Melbourn FL				
Pensacola-Frry Ps FL				
Raleigh-Cary NC				
Savannah GA				
Shreveprt-Bossier LA				
Spartanburg SC				

Table 4A - Local Voice - Large Enterprises (Syndicated MSA Data)				
MSA Name	**Pre-Merger BellSouth Market Share**	**Post-Merger BellSouth And AT&T Market Share**	**Post-Merger HHI**	**Delta**
Tallahassee FL	**[REDACTED]**			
Tampa-StPetersbrg FL				
Wilmington NC				
Winston-Salem NC				
Minimum				
Maximum				
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.				

Table 4B - Long Distance Voice - Large Enterprise Customers (Syndicated MSA Data)				
MSA Name	**Pre-Merger BellSouth Market Share**	**Post-Merger BellSouth And AT&T Market Share**	**Post-Merger HHI**	**Delta**
Asheville NC	**[REDACTED]**			
Atlanta-Sndy Spr GA				
Augusta-Rchmnd GA-SC				
Baton Rouge LA				
Birmingham-Hoover AL				
Charleston SC				
Charlotte-Gstn NC-SC				
Chattanooga TN-GA				
Columbia SC				
Columbus GA-AL				
Deltona-Daytona FL				
Durham NC				
Evansville IN-KY				
Greensboro-HighPt NC				
Greenville SC				
Hickory-Lenoir NC				
Huntsville AL				
Jackson MS				
Jacksonville FL				
Knoxville TN				
Lafayette LA				
Lexington-Fayette KY				
Louisville KY-IN				
Memphis TN-MS-AR				
Miami-Ft Lauderdl FL				
Mobile AL				
Montgomery AL				
Nashville-Davidsn TN				
New Orleans-Mtrie LA				
Orlando FL				
Pensacola-Frry Ps FL				
Raleigh-Cary NC				
Shreveprt-Bossier LA				

Table 4B - Long Distance Voice - Large Enterprise Customers (Syndicated MSA Data)				
MSA Name	**Pre-Merger BellSouth Market Share**	**Post-Merger BellSouth And AT&T Market Share**	**Post-Merger HHI**	**Delta**
Spartanburg SC	**[REDACTED]**			
Tampa-StPetersbrg FL				
Wilmington NC				
Winston-Salem NC				
Minimum				
Maximum				
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.				

Table 4C - Frame Relay - Large Business (Syndicated MSA Data)				
MSA Name	**Pre-Merger BellSouth Market Share**	**Post-Merger BellSouth And AT&T Market Share**	**Post-Merger HHI**	**Delta**
Atlanta-Sndy Spr GA	**[REDACTED]**			
Birmingham-Hoover AL				
Charlotte-Gstn NC-SC				
Greenville SC				
Jackson MS				
Jacksonville FL				
Louisville KY-IN				
Memphis TN-MS-AR				
Miami-Ft Lauderdl FL				
Nashville-Davidsn TN				
New Orleans-Mtrie LA				
Orlando FL				
Minimum				
Maximum				
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.				

Table 4D - T1 - Large Business (Syndicated MSA Data)				
MSA Name	**Pre-Merger BellSouth Market Share**	**Post-Merger BellSouth And AT&T Market Share**	**Post-Merger HHI**	**Delta**
Asheville NC	**[REDACTED]**			
Atlanta-Sndy Spr GA				
Augusta-Rchmnd GA-SC				
Baton Rouge LA				
Birmingham-Hoover AL				
Charleston SC				
Charlotte-Gstn NC-SC				
Chattanooga TN-GA				
Cincinnati OH-KY-IN				
Columbia SC				
Columbus GA-AL				
Deltona-Daytona FL				
Durham NC				
Evansville IN-KY				
Greensboro-HighPt NC				
Greenville SC				
Hickory-Lenoir NC				
Huntsville AL				
Jackson MS				
Jacksonville FL				
Knoxville TN				
Lexington-Fayette KY				
Louisville KY-IN				
Memphis TN-MS-AR				
Miami-Ft Lauderdl FL				
Mobile AL				
Montgomery AL				
Nashville-Davidsn TN				
New Orleans-Mtrie LA				
Orlando FL				
Raleigh-Cary NC				
Shreveprt-Bossier LA				

Table 4D - T1 - Large Business (Syndicated MSA Data)				
MSA Name	**Pre-Merger BellSouth Market Share**	**Post-Merger BellSouth And AT&T Market Share**	**Post-Merger HHI**	**Delta**
Spartanburg SC	**[REDACTED]**			
Tallahassee FL				
Tampa-StPetersbrg FL				
Winston-Salem NC				
Minimum				
Maximum				
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.				

Table 5A - Local Voice - Medium Enterprises (Syndicated MSA Data)				
MSA Name	**Pre-Merger BellSouth Market Share**	**Post-Merger BellSouth And AT&T Market Share**	**Post-Merger HHI**	**Delta**
Asheville NC	**[REDACTED]**			
Atlanta-Sndy Spr GA				
Augusta-Rchmnd GA-SC				
Baton Rouge LA				
Birmingham-Hoover AL				
Charlotte-Gstn NC-SC				
Chattanooga TN-GA				
Cincinnati OH-KY-IN				
Columbia SC				
Deltona-Daytona FL				
Durham NC				
Evansville IN-KY				
Greensboro-HighPt NC				
Greenville SC				
Hickory-Lenoir NC				
Huntsville AL				
Jackson MS				
Jacksonville FL				
Knoxville TN				
Lexington-Fayette KY				
Louisville KY-IN				
Memphis TN-MS-AR				
Miami-Ft Lauderdl FL				
Mobile AL				
Montgomery AL				
Nashville-Davidsn TN				
New Orleans-Mtrie LA				
Orlando FL				
Palm Bay-Melbourn FL				
Raleigh-Cary NC				
Tampa-StPetersbrg FL				
Winston-Salem NC				
Minimum				
Maximum				
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.				

Table 5B – Long Distance Voice - Medium Enterprise Customers (Syndicated MSA Data)				
MSA Name	**Pre-Merger BellSouth Market Share**	**Post-Merger BellSouth And AT&T Market Share**	**Post-Merger HHI**	**Delta**
Asheville NC	**[REDACTED]**			
Atlanta-Sndy Spr GA				
Augusta-Rchmnd GA-SC				
Baton Rouge LA				
Birmingham-Hoover AL				
Charlotte-Gstn NC-SC				
Chattanooga TN-GA				
Cincinnati OH-KY-IN				
Columbia SC				
Deltona-Daytona FL				
Durham NC				
Evansville IN-KY				
Greensboro-HighPt NC				
Greenville SC				
Hickory-Lenoir NC				
Huntsville AL				
Jackson MS				
Jacksonville FL				
Knoxville TN				
Lexington-Fayette KY				
Louisville KY-IN				
Memphis TN-MS-AR				
Miami-Ft Lauderdl FL				
Mobile AL				
Montgomery AL				
Nashville-Davidsn TN				
New Orleans-Mtrie LA				
Orlando FL				
Palm Bay-Melbourn FL				
Raleigh-Cary NC				
Tallahassee FL				
Tampa-StPetersbrg FL				
Winston-Salem NC				
Minimum				
Maximum				
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.				

Table 5C - T1 - Medium Business (MSA Data)				
MSA Name	**Pre-Merger BellSouth Market Share**	**Post-Merger BellSouth And AT&T Market Share**	**Post-Merger HHI**	**Delta**
Atlanta-Sndy Spr GA	**[REDACTED]**			
Baton Rouge LA				
Birmingham-Hoover AL				
Charlotte-Gstn NC-SC				
Chattanooga TN-GA				
Cincinnati OH-KY-IN				
Columbia SC				
Durham NC				
Greensboro-HighPt NC				
Greenville SC				
Jackson MS				
Jacksonville FL				
Knoxville TN				
Lexington-Fayette KY				
Louisville KY-IN				
Memphis TN-MS-AR				
Miami-Ft Lauderdl FL				
Nashville-Davidsn TN				
New Orleans-Mtrie LA				
Orlando FL				
Raleigh-Cary NC				
Tampa-StPetersbrg FL				
Minimum				
Maximum				
Source: AT&T/BellSouth August 18, 2006 *Ex Parte* Letter, Attach. *See supra* note 210. Figures have been rounded.				

Table 6 – Retail Business Long Distance Voice National Revenue		
	[REDACTED] Customers	**[REDACTED] Customers**
[REDACTED]	**[REDACTED]**	
[REDACTED]		
[REDACTED]		
[REDACTED]		
[REDACTED]		
[REDACTED]		
Post-merger AT&T And BellSouth Share		
Pre-Merger HHI		
Post-Merger HHI		
Delta		
Source: AT&T Info. Req., Exh. 5.13 Excerpt **[REDACTED]** at 24; *id*. at 28. Figures have been rounded.		

APPENDIX D

Mass Market Data (%share)

	Local Services		Long Distance Services		Local and Long Distance Bundle	
	BellSouth Pre-Merger	AT&T/BellSouth Post-Merger	BellSouth Pre-Merger	AT&T/BellSouth Post-Merger	BellSouth Pre-Merger	AT&T/ BellSouth Post-Merger
AL	[REDACTED]					
FL						
GA						
KY						
LA						
MS						
NC						
SC						
TN						
Minimum						
Maximum						
Median						

Source: AT&T Info. Req., Exhs. 37.a, 38; BellSouth Info. Req., Exhs. 36.a.1, 36.a.i.001, 36.a.iii.001, 36.b.2, 36.c.2, 36.f, 38; Numbering Resource Utilization / Forecast (NRUF) database. *See supra* para. 58 and accompanying footnotes for the underlying assumptions. Data as of May 2006.

APPENDIX E

Internet Backbone Data

Table 1: Market Shares and HHIs of Tier 1 Backbone Providers				
Tier 1 Provider	**Pre-merger 2003 Revenue ($M)**	**% Share (pre-merger)**	**Post-merger 2003 Revenue ($M)**	**% Share (post-merger)**
AT&T (Adjusted)	**[REDACTED]**			
Verizon				
Sprint				
Level 3				
Qwest				
SAVVIS				
Global Crossing				
Cogent				
Pre-merger HHI	**Post-merger HHI**	**Change**		
[REDACTED]	**[REDACTED]**	**[REDACTED]**		

Source: AT&T/BellSouth Schwartz Reply Decl. at paras. 19-25, Table 2. This analysis is based on proprietary data provided by AT&T and BellSouth and revenue estimates for Internet backbone providers tracked by IDC. We do not adjust the data for a post-acquisition change in transfer payments from BellSouth to Tier 1 providers because legacy SBC pays for transit. AT&T Info. Req. at 67, AT&T Info. Req., Exh. 29.c.1. These results may overstate or understate carriers' relative standings depending upon the extent to which the carriers' actual revenues differ from IDC's revenue estimates.

Table 2: Market Shares and HHIs of Tier 1 Backbone Providers				
Tier 1 Provider	**Pre-merger 2003 Revenue ($M)**	**% Share (pre-merger)**	**Post-merger 2003 Revenue ($M)**	**% Share (post-merger)**
AT&T	**[REDACTED]**			
Verizon				
Sprint				
Level 3				
Qwest				
SAVVIS				
Global Crossing				
Cogent				

Pre-merger HHI	Post-merger HHI	Change
[REDACTED]	**[REDACTED]**	**[REDACTED]**

Source: AT&T/BellSouth Reply Schwartz Decl. at paras. 19-25, Table 2. This analysis is based on 2003 calendar year revenue data for Tier 1 Internet backbone providers tracked by IDC. We do not adjust this data for a post-acquisition change in transfer payments from BellSouth to Tier 1 providers because legacy SBC pays for transit. AT&T Info. Req. at 67, AT&T Info. Req., Exh. 29.c.1. These results may overstate or understate carriers' relative standings depending upon the extent to which the carriers' actual revenues differ from IDC's revenue estimates.

Table 3: Market Shares and HHIs of Tier 1 Backbone Providers				
Tier 1 Provider	**Pre-merger 2004 Traffic (petabytes/month)**	**% Share (pre-merger)**	**Post-merger 2004 Traffic (petabytes/month)**	**% Share (post-merger)**
AT&T	**[REDACTED]**			
Company B				
Company C				
Company D				
Company E				
Company F				
Company G				
Company H				
Pre-merger HHI	**Post-merger HHI**	**Change in HHI**		
[REDACTED]	**[REDACTED]**	**[REDACTED]**		

Source: AT&T/BellSouth Schwartz Reply Decl. at para. 15, Table 1; BellSouth Info. Req. at 60. This analysis is based upon 4th Quarter 2004 traffic data for Tier 1 providers tracked by RHK, and 1st Quarter 2006 data for BellSouth (the first period for which BellSouth data is available). While this analysis most likely overstates BellSouth's position, it suggests that BellSouth has less than 2 percent of the North American Internet traffic.

APPENDIX F

Conditions

The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them. Unless otherwise specified herein, the commitments described herein shall become effective on the Merger Closing Date. The commitments described herein shall be null and void if AT&T and BellSouth do not merge and there is no Merger Closing Date.

It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

MERGER COMMITMENTS

For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.

Repatriation of Jobs to the U.S.

AT&T/BellSouth[1] is committed to providing high quality employment opportunities in the U.S. In order to further this commitment, AT&T/BellSouth will repatriate 3,000 jobs that are currently outsourced by BellSouth outside of the U.S. This repatriation will be completed by December 31, 2008. At least 200 of the repatriated jobs will be physically located within the New Orleans, Louisiana MSA.

Promoting Accessibility of Broadband Service

1. By December 31, 2007, AT&T/BellSouth will offer broadband Internet access service (*i.e.*, Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory.[2] To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the "Wireline Buildout Area"). AT&T/BellSouth will make available broadband Internet access service to the remaining living units using alternative

[1] AT&T/BellSouth refers to AT&T Inc., BellSouth Corporation, and their affiliates that provide domestic wireline or Wi-Max fixed wireless services.

[2] As used herein, the "AT&T/BellSouth in-region territory" means the areas in which an AT&T or BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i). "AT&T in-region territory" means the area in which an AT&T operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i), and "BellSouth in-region territory" means the area in which a BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i).

technologies and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.[3]

2. AT&T/BellSouth will provide an ADSL modem without charge (except for shipping and handling) to residential subscribers within the Wireline Buildout Area who, between July 1, 2007, and June 30, 2008, replace their AT&T/BellSouth dial-up Internet access service with AT&T/BellSouth's ADSL service and elect a term plan for their ADSL service of twelve months or greater.

3. Within six months of the Merger Closing Date, and continuing for at least 30 months from the inception of the offer, AT&T/BellSouth will offer to retail consumers in the Wireline Buildout Area, who have not previously subscribed to AT&T's or BellSouth's ADSL service, a broadband Internet access service at a speed of up to 768 Kbps at a monthly rate (exclusive of any applicable taxes and regulatory fees) of $10 per month.

Statement of Video Roll-Out Intentions

AT&T is committed to providing, and has expended substantial resources to provide, a broad array of advanced video programming services in the AT&T in-region territory. These advanced video services include Uverse, on an integrated IP platform, and HomeZone, which integrates advanced broadband and satellite services. Subject to obtaining all necessary authorizations to do so, AT&T/BellSouth intends to bring such services to the BellSouth in-region territory in a manner reasonably consistent with AT&T's roll-out of such services within the AT&T in-region territory. In order to facilitate the provision of such advanced video services in the BellSouth in-region territory, AT&T /BellSouth will continue to deploy fiber-based facilities and intends to have the capability to reach at least 1.5 million homes in the BellSouth in-region territory by the end of 2007. AT&T/BellSouth agrees to provide a written report to the Commission by December 31, 2007, describing progress made in obtaining necessary authorizations to roll-out, and the actual roll-out of, such advanced video services in the BellSouth in-region territory.

Public Safety, Disaster Recovery

1. By June 1, 2007, AT&T will complete the steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory in the event of an extended service outage caused by a hurricane or other disaster.

2. In order to further promote public safety, within thirty days of the Merger Closing Date, AT&T/BellSouth will donate $1 million to a section 501(c)(3) foundation or public entities for the purpose of promoting public safety.

[3] For purposes of this commitment, a low income living unit shall mean a living unit in AT&T/BellSouth's in-region territory with an average annual income of less than $35,000, determined consistent with Census Bureau data, *see* California Public Utilities Code section 5890(j)(2) (as added by AB 2987) (defining low income households as those with annual incomes below $35,000), and a rural area shall consist of the zones in AT&T/BellSouth's in-region territory with the highest deaveraged UNE loop rates as established by the state commission consistent with the procedures set forth in section 51.507 of the Commission's rules. 47 C.F.R. § 51.507.

Service to Customers with Disabilities

AT&T/BellSouth has a long and distinguished history of serving customers with disabilities. AT&T/BellSouth commits to provide the Commission, within 12 months of the Merger Closing Date, a report describing its efforts to provide high quality service to customers with disabilities.

UNEs

1. The AT&T and BellSouth ILECs shall continue to offer and shall not seek any increase in state-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. For purposes of this commitment, an increase includes an increased existing surcharge or a new surcharge unless such new or increased surcharge is authorized by (i) the applicable interconnection agreement or tariff, as applicable, and (ii) by the relevant state commission. This commitment shall not limit the ability of the AT&T and BellSouth ILECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.

2. AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (*i.e.*, own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.

3. AT&T/BellSouth shall cease all ongoing or threatened audits of compliance with the Commission's EELs eligibility criteria (as set forth in the *Supplemental Order Clarification*'s significant local use requirement and related safe harbors, and the *Triennial Review Order*'s high capacity EEL eligibility criteria), and shall not initiate any new EELs audits.

Reducing Transaction Costs Associated with Interconnection Agreements

1. The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

3. The AT&T/BellSouth ILECs shall allow a requesting telecommunications carrier to use its pre-existing interconnection agreement as the starting point for negotiating a new agreement.

4. The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.

Special Access

Each of the following special access commitments shall remain in effect until 48 months from the Merger Closing Date.

1. AT&T/BellSouth affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Act ("AT&T/BellSouth BOCs")[4] will implement, in the AT&T and BellSouth Service Areas,[5] the Service Quality Measurement Plan for Interstate Special Access Services ("the Plan"), similar to that set forth in the SBC/AT&T Merger Conditions, as described herein and in Attachment A to this Appendix F. The AT&T/BellSouth BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed therein. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T/BellSouth BOCs' monthly performance in delivering interstate special access services within each of the states in the AT&T and BellSouth Service Areas. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T and BellSouth section 272(a) affiliates, (ii) their BOC and other affiliates, and (iii) non-affiliates.[6] The AT&T/BellSouth BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The AT&T/BellSouth BOCs shall implement the Plan for the first full quarter following the Merger Closing Date. This commitment shall terminate on the earlier of (i) 48 months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T/BellSouth files its 16th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.

2. AT&T/BellSouth shall not increase the rates paid by existing customers (as of the Merger Closing Date) of DS1 and DS3 local private line services that it provides in the AT&T/BellSouth in-region territory pursuant to, or referenced in, TCG FCC Tariff No. 2 above their level as of the Merger Closing Date.

3. AT&T/BellSouth will not provide special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.

4. To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified

[4] For purposes of clarity, the special access commitments set forth herein do not apply to AT&T Advanced Solutions, Inc. and the Ameritech Advanced Data Services Companies, doing business collectively as "ASI."

[5] For purposes of this commitment, "AT&T and BellSouth Service Areas" means the areas within AT&T/BellSouth's in-region territory in which the AT&T and BellSouth ILECs are Bell operating companies as defined in 47 U.S.C. § 153(4)(A).

[6] BOC data shall not include retail data.

contract tariffed service under section 69.727(a) of the Commission's rules to its own section 272(a) affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates. AT&T/BellSouth also will not unreasonably discriminate in favor of its affiliates in establishing the terms and conditions for grooming special access facilities.[7]

5. No AT&T/BellSouth ILEC may increase the rates in its interstate tariffs, including contract tariffs, for special access services that it provides in the AT&T/BellSouth in-region territory, as set forth in tariffs on file at the Commission on the Merger Closing Date, and as set forth in tariffs amended subsequently in order to comply with the provisions of these commitments.

6. In areas within the AT&T/BellSouth in-region territory where an AT&T/BellSouth ILEC has obtained Phase II pricing flexibility for price cap services ("Phase II areas"), such ILEC will offer DS1 and DS3 channel termination services, DS1 and DS3 mileage services, and Ethernet services,[8] that currently are offered pursuant to the Phase II Pricing Flexibility Provisions of its special access tariffs,[9] at rates that are no higher than, and on the same terms and conditions as, its tariffed rates, terms, and conditions as of the Merger Closing Date for such services in areas within its in-region territory where it has not obtained Phase II pricing flexibility. In Phase II areas, AT&T/BellSouth also will reduce by 15% the rates in its interstate tariffs as of the Merger Closing Date for Ethernet services that are not at that time subject to price cap regulation. The foregoing commitments shall not apply to DS1, DS3, or Ethernet services provided by an AT&T/BellSouth ILEC to any other price cap ILEC, including any affiliate of such other price cap ILEC,[10] unless such other price cap ILEC offers DS1 and DS3 channel termination and mileage services, and price cap Ethernet services in all areas in which it has obtained Phase II pricing flexibility relief for such services (hereinafter "Reciprocal Price Cap Services") at rates, and on the terms and conditions, applicable to such services in areas in which it has not obtained Phase II pricing flexibility for such services, nor shall AT&T/BellSouth provide the aforementioned 15% discount to such price cap ILEC or affiliate thereof unless such ILEC makes generally available a reciprocal discount for any Ethernet service it offers outside of price cap regulation (hereinafter "Reciprocal Non-Price Cap Services"). Within 14 days of the Merger Closing Date, AT&T/BellSouth will provide notice of this commitment to each price cap ILEC that purchases, or that has an affiliate that purchases, services subject to this commitment from an AT&T/BellSouth ILEC. If within 30 days thereafter, such price cap ILEC does not: (i) affirmatively inform AT&T/BellSouth and the Commission of its intent to sell Reciprocal

[7] Neither this merger commitment nor any other merger commitment herein shall be construed to require AT&T/BellSouth to provide any service through a separate affiliate if AT&T/BellSouth is not otherwise required by law to establish or maintain such separate affiliate.

[8] The Ethernet services subject to this commitment are AT&T's interstate OPT-E-MAN, GigaMAN and DecaMAN services and BellSouth's interstate Metro Ethernet Service.

[9] The Phase II Pricing Flexibility Provisions for DS1 and DS3 services are those set forth in Ameritech Tariff FCC No. 2, Section 21; Pacific Bell Tariff FCC No. 1, Section 31; Nevada Bell Tariff FCC No. 1, Section 22; Southwestern Bell Telephone Company Tariff FCC No. 73, Section 39; Southern New England Telephone Tariff FCC No. 39, Section 24; and BellSouth Telecommunications Tariff FCC No. 1, Section 23.

[10] For purposes of this commitment, the term "price cap ILEC" refers to an incumbent local exchange carrier that is subject to price cap regulation and all of its affiliates that are subject to price cap regulation. The term "affiliate" means an affiliate as defined in 47 U.S.C. § 153(1) and is not limited to affiliates that are subject to price cap regulation.

Price Cap Services in areas where it has received Phase II pricing flexibility for such services at the rates, terms, and conditions that apply in areas where it has not received such flexibility, and to provide a 15% discount on Reciprocal Non-Price Cap Services; and (ii) file tariff revisions that would implement such changes within 90 days of the Merger Closing Date (a "Non-Reciprocating Carrier"), the AT&T/BellSouth ILECs shall be deemed by the FCC to have substantial cause to make any necessary revisions to the tariffs under which they provide the services subject to this commitment to such Non-Reciprocating Carrier, including any affiliates, to prevent or offset any change in the effective rate charged such entities for such services. The AT&T/BellSouth ILECs will file all tariff revisions necessary to effectuate this commitment, including any provisions addressing Non-Reciprocating Carriers and their affiliates, within 90 days from the Merger Closing Date.

7. AT&T/BellSouth will not oppose any request by a purchaser of interstate special access services for mediation by Commission staff of disputes relating to AT&T/BellSouth's compliance with the rates, terms, and conditions set forth in its interstate special access tariffs and pricing flexibility contracts or to the lawfulness of the rates, terms, and conditions in such tariffs and contracts, nor shall AT&T/BellSouth oppose any request that such disputes be accepted by the Commission onto the Accelerated Docket.

8. The AT&T/BellSouth ILECs will not include in any pricing flexibility contract or tariff filed with the Commission after the Merger Closing Date access service ratio terms which limit the extent to which customers may obtain transmission services as UNEs, rather than special access services.

9. Within 60 days after the Merger Closing Date, the AT&T/BellSouth ILECs will file one or more interstate tariffs that make available to customers of DS1, DS3, and Ethernet service reasonable volume and term discounts without minimum annual revenue commitments (MARCs) or growth discounts. To the extent an AT&T/BellSouth ILEC files an interstate tariff for DS1, DS3, or Ethernet services with a varying MARC, it will at the same time file an interstate tariff for such services with a fixed MARC. For purposes of these commitments, a MARC is a requirement that the customer maintain a minimum specified level of spending for specified services per year.

10. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC, AT&T/BellSouth will offer an alternative proposal that gives the customer the option of obtaining a volume and/or term discount(s) without a MARC. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC that varies over the life of the contract, AT&T/BellSouth will offer an alternative proposal that includes a fixed MARC.

11. Within 14 days of the Merger Closing Date, the AT&T/BellSouth ILECs will give notice to customers of AT&T/BellSouth with interstate pricing flexibility contracts that provide for a MARC that varies over the life of the contract that, within 45 days of such notice, customers may elect to freeze, for the remaining term of such pricing flexibility contract, the MARC in effect as of the Merger Closing Date, provided that the customer also freezes, for the remaining term of such pricing flexibility contract, the contract discount rate (or specified rate if the contract sets forth specific rates rather than discounts off of referenced tariffed rates) in effect as of the Merger Closing Date.

Transit Service

The AT&T and BellSouth ILECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T and BellSouth ILECs provide in the AT&T/BellSouth in-region territory.[11]

ADSL Service[12]

1. Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the "Implementation Date" in that state. For purposes of this commitment, the "Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth's in-region territory in that state.[13] Within twenty days after meeting the Implementation Date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.

2. AT&T/BellSouth will extend until thirty months after the Merger Closing Date the availability within AT&T's in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the *SBC/AT&T Merger Order* (FCC 05-183).

3. Within twelve months of the Merger Closing Date, AT&T/BellSouth will make available in its in-region territory an ADSL service capable of speeds up to 768 Kbps to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service ("Stand Alone 768 Kbps service"). AT&T/BellSouth will continue to offer the 768 Kbps service in a state for thirty months after the "Stand Alone 768 Kbps Implementation Date" for that state. For purposes of this commitment, the "Stand Alone 768 Kbps Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer the Stand Alone 768 Kbps service to eighty percent of the ADSL-capable premises in AT&T/BellSouth's in-region territory in that state. The Stand Alone 768 Kbps service will be offered at a rate of not more than $19.95 per month (exclusive of regulatory fees and taxes). AT&T/BellSouth may make available such services at other speeds at prices that are competitive with the broadband market taken as a whole.

ADSL Transmission Service

AT&T/BellSouth will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the

[11] Tandem transit service means tandem-switched transport service provided to an originating carrier in order to indirectly send intraLATA traffic subject to § 251(b)(5) of the Communications Act of 1934, as amended, to a terminating carrier, and includes tandem switching functionality and tandem switched transport functionality between an AT&T/BellSouth tandem switch location and the terminating carrier.

[12] The commitments set forth under the heading "ADSL Service" are, by their terms, available to retail customers only. Wholesale commitments are addressed separately under the heading "ADSL Transmission Service."

[13] After meeting the implementation date in each state, AT&T/BellSouth will continue deployment so that it can offer the service to all ADSL-capable premises in its in-region territory within twelve months of the Merger Closing Date.

combined AT&T/BellSouth territory that is functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date.[14] Such wholesale offering will be at a price not greater than the retail price in a state for ADSL service that is separately purchased by customers who also subscribe to AT&T/BellSouth local telephone service.

Net Neutrality

1. Effective on the Merger Closing Date, and continuing for 30 months thereafter, AT&T/BellSouth will conduct business in a manner that comports with the principles set forth in the Commission's Policy Statement, issued September 23, 2005 (FCC 05-151).

2. AT&T/BellSouth also commits that it will maintain a neutral network and neutral routing in its wireline broadband Internet access service.[15] This commitment shall be satisfied by AT&T/BellSouth's agreement not to provide or to sell to Internet content, application, or service providers, including those affiliated with AT&T/BellSouth, any service that privileges, degrades or prioritizes any packet transmitted over AT&T/BellSouth's wireline broadband Internet access service based on its source, ownership or destination.

This commitment shall apply to AT&T/BellSouth's wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, defined as the point of interconnection that is logically, temporally or physically closest to the customer's premise where public or private Internet backbone networks freely exchange Internet packets.

This commitment does not apply to AT&T/BellSouth's enterprise managed IP services, defined as services available only to enterprise customers[16] that are separate services from, and can be purchased without, AT&T/BellSouth's wireline broadband Internet access service, including, but not limited to, virtual private network (VPN) services provided to enterprise customers. This commitment also does not apply to AT&T/BellSouth's Internet Protocol television (IPTV) service. These exclusions shall not result in the privileging, degradation, or prioritization of packets transmitted or received by AT&T/BellSouth's non-enterprise customers' wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, as defined above.

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[14] An ADSL transmission service shall be considered "functionally the same" as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date if the ADSL transmission service relies on ATM transport from the DSLAM (or equivalent device) to the interface with the Internet service provider, and provides a maximum asymmetrical downstream speed of 1.5Mbps or 3.0Mbps, or a maximum symmetrical upstream/downstream speed of 384Kbps or 416Kbps, where each respective speed is available (the "Broadband ADSL Transmission Service"). Nothing in this commitment shall require AT&T/BellSouth to serve any geographic areas it currently does not serve with Broadband ADSL Transmission Service or to provide Internet service providers with broadband Internet access transmission technology that was not offered by AT&T to such providers in its in-region territory as of the Merger Closing Date.

[15] For purposes of this commitment, AT&T/BellSouth's wireline broadband Internet access service and its Wi-Max fixed wireless broadband Internet access service are, collectively, AT&T/BellSouth's "wireline broadband Internet access service."

[16] "Enterprise customers" refers to that class of customer identified as enterprise customers on AT&T's website (http://www.att.com) as of December 28, 2006.

This commitment shall sunset on the earlier of (1) two years from the Merger Closing Date, or (2) the effective date of any legislation enacted by Congress subsequent to the Merger Closing Date that substantially addresses "network neutrality" obligations of broadband Internet access providers, including, but not limited to, any legislation that substantially addresses the privileging, degradation, or prioritization of broadband Internet access traffic.

Internet Backbone

1. For a period of three years after the Merger Closing Date, AT&T/BellSouth will maintain at least as many discrete settlement-free peering arrangements for Internet backbone services with domestic operating entities within the United States as they did on the Merger Closing Date, provided that the number of settlement-free peering arrangements that AT&T/BellSouth is required to maintain hereunder shall be adjusted downward to account for any mergers, acquisitions, or bankruptcies by existing peering entities or the voluntary election by a peering entity to discontinue its peering arrangement. If on the Merger Closing Date, AT&T and BellSouth both maintain a settlement free peering arrangement for Internet backbone services with the same entity (or an affiliate thereof), the separate arrangements shall count as one settlement-free peering arrangement for purposes of determining the number of discrete peering entities with whom AT&T/BellSouth must peer pursuant to this commitment. AT&T/BellSouth may waive terms of its published peering policy to the extent necessary to maintain the number of peering arrangements required by this commitment. Notwithstanding the above, if within three years after the Merger Closing Date, one of the ten largest entities with which AT&T/BellSouth engages in settlement free peering for Internet backbone services (as measured by traffic volume delivered to AT&T/BellSouth's backbone network facilities by such entity) terminates its peering arrangement with AT&T/BellSouth for any reason (including bankruptcy, acquisition, or merger), AT&T/BellSouth will replace that peering arrangement with another settlement free peering arrangement and shall not adjust its total number of settlement free peers downward as a result.

2. Within thirty days after the Merger Closing Date, and continuing for three years thereafter, AT&T/BellSouth will post its peering policy on a publicly accessible website. During this three-year period, AT&T/BellSouth will post any revisions to its peering policy on a timely basis as they occur.

Forbearance

1. AT&T/BellSouth will not seek or give effect to a ruling, including through a forbearance petition under section 10 of the Communications Act (the "Act") 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

2. AT&T/BellSouth will not seek or give effect to any future grant of forbearance that diminishes or supersedes the merged entity's obligations or responsibilities under these merger commitments during the period in which those obligations are in effect.

Wireless

1. AT&T/BellSouth shall assign and/or transfer to an unaffiliated third party all of the 2.5 GHz spectrum (broadband radio service (BRS)/educational broadband service (EBS)) currently licensed to or leased by BellSouth within one year of the Merger Closing Date.

2. By July 21, 2010, AT&T/BellSouth agrees to: (1) offer service in the 2.3 GHz band to 25% of the population in the service area of AT&T/BellSouth's wireless communications services (WCS)

licenses, for mobile or fixed point-to-multi-point services, or (2) construct at least five permanent links per one million people in the service area of AT&T/BellSouth's WCS licenses, for fixed point-to-point services. In the event AT&T/BellSouth fails to meet either of these service requirements, AT&T/BellSouth will forfeit the unconstructed portion of the individual WCS licenses for which it did not meet either of these service requirements as of July 21, 2010; provided, however, that in the event the Commission extends the July 21, 2010, buildout date for 2.3GHz service for the WCS industry at large ("Extended Date"), the July 21, 2010 buildout date specified herein shall be modified to conform to the Extended Date. The wireless commitments set forth above do not apply to any 2.3 GHz wireless spectrum held by AT&T/BellSouth in the state of Alaska.

Divestiture of Facilities

Within twelve months of the Merger Closing Date, AT&T/BellSouth will sell to an unaffiliated third party(ies) an indefeasible right of use ("IRU") to fiber strands within the existing "Lateral Connections," as that term is defined in the *SBC/AT&T Consent Decree*,[17] to the buildings listed in Attachment B to this Appendix F ("BellSouth Divestiture Assets"). These divestitures will be effected in a manner consistent with the divestiture framework agreed to in the *SBC/AT&T Consent Decree*, provided that such divestitures will be subject to approval by the FCC, rather than the Department of Justice.

Tunney Act

AT&T is a party to a Consent Decree entered into following the merger of SBC and AT&T (the "Consent Decree"). The Consent Decree documents the terms under which AT&T agreed to divest special access facilities serving 383 buildings within the former SBC in-region ILEC territory (the "SBC Divestiture Assets"). In its Order approving the AT&T/SBC merger, the Commission also required the divestiture of these same facilities on the terms and conditions contained in the Consent Decree. The Consent Decree is currently under review pursuant to the Tunney Act in the U.S. District Court for the District of Columbia (the "Court") in U.S. v. SBC Communications, Inc. and AT&T Corp., Civil Action No. 1:05CV02102 (EGS) (D.D.C.), where the Court is reviewing the adequacy of the remedy contained in the Consent Decree to address the competitive concerns described in the Complaint filed by the Department of Justice (DOJ).

If it is found in a final, non-appealable order, that the remedy in the Consent Decree is not adequate to address the concerns raised in the Complaint and AT&T and the DOJ agree to a modification of the Consent Decree (the "Modified Consent Decree"), then AT&T agrees that (1) AT&T/BellSouth will conform its divestiture of the BellSouth Divestiture Assets to the terms of the Modified Consent Decree; and (2) AT&T/BellSouth will negotiate in good faith with the Commission to determine whether the conditions imposed on AT&T/BellSouth in the Commission order approving the merger of AT&T and BellSouth satisfies, with respect to the BellSouth territory, the concerns addressed in the Modified Consent Decree.

Certification

AT&T/BellSouth shall annually file a declaration by an officer of the corporation attesting that AT&T/BellSouth has substantially complied with the terms of these commitments in all material

[17] *See United States v. SBC Communications, Inc.*, Civil Action No. 1:05CV02102, Final Judgment (D.D.C. filed Oct. 27, 2005).

respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, and the second, third, and fourth declarations shall be filed one, two, and three years thereafter, respectively.

Conditions
ATTACHMENT A

Service Quality Measurement Plan
For Interstate Special Access

Contents

Section 1: Ordering
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PIAM: Percent Installation Appointments Met
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Section 3: Maintenance and Repair
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Section 4: Glossary

Section 1: Ordering

FOCT: Firm Order Confirmation (FOC) Timeliness

Definition
Firm Order Confirmation (FOC) Timeliness measures the percentage of FOCs returned within the Company-specified standard interval.

Exclusions
- Service requests identified as "Projects" or "ICBs"
- Service requests cancelled by the originator
- Weekends and designated holidays of the service center
- Unsolicited FOCs
- Administrative or test service requests
- Service requests that indicate that no confirmation/response should be sent
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules
Counts are based on the first instance of a FOC being sent in response to an ASR. Activity starting on a weekend or holiday will reflect a start date of the next business day. Activity ending on a weekend or holiday will be calculated with an end date of the last previous business day. Requests received after the company's stated cutoff time will be counted as a "zero" day interval if the FOC is sent by close of business on the next business day. The standard interval will be that which is specified in the company-specific ordering guide.

Calculation
Firm Order Confirmation (FOC) Interval = (a - b)
- a = Date and time FOC is returned
- b = Date and time valid access service request is received

Percent within Standard Interval = (c / d) X 100
- c = Number of service requests confirmed within the designated interval
- d = Total number of service requests confirmed in the reporting period

Report Structure
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

Geographic Scope
- State

SQM Disaggregation (Percent FOCs returned within Standard Interval)
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

Section 2: Provisioning

PIAM: Percent Installation Appointments Met

Definition
Percent Installation Appointments Met measures the percentage of installations completed on or before the confirmed due date.

Exclusions
- Orders issued and subsequently cancelled
- Orders associated with internal or administrative (including test) activities
- Disconnect Orders
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules
This measurement is calculated by dividing the number of service orders completed during the reporting period, on or before the confirmed due date, by the total number of orders completed during the same reporting period. Installation appointments missed because of customer caused reasons shall be counted as met and included in both the numerator and denominator. Where there are multiple missed appointment codes, each RBOC will determine whether an order is considered missed.

Calculation
Percent Installation Appointments Met = (a / b) X 100
- a = Number of orders completed on or before the RBOC confirmed due date during the reporting period
- b = Total number of orders where completion has been confirmed during the reporting period

Report Structure
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

Geographic Scope
- State

SQM Disaggregation
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

NITR: New Installation Trouble Report Rate

Definition
New Installation Trouble Report Rate measures the percentage of circuits or orders where a trouble was found in RBOC facilities or equipment within thirty days of order completion.

Exclusions
- Trouble tickets issued and subsequently cancelled
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- RBOC troubles associated with administrative service
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions defined by each RBOC to reflect system and operational differences
- Subsequent trouble reports

Business Rules
Only the first customer direct trouble report received within thirty calendar days of a completed service order is counted in this measure. Only customer direct trouble reports that required the RBOC to repair a portion of the RBOC network will be counted in this measure. The RBOC completion date is when the RBOC completes installation of the circuit or order.

Calculation
Trouble Report Rate within 30 Calendar Days of Installation = (a / b) X 100
- a = Count of circuits/orders with trouble reports within 30 calendar days of installation
- b = Total number of circuits/orders installed in the reporting period

Report Structure
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

Geographic Scope
- State

SQM Disaggregation
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

Section 3: Maintenance & Repair

CTRR: Failure Rate/Trouble Report Rate

Definition
The percentage of initial and repeated circuit-specific trouble reports completed per 100 in-service circuits for the reporting period.

Exclusions
- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports/circuits associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules
Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this report. The trouble report rate is computed by dividing the number of completed trouble reports handled during the reporting period by the total number of in-service circuits for the same period.

Calculation
Percent Trouble Report Rate = (a / b) X 100
- a = Number of completed circuit-specific trouble reports received during the reporting period
- b = Total number of in-service circuits during the reporting period

Report Structure
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

Geographic Scope
- State

SQM Disaggregation
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

MAD: Average Repair Interval/Mean Time to Restore

Definition
The Average Repair Interval/Mean Time to Restore is the average time between the receipt of a customer trouble report and the time the service is restored. The average outage duration is only calculated for completed circuit-specific trouble reports.

Exclusions
- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules
Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this measure. The average outage duration is calculated for each restored circuit with a trouble report. The start time begins with the receipt of the trouble report and ends when the service is restored. This is reported in a manner such that customer hold time or delay maintenance time resulting from verifiable situations of no access to the end user premise, other CLEC/IXC or RBOC retail customer caused delays, such as holding the ticket open for monitoring, is deducted from the total resolution interval ("stop clock" basis).

Calculation
Repair Interval = (a – b)
- a = Date and time trouble report was restored
- b = Date and time trouble report was received

Average Repair Interval = (c / d)
- c = Total of all repair intervals (in hours/days) for the reporting period
- d = Total number of trouble reports closed during the reporting period

Report Structure
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

Geographic Scope
- State

SQM Disaggregation
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

GLOSSARY

Access Service Request (ASR)	A request to the RBOC to order new access service, or request a change to existing service, which provides access to the local exchange company's network under terms specified in the local exchange company's special or switched access tariffs.
RBOC 272 Affiliates Aggregate	RBOC Affiliate(s) authorized to provide long distance service as a result of the Section 271 approval process.
RBOC Affiliates Aggregate	RBOC Telecommunications and all RBOC Affiliates (including the 272 Affiliate). Post sunset, comparable line of business (e.g., 272 line of business) will be included in this category.
Business Days	Monday thru Friday (8AM to 5PM) excluding holidays
CPE	Customer Provided or Premises Equipment
Customer Not Ready (CNR)	A verifiable situation beyond the normal control of the RBOC that prevents the RBOC from completing an order, including the following: CLEC or IXC is not ready to receive service; end user is not ready to receive service; connecting company or CPE supplier is not ready.
Firm Order Confirmation (FOC)	The notice returned from the RBOC, in response to an Access Service Request from a CLEC, IXC or affiliate, that confirms receipt of the request and creation of a service order with an assigned due date.
Unsolicited FOC	An Unsolicited FOC is a supplemental FOC issued by the RBOC to change the due date or for other reasons, e.g., request for a second copy from the CLEC/IXC, although no change to the ASR was requested by the CLEC or IXC.
Project or ICB	Service requests that exceed the line size and/or level of complexity that would allow the use of standard ordering and provisioning interval and processes. Service requests requiring special handling.
Repeat Trouble	Trouble that reoccurs on the same telephone number/circuit ID within 30 calendar days
Service Orders	Refers to all orders for new or additional lines/circuits. For change order types, additional lines/circuits consist of all C order types with "I" and "T" action coded line/circuit USOCs that represent new or additional lines/circuits, including conversions for RBOC to Carrier and Carrier to Carrier.

Conditions
ATTACHMENT B

Building List

Metro Area	CLLI	Address	City	State	Zip Code
Atlanta	ALPRGAVP	5965 CABOT PKWY	ALPHARETTA	GA	30005
Atlanta	ATLNGABI	2751 BUFORD HWY NE	ATLANTA	GA	30324
Atlanta	CHMBGAJG	2013 FLIGHTWAY DR	CHAMBLEE	GA	30341
Atlanta	NRCRGAER	6675 JONES MILL CT	NORCROSS	GA	30092
Atlanta	NRCRGAIJ	4725 PEACHTREE CORNERS CIR	NORCROSS	GA	30092
Atlanta	NRCRGANX	3795 DATA DR NW	NORCROSS	GA	30092
Atlanta	NRCRGARC	335 RESEARCH CT	NORCROSS	GA	30092
Birmingham	BRHMALKU	101 LEAF LAKE PKWY	BIRMINGHAM	AL	35211
Charlotte	CHRMNCXI	2605 WATER RIDGE PKWY	CHARLOTTE	NC	28217
Chattanooga	CHTGTNAC	537 MARKET ST	CHATTANOOGA	TN	37402
Jacksonville	JCVNFLHK	10201 CENTURION PKWY N	JACKSONVILLE	FL	32256
Knoxville	KNVLTNHB	8057 RAY MEARS BLVD	KNOXVILLE	TN	37919
Knoxville	KNVNTN82	2160 LAKESIDE CENTER WAY	KNOXVILLE	TN	37922
Miami	BCRTFLAU	851 NW BROKEN SOUND PKWY	BOCA RATON	FL	33487
Miami	BCRTFLCM	501 E CAMINO REAL	BOCA RATON	FL	33432
Miami	DLBHFLDU	360 N CONGRESS AVE	DELRAY BEACH	FL	33445
Miami	JPTRFLAC	100 MARQUETTE DR	JUPITER	FL	33458
Miami	JPTRFLBC	1001 N USHWY 1	JUPITER	FL	33477
Miami	PLNBFLAZ	1601 SW 80TH TER	PLANTATION	FL	33324
Miami	PLNBFLCQ	1800 NW 69TH AVE	PLANTATION	FL	33313
Miami	SUNRFLCF	720 INTERNATIONAL PKWY	SUNRISE	FL	33325
Nashville	BRWDTNEV	210 WESTWOOD PL	BRENTWOOD	TN	37027
Nashville	NSVLTNIH	1215 21ST AVE S	NASHVILLE	TN	37212
Nashville	NSVLTNWL	28 OPRYLAND DR	NASHVILLE	TN	37204
Nashville	NSVNTNFO	252 OPRY MILLS DR	NASHVILLE	TN	37214
Nashville	NSVPTNIJ	332 OPRY MILLS DR	NASHVILLE	TN	37214
Nashville	NSVPTN98	427 OPRY MILLS DR	NASHVILLE	TN	37214
Nashville	NSVPTNJX	540 OPRY MILLS DR	NASHVILLE	TN	37214
Miami	LDHLFLAC	4300 N UNIVERSITY DR	LAUDERHILL	FL	33351
Miami	SUNRFLBD	440 SAWGRASS CORP. PARKWAY	SUNRISE	FL	33325
Orlando	ORLFFLYL	8350 PARKLINE BLVD	ORLANDO	FL	32809

JOINT STATEMENT OF
CHAIRMAN KEVIN J. MARTIN AND
COMMISSIONER DEBORAH TAYLOR TATE

Re: AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74

The telecommunications market continues to be a dynamic one. New technologies and services are continuing to transform every aspect of our lives. The merged AT&T/BellSouth (AT&T) promises to offer consumers a wider array of IP-enabled services, including voice, data, wireless, and video services. In particular, the merger will enable the combined company to accelerate its deployment of broadband and IPTV in the BellSouth region. The merger also will enhance national security by creating a stronger and more efficient U.S. supplier of critical communications capabilities. Further, the merger will allow the combined entity to expand its global reach and be better positioned to provide the broad range of communications services that enterprise customers demand. As a result, today the Commission finds that this merger will further many of its broadband, competition, and public safety priorities and finds that the merger, on balance, will serve the public interest.

In particular, this merger promises to result in greater competition in the broadband and video markets. Broadband deployment to all Americans remains one of the highest objectives for us at the Commission. This deployment is critical to our nation's competitiveness in the global economy and to our national security. All consumers should expect to benefit from this technology. The merging parties recognize this and continue to deploy high bandwidth broadband to consumers. This merger will enable the combined entity to build upon the progress the companies have individually made in the deployment of broadband technologies in the combined territory.

The merging parties are also engaged in plans to deploy IPTV service throughout their territories to compete with other video providers, like cable and satellite. By enhancing the ability of new entrants to provide video services, we are advancing our goal of universal affordable broadband access for Americans, as well as our goal of increased video competition. Greater competition in the market for the delivery for multichannel video programming is a primary and long-standing goal of federal communications policy. Consumers across the country will reap the benefits of this new competition – and sooner as a result of this merger. The addition of new entrants in the video marketplace holds prices down and improves service. The additional competition, as well as the nature of IPTV, will also improve the availability and control of content that American consumers demand. Moreover, the delivery of quality video services that demand a quality broadband infrastructure will only further encourage the deployment of broadband networks into yet unserved or underserved areas.

Although we believe that this transaction offers significant benefits to consumers, we have reservations about some of the voluntary commitments offered by the merger applicants. Like the review by the Department of Justice, nineteen states, and three foreign countries, the order we adopt today does not find there to be any public interest harms resulting from the merger. Unlike the Department of Justice and these other entities, however, we nevertheless impose a number of conditions on the merging parties.

Some of the conditions will certainly provide additional consumer benefits. We find the imposition of some of the conditions, however, to be unnecessary. And, some of the conditions impose burdens that have nothing to do with the transaction, are discriminatory, and run contrary to Commission policy and precedent.

To be sure, we are pleased that some of these conditions should accelerate the deployment of broadband

facilities and adoption of broadband service throughout the 22-state region of the merged company. For example, the applicants have committed to offer high-speed broadband services to all consumers in the combined territory by the end of 2007. They have also committed to providing new retail broadband customers a $10 a month broadband Internet access service throughout the combined region and they have committed to provide a stand-alone broadband service – one that doesn't require the purchase of other bundled services – at $19.95 per month. While we would not impose these requirements as regulations, we are pleased that these conditions will further encourage the deployment and adoption of broadband by consumers. As such, these are certainly consumer-friendly concessions and are additional public benefits of the transaction.

Other conditions, however, are unnecessary and may actually deter broadband infrastructure investment. The conditions regarding net-neutrality have very little to do with the merger at hand and very well may cause greater problems than the speculative problems they seek to address. These conditions are simply not warranted by current market conditions and may deter facilities investment. Accordingly, it gives us pause to approve last-minute remedies to address the ill-defined problem net neutrality proponents seek to resolve.

Importantly, however, while the Democrat Commissioners may have extracted concessions from AT&T, they in no way bind future Commission action. Specifically, a minority of Commissioners cannot alter Commission precedent or bind future Commission decisions, policies, actions, or rules. Thus, to the extent that AT&T has, as a business matter, determined to take certain actions, they are allowed to do so. There are certain conditions, however, that are not self-effectuating or cannot be accomplished by AT&T alone. To the extent Commission action is required to effectuate these conditions as a policy going forward, we specifically do not support those aspects of the conditions and will oppose such policies going forward.

For example, today's order does not mean that the Commision has adopted an additional net neutrality principle. We continue to believe such a requirement is not necessary and may impede infrastructure deployment. Thus, although AT&T may make a voluntary business decision, it cannot dictate or bind government policy. Nor does this order. Similarly, this order does not bind the Commission to reregulate prices or reestablish price controls. Specifically, with regard to special access condition #6, AT&T is required to file an amended tariff which reduces its wholesale special access prices for DS1, DS3, and Ethernet services to some but not all companies. Unlike the commitment to offer broadband services to consumers for $19.95 a month, this condition provides no consumer benefit and is aimed at large enterprise customers and some competing carriers. And, AT&T will not be giving theses discounts to all customers equally. Specifically, the merged entity will lower the prices for some carriers but not for others. Carriers such as Verizon and Qwest do not qualify for these discounted rates unless they also lower their rates in their respective regions. In effect, therefore, the Democrat Commissioners want to price regulate not only AT&T but also Verizon and Qwest. Accordingly, not only are the conditions unnecessary as there is no finding of public interest harm, but the conditions attempt to impose requirements on companies that are not even parties to the merger. As such, this condition imposes burdens on carriers that are not even parties to the transaction. This condition surely imposes burdens that have nothing to do with the transaction.

Moreover, unlike other voluntary business commitments, this condition requires future Commission approval. Such approval would contravene established Commission policy and precedent and we would object. In short, we object to effectuating a change in Commission policy by a voluntary commitment by one company.

First, the reimposition of rate regulation in the special access market is inconsistent with the

Commission's general policies of deregulating prices in competitive markets.
Second, such a condition is explicitly inconsistent with Section 202(a) of the Communications Act of 1934, as amended, that prevents discrimination in, among other things, charges, practices, or services and finds it unlawful to give any undue or unreasonable preferences or advantages. *See* 47 U.S.C. § 202(a) (prohibiting unreasonable discrimination in charges or services for like communication services directly or indirectly); *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 130-31 (1990) (invalidating order allowing a carrier to charge a tariffed, regulated rate to certain customers and not others); *MCI v. CompTel*, 842 F. 2d. 1296, 1304 (1988) (stating that the Commission is required by statute to ensure that special access tariffs "conform to the dictates of section 202(a). If certain prices are discriminatory, it is not enough to point to the fact that they were computed in accordance with dissimilar methodologies. The FCC has no choice but to see that the terms of section 202(a) are observed, even if that entails some modification of the methodologies used to derive the proposed charges."). Carriers that are denied the discounts would be subject to a competitive disadvantage in the marketplace.

As such, even when AT&T attempts to fulfill its merger commitment by filing its tariffs, the Commission is not bound to approve these tariffs. Indeed, consistent with the Commission's prior policies and precedent, we would oppose such discriminatory practices and would encourage such tariffs to be rejected.

Finally, in addition to the fact that this condition appears aimed to give certain competing carriers an advantage over others, we note that there is no requirement that the benefits of the discounted special access rates are passed through to customers.

AT&T's proposed commitments turn the clock backward to rate regulations of a decade past. While the company has voluntarily agreed to these conditions, the Commission is required by law to recognize competition and will continue to use other tools and legal avenues to continue down the deregulatory path envisioned by Congress and adopted by the Commission.

CONCURRING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74

We celebrate today not a triumph for huge corporate mergers but a modest victory for American consumers. The AT&T-BellSouth transaction is the largest telecommunications merger ever, the latest in a litany of former Bell Company mergers that has gone on for nearly a decade. When it comes to consolidation among communications giants, we operate in a world that is certainly not of my choosing. Nor do I think it is what Congress had in mind when it passed the Telecommunications Act of 1996. That particular Congress intended to create a "pro-competitive, deregulatory" communications environment. In the past several years, the FCC has been disastrously selective in its reading of this two-fold charge. We couldn't act quickly enough to approve every call to deregulate, but we studiously avoided our obligation to encourage the kind of fair competition necessary to protect consumers in a deregulated world. I have made my disaffection with this course of Commission decision-making clear ever since I came here more than five years ago. But as I have said before, in the end we are charged with considering these mergers in the context of the world that is, not the one that might have been. With that as prologue, I began my consideration of this transaction wondering if there was some equation by which I could support the combination before us today—some way to ensure that consumers actually derive tangible value instead of being left once again holding the bag of higher prices and less competition.

We embarked upon a strange and tortured odyssey in October when the U.S. Department of Justice incomprehensibly concluded that it had no concerns about the AT&T/BellSouth merger. Instead of providing a reasoned analysis of the effects this unprecedented merger might have on the highly-complicated and increasingly concentrated telecommunications market, all DOJ could produce was a "hear no evil, see no evil, speak no evil" press release. Surreal as that was, we Commissioners were initially asked to approve the merger the very next day ***without a single condition*** to safeguard consumers, businesses, or the freedom of the Internet. This is all the more astonishing when you consider that this $80-some odd billion dollar acquisition would result in a new company with an estimated $100 billion dollars in annual revenue, employing over 300,000 people, owning 100% of Cingular (the nation's largest wireless carrier), covering 22 states, providing service to over 11 million DSL customers, controlling the only choice most companies have for business access services, serving over 67 million access lines, and controlling nearly 23% of this country's broadband facilities.

It became clear to Commissioner Adelstein and me that if there were going to be any consumer-friendly results from the transaction, it would be up to us to represent and deliver upon the many concerns that consumers had expressed to the Commission. To make matters still worse—in a farce transcending the comedic, we were expected to negotiate for safeguards without knowing who of the Commissioners were actually participating in the proceeding—an ambiguity that could have been resolved months earlier but for the alleged strategic benefits of creating uncertainty in the process and the outcome. Fortunately, just two weeks ago, this progress-inhibiting underbrush was finally cleared away and we were able to accelerate the job of reaching an outcome.

From the start I made plain to all parties and stakeholders that it would be a very steep hill for me to climb to support a merger of this magnitude and consequence. Meeting with the parties, I raised many concerns that questioned whether the merger would be consistent with the public interest and represent an improvement over the status quo.

Before creating the largest Internet access provider in history, there was the glaring need to

ensure this merger would not usher in an age of discrimination on the Internet—that wonder of technology whose freedom and openness is so dramatically refashioning all of our lives. It was time to add a fifth principle of neutrality to protect the huge network the merged entity would control. How could we be party to a transaction that would enhance both the capacity and the commercial incentive of the new company to discriminate on the Net? History, it seems to me, documents that when a firm has both the technological ability and the business incentive to control a network to its own advantage, it will at some point attempt to do just that.

We also heard the pleas of consumers, small businesses and others that this transaction should bring tangible gains in terms of services and prices to them and bring them now, not at some promised future date. A company this deeply involved in controlling telecommunications networks should also be expected to do its part to ensure that broadband is deployed more quickly throughout the nation, including to rural America and other under-served parts of the country. Finally, before accumulating enormous additional market power in the special access market, the company should address the well documented concern that businesses are being charged inflated prices for high-volume voice and data services—behavior that retards small business growth, inhibits America's international competitive posture, and eventually trickles down to consumers in higher costs.

Over the course of the intensely-busy weeks and months since we were asked to approve a condition-less merger proceeding, I have had wide-ranging discussions with many, many stakeholders that have been useful, substantive and productive. Mergers of this magnitude cannot and should not be considered without ongoing consultation with as many stakeholders as possible. This is what Commissioner Adelstein and I fought for and we were pleased when the Chairman provided, at our request, an additional period of public comment during the course of our deliberations. Indeed, I believe that this proceeding has allowed for more comment and sharing of knowledge by interested parties than any merger consideration that I have participated in during the five years I have served on the Commission. It's still short of a perfect process, but like the merger result itself, it ended better than it began.

After much hard work and countless hours of deliberation on all sides, the applicants have now offered unprecedented and substantial commitments that I believe will safeguard and serve the public interest to a degree few envisioned at the time the merger item was presented to the Commission. Would I have preferred to do even more? Of course. Am I entirely satisfied? No. Do I agree with much of the analysis contained in the Order? Decidedly not. The analysis falls far short of the mark in many important respects. This is a major reason for my concurrence—which is predicated on voting for the overall results of the Order, including the commitments the applicants have made, without endorsing all of the reasoning set forth in the Order. But I do believe the overall outcome is a genuine step forward on the fronts I enumerate below. I believe that the commitments concerning the future of the Internet; consumer access to broadband, video, and advanced wireless services; business prices for high-volume voice and data services; competitor access to UNEs and interconnection; public safety and disaster relief; and the repatriation of jobs to the United States comprise a package that will benefit the American public for years to come, and I am pleased to have worked toward this end. And the conditions are expressly enforceable by the Commission. The results we approve today allow me to concur in this Order.

I should make clear that this is a package of commitments composed of many individual elements. Not every Commissioner has equal enthusiasm for each element of the final item, so I am grateful for my colleagues' willingness to look at the package as a whole in order to produce a majority to approve or concur in the result we reach today. I think it is a real credit to the strength of the institution and the working relationships we have forged that we have been able to reach this result.

Network Neutrality. Perhaps most important, we have taken steps that will preserve and encourage the truly transformative openness and power of the Internet. The Internet is surely this generation's most transformative technology—perhaps as transformative as any technology in history. It was conceived and nurtured in freedom and it empowered not those who controlled the pipes but those at the edges—consumers, you and me. I know there are some who still believe that the government has no business overseeing any aspect of the Internet (ignoring, of course, government's formative role in creating the Internet in the first place). Their theory is that technology mandates from on high will inevitably stifle innovation and are antithetical to the de-centralized, non-hierarchical genius of the Internet. My response is that in an age when the Internet is increasingly controlled by a handful of massive private network operators, the source of centralized authority that threatens the Internet has dramatically shifted. The tiny group of corporations that control access to the Internet is the greatest threat to Internet freedom in our country today. If left unchecked, the merged entity resulting from today's decision would have gained the ability to fundamentally reshape the Internet as we know it—in whatever way best serves its own profit motives, rather than preserving the integrity and the effectiveness of the Internet.

The condition builds upon the four principles of net neutrality unanimously adopted by this Commission and made enforceable in the context of the Bell mergers completed last year. In addition to the company's compliance with these four principles, the condition agreed to by the merged entity includes a fifth principle that requires the company to maintain a "neutral network and neutral routing" of internet traffic between the customer's home or office and the Internet peering point where traffic hits the Internet backbone. The company is prohibited from privileging, degrading, or prioritizing any packets along this route regardless of their source, ownership, or destination. This obligation is enforceable at the FCC and is effective for two years. It ensures that all Internet users have the ability to reach the merged entities' millions of Internet users—without seeking the company's permission or paying it a toll. The next Drudge Report, Wikipedia, Craigslist, Instapundit, or Daily Kos should not have to seek a massive corporation's blessing before it can begin reaching out to the American public, and we can take considerable comfort from the fact that today's condition prohibits such behavior. While I might have preferred a longer duration, prior mergers resulted in similar time periods for the net neutrality conditions and it is in my view sufficient to allow Congress to take longer-term network neutrality action if it chooses to do so.

Relatedly and importantly, the merged entity is required to continue to maintain the present number of Internet backbone peering relationships for the next three years. Thus the status quo in the Internet backbone market is preserved by preventing the merged entity from using its larger size and immense last-mile customer base to terminate the settlement-free peering relationships that are fundamental to the Internet as we know it. Read in conjunction with the network neutrality obligation, this peering provision will help to protect the Internet experience and the powerful opportunities it promises for the future.

Consumer Benefits. This Order clearly prevents the merging parties from tying their Internet access service to the purchase of traditional telephone service. Additionally the merged entity commits to offer stand-alone DSL service at a more consumer-friendly price of $19.95/month. This should prove an enormous boon to customers who are happy with their wireless service and seek to "cut the cord" on wireline telephone service, or who want to take advantage of competing VoIP services that have the potential to lower consumer phone bills.

At a more macro level, I have long maintained that consumers have been sorely burdened by our nation's lack of a national broadband strategy. Today, large swaths of rural America, low-income areas,

and other underserved populations lack access to affordable broadband services, and our nation ranks 16th in the world in broadband penetration according to the International Telecommunications Union (ITU). In a more recent and nuanced ITU Digital Opportunity Index, the United States ranks 21st! These are not rankings to be proud of. There will be no end to this downward spiral absent a comprehensive national strategy to reverse it—just as every other industrialized country on the planet has developed its own national broadband strategy. But, again, the focus of today's merger proceeding cannot be on what might have been, but rather on making sure that our Commission action doesn't make an already bad situation even worse. So, even though we cannot promulgate such a broad strategy, we do secure in this merger real, tangible, and important broadband commitments that will ensure that this mega-merger does not send us even further in the wrong direction and, yes, even tips the balance a bit in the right direction.

First, the merged entity has committed to offer broadband to ***100%*** of the customers in its 22-state region by the end of 2007. There are no exceptions for sparsely populated areas; in fact, the company has committed that at least 30% of its new deployment will be in rural and low income areas. Would I have liked this commitment to apply to the faster speeds of fiber rather than to copper wire? Absolutely—but this is at least a credible commitment and a tangible beginning. And the company has agreed to at least accelerate its fiber build-out for the AT&T region by acknowledging its intention to pass at least one and a half million homes in the BellSouth region with fiber facilities by the end of 2007. The new company will need to come back to the FCC at the end of next year to tell us whether it has met its responsibility. I, for one, will be watching closely to ensure that it does.

Second, in terms of affordable broadband, the company has agreed in its 22 states to offer new retail consumers its basic broadband service for $10 per month as well as a free modem to current dial-up customers in order to make broadband affordable and available to many more people than have it today. Put this commitment together with its broadband deployment obligation, its $19.95 Stand Alone DSL commitment, and its commitment to preserve network neutrality, and I believe we have a framework that will help provide affordable, user-friendly broadband for consumers around the country.

Third, the more this agency can do to spur "third pipe" options for competitive broadband services, the better. Without conditions the merged entity would have held onto spectrum that it has not substantially developed but that is uniquely suited to wireless broadband applications. We know the merged entity will have little business incentive to invest in building out this spectrum, because doing so would just cannibalize its wireline broadband offerings as well as the broadband wireless services it offers through Cingular. I am therefore pleased that the company has agreed to divest its 2.5 GHz spectrum licenses within 12 months and to use its 2.3 GHz spectrum licenses in a timely manner or forfeit this spectrum as well. In doing this, we have taken substantial steps to enable entrepreneurs to use their talents to develop new, exciting wireless broadband applications and we have ensured that the new company has the right incentives to innovate with the spectrum it retains.

In crafting a set of measures to avoid the new company's abuse of its Internet market power, we have also taken pains to preserve competition in the very important market for plain old voice service—which is still one of the more daunting bills that American households must pay each month. One bright spot on the FCC's radar screen is the progress that cable and other competitive providers are making through offerings of facilities-based telephone service to residential customers. This merger initially raised the specter of a consolidated entity—one owning nearly all of the telephone network in roughly half the country—using its market power to reverse the inroads that new entrants have made and, in fact, to squeeze them out of the market altogether. To mitigate this concern, the merged entity has agreed to allow the portability of interconnection agreements and to ensure that the process of reaching such agreements is streamlined. These are important steps for fostering residential telephone competition and

ensuring that this merger does not in any way retard such competition.

***Benefits for Enterprise Services*:** Today's Order makes substantial strides in limiting the merged entity's ability to use its stranglehold over business access services in 22 states to raise prices for special access to even more unreasonable heights. Nowhere is the FCC's folly in de-regulating without ensuring competition more apparent than in the special access market. As the Government Accountability Office (GAO) recently pointed out, only 6% of buildings with demand for special access services have any competitive alternative besides the incumbent LEC. Indeed, the GAO report concludes that the FCC's de-regulatory "price flex" regime has actually led to higher prices in the very areas where one would ordinarily expect to find lower prices. Today's Order helps restore balance by reinstituting price caps throughout the 22 state footprint of the merging parties—a measure that should result in approximately $500 million in savings to competitors. The Order also prohibits reliance on certain anti-competitive contract conditions. Importantly, these protections are in effect for a period of four years. While this is real progress, we still have far to go. It is time for the FCC to finish its long-dormant special access proceeding that has been languishing for years.

***Additional Benefits*:** A detailed reading of the merged entity's commitments will show other important benefits in addition to the ones I have already described. Let me briefly highlight just a few of these. Because the loss of jobs is so often the first cost-cutting move of any merger, I am pleased at the company's willingness to repatriate approximately 3,000 jobs from overseas back to the United States, with at least 200 jobs being created in the hurricane-ravaged area of New Orleans. I believe this commitment is the first such job repatriation ever to accompany a telecom merger. While I fear other jobs will be lost, this provides at least some job comfort for the company's employees. The revolution in communications that we are witnessing must not come at the expense of America's hard-working communications workers. Indeed, these high-quality, dedicated, and organized workers are key to bringing us the next generation of communications services.

I am also pleased that the merged company has made public safety commitments that will help protect our nation's communications networks in the event of a natural or man-made disaster. As I have often stated, providing for the safety of the people is the most important role that a government can fulfill. So I am pleased that the merged company will ensure that legacy AT&T's first-rate disaster recovery resources will now be made available in the former BellSouth states. The company should be commended for developing these advanced capabilities beyond any government mandate to do so, and I believe that expansion of this capability to an additional broad swath of the nation is an important step forward in readying ourself for the next disaster. I have also stated that the FCC should lead the charge in securing the security, reliability, and robustness of our networks, including through public-private partnerships. Towards that end, the merged company will donate $1 million to non-profit or public entities for the purpose of promoting public safety.

Our disabilities communities get easily left behind in such huge transactions. So I am pleased that the merged entity has agreed to produce an important report on its service to consumers with disabilities—a report that can help the Commission in its mission, mandated by statute, to ensure the availability of effective and comparable communications tools to ***all*** our people. I should note that Cingular Wireless—which will now be owned wholly by the merged entity—has distinguished itself in its willingness to work with us on disabilities and public safety issues. I look forward to continuing that relationship in the years ahead, as well as to learning what new initiatives and policies the merged entity will pursue to make sure that every American has access to the wonders of the communications revolution.

Further, in what many might see as a very technical agreement, but an important one nonetheless, the company has agreed not to use our forbearance procedures to evade or frustrate any of the commitments it has made here. We have also been quite cognizant in recent months of the Tunney Act proceeding concerning the prior merger between SBC and AT&T that is currently pending in district court. While the resolution of this issue will ultimately be between the federal courts and the Justice Department, I do believe the FCC's public interest review of this merger must take into account a concern about whether the ultimate decision in the prior mergers will be reflected in this current, related merger. To alleviate this concern, the company has agreed to come back to the FCC after the courts and the Justice Department have resolved the pending proceeding to work with us in good faith to ensure that any remedies ultimately imposed in the prior merger are adequately addressed here.

In sum, I believe that we have made this transaction at least minimally acceptable to American consumers. It brings price reductions rather than price increases, more broadband rather than less, a free and open Internet rather than one rife with opportunities to degrade and limit, and numerous other safeguards and protections.

I would be remiss in not expressing gratitude to all parties who participated in these discussions. So I thank them one and all. I wish to thank the Chairman and Commissioner Tate who have spent so much time and energy on this transaction for so many weeks and months. It detracts from no one's effort to pay special thanks to my friend and colleague Commissioner Adelstein for vision and perseverance that were so important in getting us where we are today. My colleagues' personal staffs worked long and hard to get this done and we appreciate particularly the long hours and excellent contribution made by Scott Bergmann of the Adelstein Office. I am grateful to the Bureau for all the work it has done during the course of this proceeding. Most of all, I thank my dedicated, hard-working and downright brilliant staff for their tireless exertions during the pendancy of this proceeding. Scott Deutchman, joined by Bruce Gottlieb, worked literally around the clock on many occasions. They gave up family vacations, sacrificed holidays, and pushed themselves far beyond what anyone should rightly expect. Their good judgment, always-incisive analysis and remarkable outreach skills are a huge reason why this agreement was reached.

CONCURRING STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN

Re: AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74

As a Commissioner, I am required to review the transactions that come before me – not necessarily the ones that I would have preferred. This transaction has given me serious pause, but through hard work and genuine compromise, we were able to achieve a result that delivers major, tangible benefits to consumers. A historic merger warrants historic conditions. I don't pretend that we addressed every possible issue presented here or that it is possible, or even appropriate in this context, to try to rectify years of decisions that have undercut competition. Yet, drawing on the full record, I have tried to counter-balance the effects of this transaction by asking for meaningful conditions that protect the open and neutral character of the Internet, benefit consumers by promoting affordable broadband services, and preserve competitive choices for residential and business consumers.

These are rapidly changing times in the telecommunications industry and the broader communications marketplace in general. Mergers that were unthinkable only a few years ago now seem like a regular occurrence. But for a few brave voices in the competitive community, a handful of tireless consumer rights advocates, and a few concerned leaders on Capitol Hill, most observers, both inside and outside Washington, DC, don't focus on this trend of consolidation. It seems as if the widespread view, from our supposed antitrust watchdogs at the Department of Justice to many inside this building, is to simply accept this process as inevitable.

It is against this backdrop the Commission today conditionally approves the formation of the country's largest wireline, wireless, and broadband company. This combination will directly touch residential consumers, wireless customers, small and large businesses, local governments and institutions across the United States. A merger of this breadth and scope raises serious questions for policymakers and consumers because communications services – voice, data, and video – are so integral to our daily lives and to the economic success of our communities and national economy. I share many of the concerns raised about this combination and have tried to put in place a meaningful set of conditions to address them.

The result we reach today is not perfect. Rather, it reflects true compromise. Yet, on balance, it will benefit the public interest in several significant ways. In the item, we take important steps to address concentration in the broadband market by accepting as a condition AT&T's commitment to maintain a neutral network and neutral routing in its provision of wireline broadband Internet access service. This commitment will help preserve the open nature of the Internet from the consumer to the Internet cloud. As a result of our conditions, consumers also will have access to more affordable broadband services, whether purchased as a bundled package or as a stand-alone offering that can be paired with wireless or Internet phone service. In addition, we take significant steps to promote and preserve competition by requiring that the applicants divest wireless broadband spectrum that will be critical to the development of an independent broadband option; by ensuring that competitive carriers will continue to have access to critical wholesale inputs that they need; and by providing that these conditions last for a meaningful period of time.

At the same time, the applicants will be able to move forward with their plans to accelerate their broadband and video deployment across their entire footprint. To that end, I would have preferred a clearer and more enforceable set of commitments on the applicants' plans to bring true high-bandwidth broadband services to all consumers, including low income consumers and those in rural areas. But I am pleased that the combined company has agreed to reach 100% of their customers with at least basic

broadband service by the end of 2007 and to file a report on their progress in deploying advanced video services.

This proceeding has been challenging. I would like to thank the parties and my colleagues for their willingness to consider and adopt critical consumer protections to mitigate some of the potential harms of this transaction. Without these conditions, I could not support this combination, so our ability to find common ground was critical to this decision. I would have preferred more rigorous safeguards in some areas and longer durations for certain conditions that we adopt. At the same time, I know and respect that some of my colleagues come at this proceeding from a very different starting position.

That fact was keenly driven home two months ago when the Department of Justice waived this merger through without the imposition of even a single condition to protect competition or consumers. I disagreed with that approach and continue to believe that a merger of this magnitude warrants a careful review of the public interest, something I have pressed hard for in this case. We are obligated to analyze carefully the record evidence and determine whether the public will be served better by the transaction being approved or being denied, and whether conditions may be necessary to mitigate harms to consumers. The manner in which the Commission reaches its decisions is also important, so I appreciated the willingness of my colleagues to provide additional opportunity for public input on the impact of this deal and on the need for adequate conditions.

We won far more concessions to benefit the public than anyone predicted when this deal was announced. People expected us to deliver a few kilobits, and we came through with several megabits. What follows is my analysis of many of the critical elements that made this agreement possible.

Ensuring a Neutral and Open Internet

One hallmark of this Order is that it applies explicit, enforceable provisions to preserve and protect the open and interconnected nature of the Internet, including not only a commitment to abide by the four principles of the FCC Internet Policy Statement but also an historic agreement to ensure that the combined company will maintain a neutral network and neutral routing in its wireline broadband Internet access service. Together, these provisions are critical to preserving the value of the Internet as a tool for economic opportunity, innovation, and so many forms of civic, democratic, and social participation.

The Internet has been a source of remarkable innovation and has opened a new world of social and economic opportunities, precisely because of its openness and diversity. To help preserve this character, the FCC last fall adopted an Internet Policy Statement that sets out a basic set of consumer expectations for broadband providers and the Internet. With these four principles, the Commission sought to ensure that consumers are entitled to access the lawful Internet content of their choice, to run applications and use services of their choice, subject to the needs of law enforcement, and to connect their choice of legal devices that do not harm the network. This Order rightly requires the applicants to meet these basic provisions adopted unanimously by the Commission and applied as enforceable conditions to the BOC-IXC mergers, last year.

Most significantly, the Commission takes a long-awaited and momentous step in this Order by requiring the applicants to maintain neutral network and neutral routing in the provision of their wireline broadband Internet access service. This provision was critical for my support of this merger and will serve as a "5th principle," ensuring that the combined company does not privilege, degrade, or prioritize the traffic of Internet content, applications or service providers, including their own affiliates. Given the increase in concentration presented by this transaction – particularly set against the backdrop of a market in which telephone and cable operators control nearly 98 percent of the market, with many consumers

lacking any meaningful choice of providers – it was critical that the Commission add a principle to address incentives for anti-competitive discrimination. Defining the exact parameters of any neutrality provision is, almost by definition, complex and difficult. The precise contours, scope, and exclusions in this provision reflect compromise and a predictive judgment about how, in the words of Prof. Tim Wu, "to preserve the most attractive features of the Internet as it now exists." The work is not done, however. It is critical that we remain vigilant and continue to explore comprehensive approaches to this issue; but I expect this significant step will inform the debate in the coming months and years. I appreciate the efforts of the many diverse groups and individuals who have contributed to this effort and, in particular, I want to thank Commissioner Copps for his leadership on this issue and for his commitment to the effort to devise a carefully-crafted condition.

Encouraging Consumer Access to Broadband

Affordable Broadband. We made substantial progress during our review in increasing consumer access to broadband services. These services are increasingly recognized as critical for the growth of small businesses, for persons with disabilities, and as a driver of opportunity in so many aspects our lives, including distance learning and telemedicine. So, the commitment to offer basic broadband service for $10 per month should help lower the cost for many consumers who are just starting to take advantage of the broadband experience. I've said often that we need more bandwidth value in this country, so I am pleased to see this commitment from the applicants. We have heard from many Members of Congress, state and local officials, and community organizations who believe that the ability of the combined company to deliver low priced broadband services was particularly appealing to them.

Broadband Build-Out. I also note that, in response to our call for conditions, AT&T has committed to provide broadband services to 100% of their territory by the end of 2007. A ubiquitous broadband commitment is key because people all over this country want access to the opportunities that flow from this technology, no matter where they live. While I support adopting this commitment as a condition of the merger, it alone will not be a panacea. It would have been substantially improved by the inclusion of more specific, quantifiable, and enforceable commitments for rural and low income consumers, who deserve to enjoy the benefits of this transaction, too.

This commitment also relies on a definition of broadband that does not nearly put our country on par with our global competitors and is not at a sufficient level of bandwidth to support the provision of video services. I would have supported adoption of a condition requiring the applicants to meet agreed-upon levels of fiber deployment, which is critical for the deployment of competitive video services, one of the chief benefits touted for this combination. I do appreciate the applicants' willingness to respond to my concerns by outlining some of their fiber and video deployment plans and agreeing to provide a report one year from now on their progress, but I wish that we could have done more to ensure that consumers truly reap the purported benefits of providing real video competition in the BellSouth region. I am hopeful this will occur even in the absence of enforceable conditions.

I am particularly pleased that AT&T also has committed to increase its build-out of wireless broadband services. As a condition of this merger, AT&T will jumpstart service in the under-used 2.3 GHz band by agreeing to a specific construction commitment over the next three and a half years. AT&T already has conducted a number of successful trials on the spectrum and is running a commercial WiMAX network in Pahrump, Nevada. I want to see more deployment in the 2.3 GHz band. In addition to divesting its 2.5 GHz wireless broadband holdings, AT&T has met my challenge by committing today to a specific level of buildout by July 2010. Much like the Sprint-Nextel merger, I am hopeful that this build-out commitment will prove a catalyst to the entire Wireless Communications Service. Like a rising

tide that lifts all boats, AT&T's work in this band will be a boon for other wireless broadband providers looking to provide service in the 2.3 GHz band.

Stand-Alone DSL. Another major victory for consumers is the ability to purchase broadband services without having to buy a whole bundle of traditional telephone service. So, I fully support the applicants' commitment to provide a meaningful stand-alone DSL option for consumers who want access to broadband services but who want to "cut the cord." Consumer advocates have strongly supported this condition, which should expand the options available for residential and small business consumers who are interested in relying on wireless or Internet phone service for their voice connections.

We have shown greater attention in this Order to the stand-alone DSL condition because it must be implemented fairly in order to be a meaningful option for consumers. In the previous merger of then SBC with AT&T, we conditioned our support on the offer of a similar naked DSL service. I was disappointed when that offer was made to consumers at a price point that seemed designed to make it unattractive for consumers, virtually at the same level as the entire bundled offering. In California, for example, consumers who were actually able to learn of the availability of stand-alone DSL, which had not been advertised, were quoted a rate of $44.99 per month, a mere one dollar less than the least expensive regular bundle of DSL and phone service. So, it is especially meaningful here that we were able to reach agreement for AT&T to offer the service at $19.95. Particularly in combination with the Internet neutrality conditions adopted today, this stand-alone DSL offering should create an opportunity for the development of competitive Voice over Internet Protocol (VoIP) services. This condition has the potential both to give consumers more options and flexibility in their broadband and voice services, and to spur the development of competition and choice.

Promoting Competitive Alternatives

Some have argued that this combination is a mere afterthought in the world of converged communications. But this analysis falls short. Even the Order as drafted recognizes that the markets for business and residential services are highly concentrated in the applicants' in-region territories. Moreover, AT&T is already a substantial competitive force and has the potential to be a greater competitive force in the BellSouth region. In fact, just last year AT&T justified the SBC-AT&T merger on grounds that it would compete nationwide, not merge nationwide. So, in the absence of meaningful conditions from the Department of Justice, it is critical that we adopt the safeguards we do today to protect against the loss of competition.

UNEs. To address concerns about the loss of competitive alternatives, the applicants have agreed to freeze the wholesale rates for critical unbundled network elements and to recalculate the impairment triggers for determining the availability of the elements. As a result, competitors will have access to critical elements in some additional markets where AT&T is lost as a competitor, and they will not be faced with draconian price increases. The applicants have also offered an important new commitment – a commitment not to seek forbearance from section 251 unbundled network elements – that should provide competitors another critical measure of stability.

Reducing Costs of Interconnection Agreements. I was also pleased that we require the applicants to take a number of steps – including providing interconnection agreement portability and allowing parties to extend their existing agreements – to reduce the costs of negotiating interconnection agreements. This condition also responds to concerns about incentives for discrimination – whether through the terms of access offered to competitors or through raising competitors' costs – long-recognized by Commission precedent. This condition also addresses the purported purpose of this merger, which is

to respond to intermodal competition.

Special Access Services. It is clear that many business customers and wholesale carriers rely heavily on the applicants' special access services for their voice and high-speed connections. Independent wireless companies, satellite providers, and long distance providers also depend on access to the applicants' nearly ubiquitous network and services to connect their networks to other carriers. In addition, many small rural providers depend on these services to connect to the Internet backbone. So, if the applicants were to raise prices as a result of diminished competition, such action would directly impact the cost and availability of services for large and small businesses, schools, hospitals, government offices, and independent wireless providers. Particularly in light of DOJ's inaction, I believe it is imperative to adopt measures to protect against the loss of competition. The Order includes modest provisions to reduce the applicants' prices for special access services in areas where the Government Accountability Office (GAO), in its recent report on special access services, raised the most significant concern, and the Order includes a price freeze for the remainder of the applicant's special access services across the entire 22 state territory of the new company.

The Order also addresses some of the terms and conditions that have been called into question by GAO. For example, it eliminates on a going forward basis at least one condition that restricts the ability of wholesale providers to buy from other channels. While I would have supported, and many commenters have strongly urged the Commission to adopt, more stringent safeguards in this area, we have attempted to provide a modest level of stability for 48 months for these many consumers of special access services. I do note that the Commission has a long-pending proceeding on special access services and, with fresh motivation from GAO's report, it will be even more critical that the Commission tackle these issues as comprehensively and expeditiously as possible. I will continue to push for action on this long-overdue proceeding.

Wireless Broadband. I am particularly pleased with the conditions related to wireless broadband because these services offer one of the most significant opportunities for much-needed broadband competition. And while many simply talk about broadband deployment, I have been passionate about taking specific steps to drive actual wireless broadband build-out. I want to promote flexibility and innovation in this wireless space, but since the spectrum is a finite public resource, I want to see results as well – particularly in the area of wireless broadband.

Consistent with my efforts to promote wireless broadband deployment in other mergers and proceedings, I worked closely with the applicants to come up with conditions for the merged company's holdings that will serve the public interest. Most significantly, AT&T will divest the licenses and leases it acquires in the 2.5 GHz band from BellSouth within one year of the merger's closing date. This significant commitment will ensure that independent broadband access providers interested in developing services in the 2.5 GHz band will now have access to spectrum in an important part of the country that may otherwise have been unavailable to them. Increased 2.5 GHz availability in the southeast will lead to the deployment of wireless broadband services in this market in direct competition to the new AT&T – a real boon for consumers. And consumers in other markets will benefit as increased deployment in the southeast will continue to improve efficiencies for the entire 2.5 GHz industry as broadband services are rolled out in the band across the country over the next several years.

Taken together, the two spectrum conditions – a build-out condition for the 2.3 GHz band and divestiture of the 2.5 GHz band – will significantly advance the deployment of wireless broadband services in the southeast and throughout the rest of the country. With the belief that actions speak louder than words, I truly am pleased to have been an advocate for that outcome.

Tunney Act Review. It is worth noting that, even as we move forward with this proposed merger, a federal court is still reviewing the historic Bell-IXC mergers approved by DOJ and the Commission last year, and the adequacy of the conditions imposed on those mergers. With that review pending, leading members of Congress on a bi-partisan basis have raised questions about whether it is appropriate to move forward with review of this transaction. Both this Order and the Commission's orders in last year's mergers take note of DOJ's review and conclusions, so I am pleased that the applicants have committed to apply the result of any changes in the consent decree regarding the divested buildings in the SBC-AT&T merger in the BellSouth territory, as well. I have serious reservations about whether the divestiture analysis applied by DOJ adequately reflects the competitive harms, so I was also pleased that AT&T has agreed to consult with the FCC on the need for further conditions, should the Tunney Act review process lead to the imposition of greater conditions for last year's mergers.

Ensuring Access for All Americans

Persons with Disabilities. It is significant that we have heard in this proceeding from many groups representing persons with disabilities. Many of these commenters have noted that the applicants have a good history of working with consumers with disabilities and have encouraged the Commission to look carefully at the how the merged company will provide accessible services in the future. To that end, I want to commend the applicants for agreeing to provide a report describing the efforts of the combined company to provide high quality service to consumers with disabilities on a going-forward basis.

Rural Carrier Concerns. I also note that a number of commenters have raised concern about the impact of this transaction on small, rural carriers and their ability to deliver high quality, advanced services to customers in Rural America. This Order does adopt a number of measures – including the freeze on special access rates, a freeze on certain transiting rates, and a condition to address Internet backbone peering issues – that should help ameliorate these concerns. Still, it will require an on-going effort to ensure that Rural Americans benefit from the evolution of technology and this changing marketplace.

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I support the conditions that we adopt in this Order and find that they strike a reasonable balance. Particularly given where we started, and the paltry baseline afforded by DOJ's review, I believe that we have advanced the public interest significantly. Were the pen solely in my hand, I likely would have crafted different conditions, but each of my colleagues would likely say the same thing.

I rely specifically on the companies' assurances that they will faithfully and fairly implement the commitments they have made both in their applications and in their more recent filings. I fully expect they will live up to the letter and spirit of this agreement. It will also be important that this Commission commit to monitor and vigorously enforce the terms of this Order.

While I support this transaction as conditioned, it is important to note that there is much analysis in this Order that I find lacking or downright troubling. It is important to consider this combination in light of larger industry trends and developing intermodal competition, but I still find that the Order's sweeping conclusions about the lack of impact requires us to take too much on faith. It also rejects long-standing Commission precedent on the harms of horizontal consolidation in the industry, in what some might describe as an effort to walk away from "phone-to-phone" competition solely in favor of intermodal competition. While I can agree to support the package of conditions agreed to by the

applicants and my colleagues, I choose to concur to the Order given my concern with the overall analysis.

I would also like to thank the many Members of Congress, outside parties, and consumers for their comments, and AT&T and BellSouth for their efforts to address concerns that have been raised in this proceeding. I'd especially like to thank my colleague and friend Commissioner Copps for his tenacity and dedication to the public interest. He and his staff have worked tireless to make this agreement possible. It has taken effort on all sides, but we have worked quickly to achieve a result that strikes a balance. At times, this has been a difficult and unnecessarily protracted process but I am pleased that we moved quickly to conclude this proceeding once the Commission moved past its own internal drama. It turns out there wasn't an impasse, after all.

Finally, the fact that I was able to reach a successful conclusion in the waning days of the year is a tribute to the monumental efforts of my staff, especially Scott Bergmann and Barry Ohlson. They sacrificed their holidays, holding marathon sessions and working countless long hours. My heartfelt thanks are due to their families, as well, for the considerable sacrifices they made in allowing them to carry on. These are two of the finest public servants I have known, and two of the finest telecom lawyers in this city. They rose to this occasion as they have so often in the past. Appreciation is due not only from me, but from so many Americans who will benefit from their work, even if they never know any of our names.

As I have oft stated, the opportunities arising from today's technologies are greater than ever, but so is the penalty for those left without options. With that in mind, I have made every effort to ensure that consumers reap the benefits of this rapidly changing marketplace and this transaction.

For all these reasons, I concur in this Order.