

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

Filed Electronically in Docket Office at 06/15/06

In Re:	)	
	)	
Joint Application of	)	
	)	
AT&T Inc.	)	
	)	
and	)	Docket No. 06-0093
	)	
BELLSOUTH CORPORATION,	)	
TOGETHER WITH ITS CERTIFICATED	)	
OPERATING SUBSIDIARIES	)	
	)	
Regarding Change of Control of the	)	
Operating Authority of BellSouth	)	
<u>Corporation's Tennessee Subsidiaries</u>	)	

REBUTTAL TESTIMONY OF  
JOSEPH GILLAN  
ON BEHALF OF  
NUVOX COMMUNICATIONS, INC; XSPEDIUS MANAGEMENT CO.  
SWITCHED SERVICES, LLC; XSPEDIUS MANAGEMENT CO. OF  
CHATTANOOGA, LLC; AND ITC^DELTACOM COMMUNICATIONS, INC.  
D/B/A ITC^DELTACOM.  
("CLEC COALITION")

Table of Contents

I. Introduction .....	1
II. The Claimed Benefits of the BellSouth Acquisition are an Illusion .....	4
III. The Competitive Harm is the Tennessee Business Market .....	11
IV. Conclusion .....	20

Exhibits

Business Market Share (Confidential) .....	JPG-2
HHI Calculations (Confidential) .....	JPG-3

**I. INTRODUCTION**

**Q. Please state your name, business address and the parties sponsoring your rebuttal testimony.**

A. My name is Joseph Gillan. My business address is P. O. Box 541038, Orlando, Florida 32854. I am an economist with a consulting practice specializing in telecommunications. I am testifying on behalf of NuVox Communications, Inc; Xspedius Management Co. Switched Services, LLC; Xspedius Management Co. of Chattanooga, LLC; and ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom (collectively, "CLEC Coalition"). I previously filed direct testimony on behalf of these same parties in this proceeding.

**Q. What is the purpose of your testimony?**

A. The purpose of my rebuttal testimony is to respond to the extraordinary claim that AT&T's acquisition of BellSouth will not harm competition and, as such, is in the public interest. In prior acquisitions, SBC (now AT&T) at least offered a *flawed* explanation as to how its growing dominance might increase competitive choice.<sup>1</sup> With the BellSouth acquisition, however, AT&T does not bother to even contrive a theory. Rather, AT&T repackages its own *private* interests (such as eliminating

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<sup>1</sup> As I explained in my direct testimony, the "logic" SBC/AT&T offered in the Ameritech acquisition was that by acquiring Ameritech it would have the necessary scale to compete out-of-region.

1 BellSouth's input to the management of Cingular) as the *public* interest, or argues  
2 that the possible deployment of an entertainment network (Project Lightspeed) is  
3 a sufficient counterbalance to its increased market dominance.

4  
5 As I explain below, the acquisition of BellSouth will establish AT&T as the  
6 dominant provider in the Tennessee business market, with a market share  
7 exceeding 70%.<sup>2</sup> The acquisition eliminates AT&T as a CLEC-competitor to  
8 BellSouth at the same time that it provides AT&T an even greater incumbent  
9 footprint to solidify its market position. Although BellSouth claims here that  
10 AT&T is not a competitor, this perception of AT&T is of *very* recent vintage (*i.e.*,  
11 this proceeding). In BellSouth's most recent annual 10-K filing with the  
12 Securities Exchange Commission, BellSouth made clear that "*we believe that at*  
13 *December 31, 2005 our most significant local service competitors were AT&T*  
14 *Corp. and MCI Inc. (currently known as Verizon Communications, Inc.).*"<sup>3</sup>

15  
16 AT&T's acquisition of BellSouth will provide the nation's largest carrier with the  
17 cost-based, nondiscriminatory access to all parts of the BellSouth network that  
18 CLECs have been fighting to achieve since the Telecommunications Act was  
19 passed. It is important to appreciate that UNE-access is a weak substitute to  
20 actually owning the network itself (which is why SBC/AT&T has consistently

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<sup>2</sup> The focus of my testimony concerns the effects of the acquisition on the business market, which is the market in which the sponsors of my testimony compete. This focus should not be interpreted to suggest, however, that I agree, in any way, with the Joint Applicants' parallel claim that the acquisition will have no effect in the residential market.

<sup>3</sup> BellSouth 2005 10-K, February 28, 2006 at 6 (emphasis added).

1 favored expansion through the acquisition of incumbents, rather than entry as a  
2 CLEC).<sup>4</sup> To claim that AT&T's acquisition of BellSouth will have no  
3 competitive impact is to suggest that AT&T obtaining UNE-access (which  
4 provided AT&T with a *higher* incremental cost structure) had no competitive  
5 impact – a position that BellSouth has consistently opposed for more than a  
6 decade. Of course the BellSouth acquisition will have a competitive impact –  
7 why else would it be happening?

8  
9 The relevant question is not whether the acquisition will harm competition – it  
10 will – the relevant question is whether the harm will be significant and long  
11 lasting, and whether there are conditions that the Authority can place on the  
12 acquisition to mitigate its impact. As I explained in my direct testimony, the key  
13 is assuring that the network AT&T covets (and, if approved, will own) remains  
14 open to CLEC competitors (at TELRIC-based UNE rates for §251 network  
15 elements, and at just and reasonable rates established by the Authority for those  
16 elements required under §271), while adopting other reforms to remove as many  
17 “points of friction” between the (post-acquisition) AT&T and its much smaller

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<sup>4</sup> The TELRIC pricing standard is generally an estimate of BellSouth's Average Total Network Cost, calculated on a forward-looking basis (that is, based on the costs of current technology). To an entrant leasing network elements, the TELRIC cost is also the incremental cost for each element because the TELRIC price must be paid with each incremental unit purchased. In contrast, by becoming the network owner, AT&T will not gain the flexibility of an incremental cost structure that is far lower than it could achieve as a UNE-based CLEC because there is no (or little) incremental cost associated with additional sales. Consequently, AT&T will leap-frog all other entrants to a much lower incremental cost structure by becoming the incumbent provider in most of Tennessee.

1 rivals as possible. Hopefully, by so doing, the competitive harms of this  
2 acquisition can be mitigated and the public interest protected.  
3

4 **II. THE CLAIMED BENEFITS OF THE**  
5 **BELLSOUTH ACQUISITION ARE AN ILLUSION**  
6

7 **Q. What do the Joint Applicants claim are the principal “public interest”**  
8 **benefits of AT&T acquiring BellSouth?**  
9

10 A. The Joint Applicants claim that the proposed acquisition of BellSouth by AT&T  
11 will benefit Tennessee consumers in four ways. Specifically, the applicants claim  
12 that the merger will: (1) more quickly permit Cingular to offer “converged  
13 services,” (2) facilitate video competition in Tennessee, (3) provide BellSouth  
14 access to the resources of AT&T Labs, and (4) position BellSouth to better  
15 respond to natural disasters.<sup>5</sup> Notably absent from its list of public benefits is any  
16 suggestion that the merger will improve the typical Tennessee customer’s  
17 *telephone* service, either through higher quality, greater choices or lower prices.  
18

19 **Q. Should the Authority place much weight on the Joint Applicants’ claims**  
20 **regarding the effects of the merger on Cingular’s wireless services and the**  
21 **potential that BellSouth may, someday, offer video services?**  
22

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<sup>5</sup> See Transmittal Letter from Guy Hicks and Jack Robinson to the Honorable Ron Jones, Chairman, Tennessee Regulatory Authority, March 31, 2006

1       A.     No. As a threshold point, even if the Joint Applicants' claims are true, is it really  
2             worth it to create a massive monopoly, controlled in San Antonio, merely to  
3             minimize the management headache of *coordinating* Cingular's activities, or to  
4             *possibly* build an entertainment network in Tennessee (to compete with cable,  
5             satellite and over-the-air broadcast stations)?

6  
7             Moreover, these are unregulated markets, presumably where AT&T and  
8             BellSouth already confront strong commercial incentives to invest wisely and  
9             work to control costs. To the extent that AT&T's acquisition of BellSouth  
10            reduces its costs, why should the Authority expect such benefits to flow to  
11            Tennessee consumers, as opposed to the AT&T shareholder?

12  
13       **Q.     Are the Joint Applicants consistent in the relevance of Cingular to the**  
14       **Authority's review of this merger?**

15  
16       A.     No. On the one hand, the Joint Applicants claim that one of the benefits of the  
17             merger will be to unify the Cingular management.<sup>6</sup> In addition, the Joint  
18             Applicants claim that wireless service should be viewed as a primary source of  
19             competition, at least in the mass market.<sup>7</sup> Even so, when asked to provide data  
20             that would permit the Authority to actually consider Cingular's competitive

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<sup>6</sup> Kahan Direct at 6.

<sup>7</sup> See Aron Direct at 18-22.

1 position in Tennessee, the Joint Applicants object by claiming that wireless  
2 services are not relevant:

3 AT&T and BellSouth object to this Request on the grounds that it  
4 seeks information regarding wireless services. Such services are  
5 not within the jurisdiction of the TRA and consequently are not  
6 relevant to this proceeding.<sup>8</sup>  
7

8 While I would agree that the Authority should not include the unification of  
9 Cingular's management in its public interest analysis, it is the Joint Applicants  
10 that claim that wireless services should be viewed as competitors (at least in the  
11 mass market). The Joint Applicants cannot have it both ways –claiming that  
12 wireless is a critical part of the competitive analysis, while *simultaneously* arguing  
13 that wireless services are irrelevant to the proceeding.  
14

15 **Q. To the extent that the effect of the acquisition on Cingular is relevant, should**  
16 **the Authority conclude that the acquisition of BellSouth by AT&T must**  
17 **necessarily benefit consumers in Tennessee?**  
18

19 A. No. According to AT&T witness Kahan, one of the reasons that Cingular “must  
20 be brought under unified ownership” is to reconcile potentially different priorities:

21 While Cingular has been an extraordinarily successful joint  
22 venture, the sharing of ownership and managerial control by two  
23 companies, each with potentially different priorities, has impeded  
24 its ability to react quickly to changes in marketplace conditions.<sup>9</sup>  
25

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<sup>8</sup> Joint Applicants' Response to NuVox (et. al) Data Request No. 13.

<sup>9</sup> Kahan Direct at 6.

1 While this may be a sound reason for AT&T to acquire BellSouth, why should the  
2 Authority conclude that eliminating BellSouth's "potentially different priorities"  
3 is in the public interest of Tennessee consumers? To the extent that BellSouth  
4 had different priorities than San Antonio, wouldn't those priorities have been  
5 more closely aligned with those of its Tennessee customers?  
6

7 It is also useful to note that a primary source of the alleged benefit is to position  
8 Cingular to more easily offer converged wireless and wireline services,<sup>10</sup> even  
9 though the Joint Applicants simultaneously claim that wireless service is a  
10 competitor to its wireline services.<sup>11</sup> For the purposes of my testimony here, the  
11 Authority need not determine which of AT&T's conflicting claims is accurate –  
12 that is, are wireless and wireline services converging or competing – because  
13 there is no serious claim that wireless service is playing a significant role in the  
14 business market (which is the focus of my testimony).<sup>12</sup>  
15

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<sup>10</sup> *Id.*

<sup>11</sup> *See*, for instance, Aron Direct at 18.

<sup>12</sup> This is not to say that I agree with Dr. Aron that wireless service is an effective competitor to wireline service in the mass market, as she claims. (Aron Direct at 18-22). Rather, my point is that not even the Joint Applicants claim that wireless service is a significant competitor to wireline service for business customers, particularly the high-speed digital services underlying the enterprise market.



1       **Q.     Should the Authority place *any* weight on the Joint Applicants' claim that**  
2       **the acquisition *might* lead to the deployment of video services in the**  
3       **BellSouth region?<sup>13</sup>**

4  
5       A.    No. The Joint Applicants' claims regarding the effect of its merger on the  
6       potential development of its entertainment network (Project Lightspeed) is even  
7       more tangential to the public interest than its discussion about simplifying  
8       Cingular's management. The Joint Applicants point to AT&T's plan to deploy  
9       Project Lightspeed to 19 million homes by the end of 2008<sup>14</sup> to imply that it  
10      stands ready to expand the project more broadly. What is left unsaid, however, is  
11      that its current plans only call for it to deploy Project Lightspeed to 50% of its  
12      subscribers.<sup>15</sup> Which half of AT&T's existing customer base does Tennessee  
13      most closely resemble? The 50% of its customer base that AT&T plans on  
14      offering its entertainment service to, or the 50% that it does not? Even if the  
15      merger makes AT&T's entertainment plans more profitable, there is no reason for  
16      the Authority to believe that these plans will benefit Tennessee consumers, or that  
17      such rollout would not occur with or without the merger.

18  
19      AT&T even goes so far as to claim that one of the "public interest" benefits of its  
20      acquisition of BellSouth is that it will provide it more negotiating leverage with

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<sup>13</sup>     See Kahan Direct at 10.

<sup>14</sup>     *Ibid.*

<sup>15</sup>     <http://arstechnica.com/news.ars/post/20051026-5488.html>

1 programmers.<sup>16</sup> Is it reasonable to claim – as AT&T clearly does – that the  
2 Authority should sanction the virtual recreation of the Bell System so that AT&T  
3 can better negotiate with Disney? I bring the Authority's attention to this point  
4 because it demonstrates just how far a field the Joint Applicants must tread to find  
5 a public interest justification for this acquisition.  
6

7 **Q. The Joint Applicants also argue there are advantages to integrating AT&T's**  
8 **IP backbone network with BellSouth's local network.<sup>17</sup> Does this claim raise**  
9 **concerns?**  
10

11 A. Yes. Rather than being seen as a benefit of the merger, this aspect of AT&T's  
12 testimony should be troubling to the Authority, for it signals AT&T's intention to  
13 integrate BellSouth's local network into its services through interconnection  
14 arrangements that it will deny its competitors. The fundamental premise of the  
15 AT&T divestiture – a divestiture that is being effectively reversed, at least in the  
16 Southeast, through this acquisition – was that nondiscriminatory interconnection  
17 to the incumbent's local network would best promote competition. Yet here  
18 AT&T posits the exact *opposite* premise -- that is, that AT&T must enjoy an  
19 *exclusive* integration with the BellSouth network to compete in the future.  
20

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<sup>16</sup> Kahan Direct at 12-13.

<sup>17</sup> See Rice Direct at 3-5.

1 The BellSouth local network is a unique asset that provides the connectivity to  
2 end-users that nearly all of its competitors require. The Authority should  
3 affirmatively *prohibit* discriminatory interconnection arrangements if it is to  
4 approve this acquisition, not *sanction* such behavior as an alleged “benefit.”  
5

6 **Q. AT&T also claims that the merger will provide BellSouth with certain**  
7 **benefits from AT&T Labs.<sup>18</sup> Should this claim be given great weight?**  
8

9 A. No. As a practical matter, if AT&T Labs is operating in a competitive market as  
10 a profit-maximizing firm, then it should be willing to license its innovations,  
11 particularly to other RBOCs (such as BellSouth) that are not directly competing  
12 within AT&T’s incumbent footprint. In fact, the only reason that AT&T Labs  
13 would *not* be interested in licensing its innovations is if AT&T were gaining a  
14 competitive advantage that might be diminished by providing the innovation to a  
15 rival. According to the Joint Applicants (at least in this proceeding), AT&T and  
16 BellSouth are not significant competitors, which would suggest that AT&T Labs  
17 innovations would (at some point) be available to BellSouth whether owned by  
18 AT&T or not.  
19

20 **Q. In summary, have the Joint Applicants shown that BellSouth’s acquisition by**  
21 **AT&T “furthers the public interest,” as required by §65-4-113(b)?**  
22

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<sup>18</sup> See, for instance, Rice Direct at 8 and 11; Kahan Direct at 7.

1       A.     No, I do not believe they have. There is little question that AT&T's acquisition of  
2       BellSouth furthers AT&T's private interests – it simplifies AT&T's national-local  
3       ambitions (by increasing its footprint without the bother of competitive entry), it  
4       eliminates the need to coordinate the management of Cingular, and it may even  
5       lower AT&T's video programming costs. But there is a difference between  
6       AT&T's *private* interest and the *public* interest, and AT&T's public interest  
7       testimony confuses the two.

8  
9       In contrast, as I explain below, the acquisition will further concentrate the  
10      business market in Tennessee, eliminating AT&T as a competitor and providing it  
11      a position of national-dominance that is unrivaled. These harms are real and  
12      immediate and must not be ignored.

13  
14                               **III. THE COMPETITIVE HARM IN THE**  
15                               **TENNESSEE BUSINESS MARKET**

16  
17      **Q.     Please summarize the basic argument advanced by the Joint Applicants as to**  
18      **why competition in the business market will not be harmed by the**  
19      **elimination of AT&T as a competitor.**

20  
21      A.     The core of the Joint Applicants' theory appears to reside at the intersection of  
22      two claims: (a) the Joint Applicants do not directly compete, but instead focus on

1 different “types” of business customers,<sup>19</sup> and (b) other technologies (principally  
2 VoIP) and entrants will present sufficient competition that whatever loss in  
3 competitive pressure that will result from AT&T’s CLEC-to-ILEC conversion  
4 will not be significant. As I explain below, however, the first claim is never  
5 documented (and is seemingly contradicted by BellSouth’s own revenue figures),  
6 while the second claim is a blend of distortion and exaggeration. Moreover, the  
7 Joint Applicants completely ignore in this proceeding the very advantage in the  
8 multi-location business market that they once used to explain the Ameritech  
9 acquisition (*i.e.*, the importance of enjoying a broad geographic footprint).

10  
11 **Q. As to the first claim – that AT&T and BellSouth serve “different” customer**  
12 **segments – do the Joint Applicants offer *any* evidence to support that claim?**

13  
14 A. No. The only citation provided by Dr. Aron is to the *application* of the Joint  
15 Applicants – in other words, because the Joint Applicants say it is true, Dr. Aron  
16 apparently accepts it as true. Indeed, the only actual data provided by the Joint  
17 Applicants addresses the “business market” more generally – that is, the Joint  
18 Applicants cite to business switched access lines without offering any more  
19 discrete analysis based on sub-groupings of customers.<sup>20</sup>

20  

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<sup>19</sup> The claim – which is not documented by a single fact or competitive statistic – asserts that BellSouth focuses on “small and medium” size business customers, while AT&T focuses primarily on “large” business customers. *See*, for instance, Aron Direct at 35 and Kahan Direct at 15.

<sup>20</sup> *See* Kahan Direct at 15 and Aron Direct at 30.

1       **Q.     Is there data that contradicts the claim that BellSouth does not compete for**  
2       **larger business customers?**

3  
4       A.     Yes. The claim made here directly contradicts the following description of  
5       BellSouth's activities provided the Securities Exchange Commission;

6               Effective January 1, 2006, we [BellSouth] reorganized our  
7               operations to parallel our major customer bases: retail markets and  
8               business markets.

9               *Retail Markets.* In addition to providing traditional local and  
10              long distance voice services, this unit focuses on providing  
11              advanced voice, data, Internet and networking solutions to  
12              residential customers and small and medium-sized businesses....  
13              During 2005, the consumer unit represented 44% of  
14              Communications Group revenues while the small business unit  
15              represented 13% of Communications Group revenues.

16              *Business Markets.* This unit provides (1) a wide range of  
17              standard and highly specialized services and products to large and  
18              complex business customers and (2) interconnection.... During  
19              2005, the large business unit represented 17% of Communications  
20              Group revenues, and interconnection services represented 23% of  
21              Communications Group revenues and 42% of our reported data  
22              revenues.<sup>21</sup>

23  
24              According to BellSouth's SEC filing, the large business unit accounts for 30%  
25              more revenue than its small business unit. The fact that AT&T and BellSouth  
26              *claim* that they offer service to different customer segments does not make it so,  
27              nor does Dr. Aron's *repeating* the claim make it any more accurate.

28  
29       **Q.     Has BellSouth always denied that AT&T is a competitor?**

30  

---

21       BellSouth 10K at 4 (emphasis added).

1       A.     No. As recently as just four months ago, BellSouth was making it clear to its  
2       investors that it considered AT&T one of its most significant competitors:

3               Although our competitors vary by state and market, we believe that  
4               at December 31, 2005 our most significant local service  
5               competitors were AT&T Corp. and MCI Inc. (currently known as  
6               Verizon Communications, Inc.) and our most significant long  
7               distance competitors included AT&T, Verizon and Sprint Nextel  
8               Corporation.<sup>22</sup>  
9

10            While the statement indicates that BellSouth's competitors may vary by state and  
11            market, if AT&T is not a competitor here in Tennessee for business customers,  
12            then where is the proof of that in this docket, and, if not here, then exactly where  
13            is AT&T one of BellSouth's *most significant* competitors? Thus far, the  
14            testimony throughout the region has consistently denied that AT&T is a  
15            competitor,<sup>23</sup> and Dr. Aron has been willing to categorically echo the claim.

16  
17       **Q.     Does the data indicate that AT&T is a significant competitor in the business**  
18       **market in Tennessee?**

19  
20       A.     Yes. As shown in Confidential Exhibit JPG-2, the data indicates that the  
21       business market in Tennessee is already highly concentrated, and adding AT&T's  
22       share to that of BellSouth will bring the incumbent share to over 70%, irrespective

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<sup>22</sup>       BellSouth 2005 10-K, February 28, 2006 at 6 (emphasis added).

<sup>23</sup>       In addition to Tennessee, testimony or comments have been filed by the Joint Applicants  
in Kentucky, Louisiana and Mississippi and in none of those states have the Joint Applicants  
conceded a market where AT&T is a significant competitor.

1 of the assumption used to isolate AT&T's business lines to markets where  
2 BellSouth is the incumbent.<sup>24</sup>

3  
4 **Q. Have you also calculated the HHI in the Tennessee business market, both**  
5 **before and after AT&T acquires BellSouth?**<sup>25</sup>

6  
7 A. Yes. As shown on Confidential Exhibit JPG-3, the business market in Tennessee  
8 is already (prior to the acquisition) "highly concentrated" with a HHI of over  
9 4000. To place this measure in perspective, the Department of Justice typically  
10 considers a market with an HHI of 1800 to be a "highly concentrated" market.  
11 Moreover, the acquisition of BellSouth by AT&T will increase the HHI in this  
12 market by over 700 points. The Department of Justice considers a merger that  
13 produces an increase in the HHI of more than 100 points in a highly concentrated  
14 market to be "likely to create or enhance market power or facilitate its exercise."<sup>26</sup>

15  
16 **Q. Dr. Aron claims that new technologies (in particular VoIP) lessen**  
17 **competitive concerns. Do you agree?**

---

<sup>24</sup> As I explain in more detail in Confidential Exhibit JPG-2, AT&T's business lines are provided for Tennessee overall and, therefore, some lines may be in exchanges of other incumbents. Reducing AT&T's business line count by reasonable estimates of the competitive activity in other exchanges, however, does not materially change any of the conclusions of my testimony.

<sup>25</sup> The Herfindahl-Hirschman Index ("HHI") is a measure of market concentration used by (among others) the Federal Trade Authority and the Department of Justice. The HHI is calculated as the sum of the squares of the market shares of participants in a market, with the higher the resulting HHI, the greater degree of concentration.

<sup>26</sup> Merger Guidelines, Federal Trade Authority and United States Department of Justice, Revised April 8, 1997.



1

2       A.     No. First, it is important to underscore that not even the Joint Applicants are  
3             suggesting (at least in their direct testimony) that wireless service is viewed as a  
4             viable substitute for wireline phone service in the business market. Consequently,  
5             that portion of Joint Applicants' testimony (to the extent it is relevant at all) has  
6             little to do with competition in the business market that I address here.

7

8             Second, it is important to distinguish the Joint Applicants' discussion about VoIP  
9             being used by cable-based providers from the issue here, which is competition in  
10            the business market. There is little doubt that VoIP technology provides cable-  
11            based entrants an opportunity to use their broadband platform to offer telephony  
12            service to residential customers. The fact that the technology provides an opening  
13            for a second provider in the residential market, however, does not generally  
14            reduce barriers for other carriers, particularly in the business market. The cable  
15            provider is *uniquely* positioned to use the technology because it introduces the  
16            technology as an overlay to its preexisting data network, which itself enjoys  
17            synergies with its video platform, and the "triple-play" strategy of  
18            voice/data/video relevant only to the residential customer.

19

20            Most significantly, each of the VoIP business applications cited by Dr. Aron is an  
21            example of VoIP being used in conjunction with a DS-1 to the customer.<sup>27</sup> The  
22            fact that the digits are organized into IP packets (as opposed to traditional time-

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<sup>27</sup> See Aron Direct at 38-39.

1 division multiplexing) does not change the fundamental requirement that the  
2 CLEC still requires access to a DS-1 facility to offer its VoIP service.  
3 Consequently, VoIP may make it possible for a CLEC to offer a *better* service  
4 using its DS-1, but it does not make it any less *critical* for the CLEC to have  
5 access to that DS-1 to offer the service at all. It is BellSouth's local network  
6 dominance that provides its market position, and it is BellSouth's local network  
7 that AT&T is acquiring lock, stock and barrel (so that it need not compete as a  
8 CLEC).

9  
10 **Q. Dr. Aron suggests that the BellSouth's business market is in significant**  
11 **decline?<sup>28</sup> Do you agree?**

12  
13 A. No. Dr. Aron's conclusion is based on the fact that she limited her analysis to  
14 switched business lines, without considering the fact that the driver of most  
15 demand in the business market is for non-switched lines (which BellSouth records  
16 as "special access" lines). As shown in the graph below, the number of special  
17 access lines eclipsed the number of multi-line business lines in 2000,<sup>29</sup> and are  
18 continuing to fuel rapid growth in the number of lines being provided by  
19 BellSouth in Tennessee.

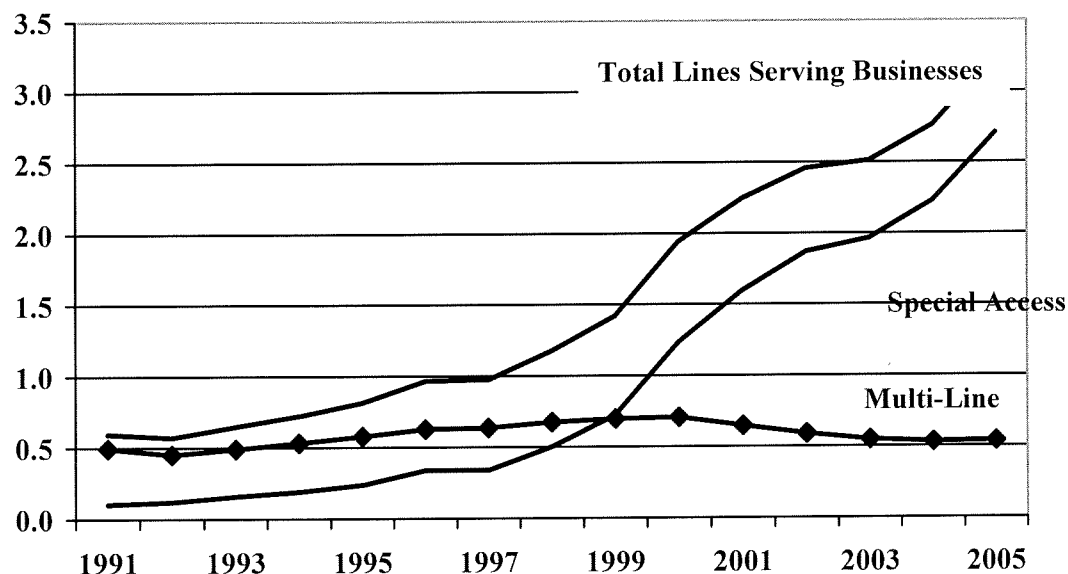
20

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<sup>28</sup> Aron Direct at 30.

<sup>29</sup> Source: ARMIS 43-08. Multi-line business lines excluding lines used to provide payphone service. Special access lines include only digital access facilities.

**The Growth of Business Lines: Special Access and Multi-line Business Lines  
BellSouth Tennessee 1991-2005 (millions of lines)**



When *all* types of lines used to serve business customers are included in the analysis, BellSouth's line growth is continuing. Dr. Aron recognizes that new digital technologies are changing the business market, but apparently is unaware that BellSouth itself provides access connections used in that market. It is not that other networks have caused BellSouth's "switched business line" count to decline, it is BellSouth's other services that have played the largest role.<sup>30</sup>

<sup>30</sup> Viewed in a broader context, BellSouth also makes no reference to the consumer broadband market, where it has seen similar growth. To focus only on the switched local service, while ignoring special access and consumer broadband services (not to mention Cingular wireless growth), paints an inappropriately narrow picture of BellSouth's business today and its prospects for the future. The TRA should not only consider the BellSouth in terms of its traditional services, it should also take into account the other BellSouth services that replace them.

1       **Q.     Finally, BellSouth claims that it is disadvantaged by having to rely on**  
2       **partners to meet the interLATA needs of its large business customers.<sup>31</sup> Does**  
3       **this make sense?**

4  
5       A.    No. It is relatively simple for BellSouth to obtain the intercity capacity it needs  
6       on a wholesale basis from a number of carriers to offer services. Consequently,  
7       any suggestion that BellSouth is disadvantaged by not being owned by a carrier  
8       with an interexchange network makes little sense – virtually *none* of the carriers  
9       that the Joint Applicants point to as competitors in the business market own a  
10      nationwide network.<sup>32</sup> It is also useful to note that BellSouth certainly markets to  
11      large business customers as though it controls nationwide facilities. As explained  
12      on its website:

13           In today's data-driven business climate, companies like yours  
14           require flexible, high-bandwidth nationwide wide area network  
15           (WAN) solutions than can cost-effectively extend connectivity to  
16           all sites and users.... Now, with BellSouth® Managed Network  
17           VPN Service nationwide, you can establish a more secure WAN  
18           connectivity over a carrier-class IP network infrastructure that  
19           allows you to run voice, video and data over a single network. This  
20           Layer 3 IP nationwide VPN service simultaneously delivers  
21           flexibility and breadth of reach with the security and performance  
22           of a private network.<sup>33</sup>  
23

24           Although BellSouth was not disadvantaged by having to rely on a partner, the  
25           merger will disadvantage all other CLECs relative to the consolidated AT&T.

---

<sup>31</sup> Dickens Direct at 5-6.

<sup>32</sup> See Kahan Direct at 16.

<sup>33</sup> [http://largebusiness.bellsouth.com/products\\_detail.aspx](http://largebusiness.bellsouth.com/products_detail.aspx) (emphasis added)

1 The “long distance” segment is characterized by wholesale carriers willing to  
2 work cooperatively with local networks to provide customers end-to-end service,  
3 but the same cannot be said for the local market. While BellSouth may not have  
4 needed a long distance partner to effectively compete for larger businesses, there  
5 is a clear advantage to AT&T by acquiring BellSouth so that it has the local  
6 network under its control.

7  
8 **IV. Conclusion**

9  
10 **Q. Please summarize your rebuttal testimony.**

11  
12 A. It is certainly understandable why AT&T has chosen to acquire BellSouth. After  
13 all, if AT&T does not become Tennessee’s largest incumbent, its other option  
14 would be to compete as a CLEC. And therein lies the problem. Robust  
15 competition for Tennessee consumers requires that other competitors have access  
16 to reach their potential customers,<sup>34</sup> not just AT&T through its purchase of  
17 BellSouth. My direct testimony identified modest steps that the Authority can  
18 take to mitigate some of the advantages that AT&T will gain through this  
19 acquisition, while this testimony has clearly shown that action is needed. I  
20 continue to recommend that the Authority only approve this acquisition if  
21 accompanied by these conditions.

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<sup>34</sup> Although my testimony focuses on business customers, the comment is equally applicable to the residential market.

1

2       **Q.     Does this conclude your rebuttal testimony?**

3

4       **A.     Yes.**

Certificate of Service

The undersigned hereby certifies that on this the 15<sup>th</sup> day of June, 2006, a true and correct copy of the foregoing has been forwarded via electronic transmission to:

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