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June 15, 2006

Chairman Ron Jones
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

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@ 1:59pm

**Re: Rebuttal Testimony of Don J. Wood in Docket No. 06-00093:
Joint Application of AT&T Inc. and BellSouth Corporation,
Together with its Certificated Tennessee Subsidiaries Regarding
Change of Control of the Operating Authority of BellSouth
Corporations Tennessee Subsidiaries.**

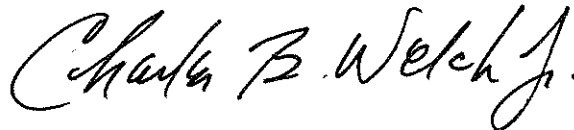
Dear Chairman Jones,

Please find enclosed, originals and 5 copies of the referenced rebuttal testimony. Please date stamp a copy of each for my records and return in the enclosed envelope.

Thank you for your assistance regarding this matter. If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC



Charles B. Welch, Jr.

CBW/jrh
Enclosures
Cc: All Parties of Record

CERTIFICATE OF SERVICE

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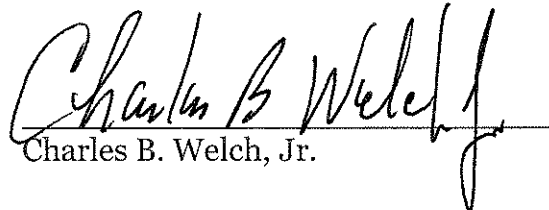
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Charles B. Welch, Jr.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

IN RE:

Joint Application of

AT&T INC.

and

**BELLSOUTH CORPORATION,
TOGETHER WITH ITS CERTIFICATED
TENNESSEE SUBSIDIARIES,**

**Regarding Change of Control
of the Operating Authority of
BellSouth Corporation's Tennessee
Subsidiaries**

Docket No. 06-00093

**REBUTTAL TESTIMONY OF DON J. WOOD ON BEHALF
OF TIME WARNER TELECOM OF THE MID-SOUTH, LLC**

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1 **Purpose of Testimony**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Don J. Wood. My business address is 30000 Mill Creek Avenue, Suite 395,
4 Alpharetta, Georgia 30022.

5

6 Q. ARE YOU THE SAME DON J. WOOD WHO PREFILED DIRECT TESTIMONY ON
7 BEHALF OF TWTC ON JUNE 2, 2006?

8 A. Yes.

9

10 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

11 A. The purpose of my rebuttal testimony is to respond to various claims made in the direct
12 testimony of the Joint Applicants. Specifically, I will respond to the prefiled testimony of
13 Mr. Marty Dickens, Mr. James Kahan, Mr. Christopher Rice, and Dr. Debra Aron.

14 The testimony of Mr. Kahan and Mr. Dickens repetitive in most respects; Mr.
15 Kahan explains how SBC/AT&T would benefit from its acquisition of BellSouth, and
16 Mr. Dickens sticks carefully to this party line. The similarity of their testimony casts at
17 least some doubt on the accuracy of Mr. Dickens' description (provided throughout his
18 testimony) of a post-merger BellSouth that will operate in a largely autonomous and
19 independent way.

1 Overall, the testimony of the Joint Applicants' witnesses describes the current
2 state of the telecommunications industry, sets forth several purported bases for the
3 merger, and provides multiple assurances that no harm will come to the existing
4 residence and business customers of BellSouth if the proposed merger is approved
5 without conditions. Unfortunately, their discussion occurs at a level that is much too
6 high and that relies on broad generalizations instead of a more structured and detailed
7 analysis of the various product and geographic markets in Tennessee. Ultimately, the
8 direct testimony of the Joint Applicants provides no assurance that the proposed merger
9 will not lead to a significant reduction in competitive alternatives, an increase in market
10 concentration, and subsequent increase in market power in the markets for some services.
11 Before approving the merger, it is extremely important as a public interest matter that the
12 TRA consider the merger's likely impact on (1) specific markets, and (2) competition in
13 those markets (and by extension, the impact on customers) over the long run.

14
15 **The Applicant's Claims Regarding the Impact of the Proposed Merger on BellSouth's**
16 **Operations**
17

18 Q. DOES BELL SOUTH DESCRIBE HOW ITS OPERATIONS IN TENNESSEE WILL
19 BE IMPACTED BY THE PROPOSED MERGER?

20 A. Yes, but the claims are not consistent. Initially Mr. Dickens claims that the merger is
21 needed because it will make "BellSouth Telecommunications, Inc. a better and more

1 efficient competitor.” Presumably BellSouth will become “better and more efficient” by
2 implementing many of the significant network and operational changes described by Mr.
3 Rice and Mr. Kahan. In an apparent attempt to provide some assurance to the TRA that it
4 need not look too closely at the details of the proposed merger and its impact on specific
5 markets, Mr. Dickens later asserts (p. 3) that “BellSouth Telecommunications, Inc., the
6 operating subsidiary, will continue to operate just as before in Tennessee.”

7 Both of these claims cannot be true. Either significant changes (that may or may
8 not provide a legitimate basis for the proposed merger) are in store – in which case the
9 TRA should look very carefully at the potential impact of the merger across all product
10 and geographic markets – or BellSouth “will continue to operate just as before,” thereby
11 begging the question of exactly how the merger can be justified for reasons other than the
12 Joint Applicants’ desire to increase their market power and eliminate both existing and
13 potential competition.

14
15 Q. MR. DICKENS CLAIMS THAT A DIRECT RESULT OF THE MERGER WILL BE
16 “EXCITING NEW PRODUCT OFFERINGS.” DOES HE PROVIDE AN EXAMPLE
17 OF THE OFFERINGS THAT BELL SOUTH WILL MAKE POST-MERGER?

18 A. Yes. He states (p. 7) that “after the merger, the combined AT&T/BellSouth will be able
19 to offer such things as a complete suite of local, long distance, wireless, and ultimately
20 video services.” When listing this collection of “exciting new product offerings,” Mr.

1 Dickens fails to mention that these are exactly the same exciting product offerings that
2 BellSouth offers on a bundled basis *today*. Exhibit DJW-2 is a printout of BellSouth's
3 website as of June 15, 2006. As these printouts show, BellSouth is currently offering
4 residence customers a bundled offering that consists of local, long distance, internet,
5 wireless, and digital video services. Small Business customers can currently receive
6 local, long distance, internet access, enhanced voice and data, and wireless services.
7 Large Business customers (a classification of customers that the Joint Applicants' witness
8 consistently claim that BellSouth does not currently serve) can today – pre-merger –
9 subscribe to bundles of traditional voice, data, internet, wireless, and VoIP services.

10 While it is clear that the merged entity (with almost \$100 billion in annual
11 revenue and over 40% of the nation's access lines) will be bigger than pre-merger
12 BellSouth, it does not appear to be accurate to assert that it will offer any "exciting *new*
13 service offerings," at least over the short run. As I will explain later in my testimony, the
14 combined entity will have little incentive to deploy new technology or to offer
15 fundamentally new services over the long run.

16
17 Q. MR. DICKENS ASSERTS (P. 3) THAT THE TRA'S REGULATORY AUTHORITY
18 OVER BELL SOUTH TELECOMMUNICATIONS, INC. WILL NOT BE IMPACTED
19 BY THE MERGER. DO YOU AGREE?

20 A. No, for two reasons. First, while BellSouth will continue to be "subject to rules and

1 statutes governing price-regulated carriers,” such oversight extends only to those service
2 offerings that are currently classified as regulated. As Mr. Rice points out (p. 2),
3 however, one of the stated objectives of the merger is to combine the SBC/AT&T,
4 BellSouth, and Cingular networks “into one, Internet Protocol based network.” While IP-
5 based services would be provided over the same local facilities and would serve the same
6 role in the market as today’s circuit-switched services, it is unclear what – if any –
7 jurisdiction the TRA would have regarding the pricing or quality of these services. It is
8 possible that the merger will lead to a worst-case scenario for mass market customers: the
9 circuit-switched services that they must rely on BellSouth to provide today¹ would be
10 replaced by services that, while largely functionally equivalent, would have no pricing or
11 quality oversight. End user customers in Tennessee would face a reality of few (if any)
12 competitive alternatives and no regulatory protection against high prices or poor quality.

13 Second, the elimination of an independent RBOC has significant consequences
14 (even more so as the number of such independent RBOCs dwindles to 2.5). As set forth
15 in some detail in my direct testimony, the ability of regulators to benchmark RBOC
16 performance or to identify “best practices” is effectively eliminated with so few data
17 points. In addition, the integration of various systems (described by the applicant
18 witnesses as sources of increased efficiency) means that BellSouth cannot continue to

¹ Even the Joint Applicants do not claim that most mass-market customers have facilities-based alternatives for these services.

1 operate in a way that is inconsistent with SBC/AT&T. To the extent that BellSouth is an
2 example of “best practices” in certain aspects of its relationship with CLECs, its practices
3 will inevitably be pulled down to the level of SBC/AT&T. In-region CLECs will be
4 adversely impacted by this change in practices, and the use of BellSouth’s practices to
5 benchmark the activities of other ILECs will be lost. In this important respect, BellSouth
6 cannot and will not “continue to operate just as before in Tennessee.”
7

8 Q. MR. DICKENS’ ASSERTS (P. 4) THAT BELLSOUTH WILL BE “BOUND TO ITS
9 INTERCONNECTION AGREEMENTS TO THE SAME DEGREE AS BEFORE THE
10 MERGER.” IS THIS OBSERVATION IMPACTED BY THE POST-MERGER
11 CHANGE IN BELLSOUTH’S WHOLESALE PRACTICES?

12 A. Absolutely. Mr. Dickens’ statements that BellSouth will continue to be bound by
13 interconnection agreements and will be required to adhere to wholesale performance
14 standards are literally true, but they fail to take into consideration important practical
15 differences. Interconnection agreements and wholesale tariffs are lengthy and complex
16 documents; an ILEC that wants to do the right thing can certainly do so, but an ILEC
17 seeking an excuse to engage in practices that will limit the ability of a competitor to
18 effectively provide service can probably find one. At a minimum, the frequency and
19 importance of disputes coming before the TRA for resolution can be expected to
20 significantly increase. For this reason, it is imperative that an expedited dispute

1 resolution process for all inter-carrier disputes be adopted as a condition of the merger,
2 and that performance measures and penalties be established for key wholesale services,
3 including special access services.

4
5 **The Applicant's Claims Regarding the Rationale for the Proposed Merger**
6

7 Q. WHAT IS THE JOINT APPLICANTS' PRIMARY STATED REASON FOR THE
8 PROPOSED MERGER?

9 A. Dr. Aron states (pp. 14-15) that "the telecommunications marketplace is in significant
10 transition, and this merger can be seen as a response to, and part of, that larger
11 transition."

12 This statement is nonsensical for a couple of reasons. First and foremost, there is
13 no single "telecommunications marketplace;" the telecommunications industry is
14 composed of a number of distinct product and geographic markets. In order to analyze
15 the impact of the proposed merger in a meaningful way, it is necessary to consider the
16 likely impact in each of these distinct markets. Broad, high-level statements about recent
17 industry changes are not a substitute for this essential market-by-market analysis.

18 Second, describing the merger as a response to industry change is fine, but the
19 important question remains: What can BellSouth offer post-merger that it cannot offer
20 pre-merger? Or, stated more directly: Other than operating as a part of a much larger

1 (\$100 B) entity that will now enjoy the elimination of a major competitor in key
2 markets,² the elimination of a significant potential (and promised) competitor in many
3 other regions, and a consolidation of operations that will eliminate any existing “best
4 practices” in its wholesale operations, what can BellSouth offer post-merger that it cannot
5 offer pre-merger? By keeping their discussion sufficiently broad, the Joint Applicants’
6 witnesses have avoided addressing such thorny issues.

7 As an RBOC with an adjacent territory, SBC/AT&T represents an entity with
8 perhaps the greatest capability to compete within the BellSouth territory in many product
9 and geographic markets. Indeed, much of the purported justification offered by SBC and
10 AT&T for their merger was the combined entity’s enhanced ability to compete out of
11 region. Those promises have now apparently fallen by the wayside; it is impossible to
12 compete out of region once you have purchased the other region. And as described
13 above, comparing the wish list set forth in the Joint Applicants’ testimony with
14 BellSouth’s bundled offerings available today suggests that the likely answer to the
15 question “what can BellSouth offer post-merger that it cannot offer pre-merger?” is , at
16 least over the foreseeable future, “nothing.”
17

18 Q. DR. ARON ARGUES THAT BELL SOUTH’S “LOSS” OF LINES OVER THE PAST

² AT&T will be eliminated as an in-region competitive provider of special access services, for example.

1 TEN YEARS PROVIDES A JUSTIFICATION AND A “CONTEXT” FOR THE
2 PROPOSED MERGER. DO YOU AGREE?

3 A. Not at all. Dr. Aron asserts (p. 6) that “traditional telecommunications services such as
4 those offered by AT&T and BellSouth are, as one industry analyst put it, under ‘full
5 blown assault’,” and that ‘the competitive landscape of the retail communications
6 industry today not only provides context for the business reasons for the merger, it makes
7 *implausible* any adverse competitive effects from the merger” (emphasis added).

8 The fact that many customers no longer desire BellSouth’s “traditional
9 telecommunications service” offering – a service based on 100+ year old technology –
10 should not come as a surprise except to someone with the mindset of a former regulated
11 monopoly. It is also irrelevant: the fact that many customers no longer desired black and
12 white television sets did not mean that Zenith needed to merge in order to eliminate the
13 providers of color sets, but instead that Zenith needed to offer a color set of its own.
14 Unfortunately, the Joint Applicants’ monopoly mindset, particularly when combined with
15 the market power that will be created by the proposed merger, means that new
16 technologies and new service offerings are likely to be few; such an entity has little
17 incentive to make its own investments obsolete. As Dr. Aron’s testimony illustrates, a
18 company with a “defend the traditional service offering” mindset is unlikely to invest in
19 new technologies or to offer new services if it can instead limit competitive entry.

20 A meaningful analysis of the impact of the proposed merger on BellSouth,

1 competitive markets, and Tennessee end-user customers requires a more substantive
2 review. Dr. Aron claims (p. 6) that “traditional wireline companies, including BellSouth,
3 are losing lines at a rate that is unprecedented in the history of the industry” and that
4 BellSouth now has fewer access lines than it had ten years ago. At p. 17, Dr. Aron poses
5 the question “where are these lines going?,” and responds that “these lines are going to
6 alternative service providers such as cable companies, VoIP companies, and wireless
7 companies, or even to non-voice communications over broadband.” As I will explain in
8 more detail below, however, the vast majority of these lines are not “going” anywhere,
9 and pre-merger BellSouth has shown that it is well-positioned to respond to these
10 changes in the industry.

11
12 Q. HAVE CLECS CAUSED BELL SOUTH TO “LOSE” ACCESS LINES?

13 A. Rarely. If a CLEC utilizes resale as its means of offering service, then BellSouth clearly
14 does not “lose” the access line. Similarly, a CLEC that relies on UNE-P does not cause
15 BellSouth to “lose” the access line, because BellSouth’s facilities continue to be used to
16 provide the service. Nevertheless, it appears that Dr. Aron has included customers served
17 by a CLEC using resale or UNE-P as a part of her calculation of “lost” access lines.

18 The only way for BellSouth to “lose” a line to a CLEC is for the CLEC to
19 construct its own facilities, including the local loop, to serve the customer. But as Dr.
20 Aron points out, this has rarely happened. She describes (pp. 9-10) the actions of the

1 legacy AT&T, the largest and initially most active CLEC marketing to mass-market
2 customers in the BellSouth region: “when AT&T competed for mass-market customers, it
3 provided its service to mass-market customers via the unbundled network platform
4 (‘UNE-P’). This meant that it provided services to mass-market customers entirely over
5 the incumbent’s network rather than building its own.” Dr. Aron then goes on to explain
6 why BellSouth is unlikely to “lose” access lines to CLECs in the future; even as the
7 largest carrier operating as a CLEC, “it does not appear that the legacy AT&T (the CLEC
8 before its acquisition by SBC) had a viable strategy for transitioning to its own facilities.”

9 At pp. 35-36, Dr. Aron goes on to claim that a number of CLECs that focus on
10 business customers currently operate in Tennessee. Her list appears accurate, but she
11 completely omits any discussion of the scope of each carrier’s facilities.³ Certainly, none
12 of the CLECs that she lists have a ubiquitous network of their own that would enable
13 them to provide service to customers with multiple locations without some reliance on
14 the facilities provided by a wholesale provider. Today and in the foreseeable future, that
15 wholesale provider is most likely to be BellSouth. Post-merger, these options will be
16 further limited as SBC/AT&T exits the market as a wholesale provider of special access
17 services. Just as with UNE-P, BellSouth is not “losing” a line when it becomes a

³ Time Warner Telecom is one of the few “true” facilities-based carriers remaining, and even must rely on BellSouth and other ILECs to supplement its network by purchasing special access.)

1 wholesale provider of the facility used by a CLEC to provide service to a retail customer.

2 At pp. 38-39, Dr. Aron picks an interesting example of a carrier that provides a
3 competitive service to business customers. She describes the combined voice and data
4 offering of CBeyond, but completely fails to mention that CBeyond's "competing"
5 service is actually an application being provided *over a BellSouth local T-1 facility*.
6 BellSouth is not "losing" lines to CBeyond, either.

7
8 Q. DOES BELL SOUTH "LOSE" A LINE WHEN A CUSTOMER SUBSCRIBES TO
9 WIRELESS SERVICE?

10 A. No. Dr. Aron argues (p. 18) that "looking at line and subscriber counts, communications
11 services are being provided decreasingly by RBOCs and increasingly by wireless
12 carriers." Such a statement can only have meaning if the RBOC in question doesn't own
13 a wireless carrier. If it does, then the situation is more accurately described as one in
14 which a customer is simply electing to order a different service. The fact that one of
15 BellSouth's affiliates is cannibalizing the services of another affiliate does not mean that
16 BellSouth is "losing" these customers.

17 Dr. Aron's analysis actually distorts the transition from wireline to wireless
18 services in two ways. First, she fails to consider that a customer that discontinues her
19 BellSouth wireline service in favor of her wireless service from Cingular does not
20 represent a "lost" line for BellSouth. Second, by neglecting to include the substantial

1 growth in wireless lines over the past ten years, Dr. Aron's analysis fails to show that the
2 "lines" served by BellSouth have actually increased.⁴

3
4 Q. DO STAND-ALONE VOIP PROVIDERS CAUSE BELL SOUTH TO "LOSE" LINES?

5 A. No. Dr. Aron argues (p. 24) that "the fact that VoIP is, or can be, an application on a
6 broadband connection means that there is room for pure-play VoIP providers such as
7 Vonage and Net2Phone (and a myriad of others) to provide additional competitive
8 pressure for voice telephony." This is nonsense.

9 It is true that some customers might prefer a VoIP service over the "traditional
10 telecommunications services" that BellSouth would prefer to sell them, but that simply
11 means that BellSouth should offer a VoIP service. But there is no way that a stand-alone
12 provider of VoIP (what Dr. Aron calls pure-play provider) can provide discipline in the
13 market – in terms of prices or service quality – for either BellSouth-provided VoIP or for
14 BellSouth's "traditional telecommunications services." A stand-alone VoIP provider is
15 providing an application that must be provisioned over a broadband facility, and either
16 the VoIP provider or the retail customer must purchase this broadband facility. If
17 BellSouth can set the price for the underlying facility and for its own bundled

⁴ While wireless phones are not physically connected to BellSouth "lines," each wireless account does represent a "line" for purposes of this analysis. Put another way, if 100% of BellSouth's customers "cut the cord" and became Cingular customers instead, it would not be accurate to suggest that BellSouth had "lost" all of its customers.

1 facility+application VoIP offering, the stand-alone VoIP provider cannot duplicate
2 BellSouth's prices or service quality. As the provider of the underlying broadband
3 facility (whether or not it sells the VoIP application to the customer), BellSouth clearly
4 has retained the "line."

5 The facts similarly get in the way of Dr. Aron's claim that BellSouth has "lost"
6 lines to "non-voice communications over broadband." If BellSouth continues to control
7 the broadband connection, the fact customers have elected to use different applications
8 provisioned over that facility in no way indicates that BellSouth has "lost" a line.

9
10 Q. CAN CABLE COMPANIES CAUSE BELL SOUTH TO "LOSE" LINES?

11 A. In some instances yes, though that impact is limited to specific product and geographic
12 markets. Existing cable networks are not ubiquitous even to residential customers, and
13 even Dr. Aron admits that these facilities have not been built to business and government
14 locations. Business customers that require significant bandwidth have not been "lost" to
15 cable companies.

16
17 **The Applicant's Claims Regarding the Impact of the Proposed Merger**
18

19 Q. HOW SHOULD AN ANALYSIS OF THE IMPACTS OF THE PROPOSED MERGER
20 BE CONDUCTED?

1 A. As described in my testimony, an analysis conducted pursuant to the Merger Guidelines
2 begins with a meaningful and proper definition of a market. The Joint Applicants’
3 analysis often fails at this initial step, because they have elected to treat the concept of a
4 market in an overly broad manner.

5 Dr. Aron states (p. 7) that “sound merger analysis” is forward-looking, and argues
6 that “if the merging parties would not, looking forward, be competing in any meaningful
7 way with each other in the absence of the merger, one can conclude that the merger
8 would have no detrimental effect on competition.” While I disagree with her
9 fundamental premise,⁵ in this case the facts do not support her conclusion: BellSouth and
10 AT&T are currently “competing in a meaningful way” in many geographic markets for
11 Type I special access. The merger would eliminate an important competitor in these
12 markets and would significantly increase BellSouth’s market power.

13 Dr. Aron also suggests (p. 7) that “the ability of competitors to enter and to
14 expand their services to customers” should be considered when assessing the impact of
15 the merger. I agree. What her high-level analysis fails to consider, however, is that
16 special access facilities – for many reasons – have proven difficult for competing
17 providers to deploy in many locations (the economics of the number of customers served

⁵ As a simple example, a merger may have a direct and detrimental impact on competition by eliminating a “best practices” RBOC, even if the merging entities did not compete for the wholesale service pre-merger.

1 by the carrier at each location, right-of-way access, and building access have all
2 contributed to this difficulty).

3
4 Q. DR. ARON SUGGESTS THAT THE PROPOSED MERGER WILL HAVE LITTLE
5 IMPACT ON COMPETITION FOR BUSINESS SERVICES BECAUSE SBC/AT&T
6 AND BELL SOUTH SERVE BUSINESS CUSTOMERS OF DIFFERENT SIZES.
7 DOES THIS ARGUMENT MAKE SENSE?

8 A. No. Consistent with the claims made by other of the Joint Applicants' witnesses, Dr.
9 Aron states (p. 35) that "while AT&T focuses on large, national and international
10 businesses, BellSouth's focus is on small and medium-sized business." This statement is
11 sufficiently broad, generalized, and undefined as to have no real meaning at all.

12 First and foremost, it is not the absolute size of the customer that is important, but
13 rather the customer's telecommunications needs and the location of those needs. While
14 the largest multi-national customers may need a combination of long-haul facilities and
15 the local facilities to connect this "backbone" to the customer's location (or multiple
16 locations) and a smaller business customer may require only the equivalent of a local
17 special access facility, it is inescapable that the local facility will be needed for both.
18 Currently, SBC/AT&T and BellSouth provide this local facility at many locations within
19 the region. The relevant consideration is not the size of the customer, but rather whether
20 the customer requires a network facility to connect two end points. Ultimately, it is the

1 underlying facility that is important; SBC/AT&T's and BellSouth's "focus" on business
2 customers of different sizes is irrelevant.

3 Second, none of the Joint Applicants' witnesses define the terms "large,"
4 "medium," or "small" in this context. It is likely that significant overlap exists between
5 these categories, and that SBC/AT&T and BellSouth are indeed competing for many of
6 the same business customers today.

7 Third, the statement is not supported by the facts. In and around Memphis,
8 BellSouth currently provides service to FedEx, International Paper, 1st Tennessee Bank,
9 Regions Bank, Autozone, Bank of America, Hilton Hotels, Baptist Hospital, Methodist
10 Hospital, Regional Medical Center, the City of Memphis, Shelby County Government,
11 MLGW, Harrah's Entertainment, Shelby County Schools, Memphis City Schools,
12 University of Memphis, Rhodes College, Sedgwick CMS, Morgan Keegan, University of
13 Tennessee Medical Group, Service Master, Orgil Brothers, AT&T, Verizon,
14 Sprint/Nextel, and Time Warner Telecom. Each of these customers meets a reasonable
15 definition of the term "large," yet Mr. Dickens, Mr. Kahan, and Dr. Aron all assert that
16 BellSouth is not serving (or at least not attempting to serve) any large business customers
17 in competition with AT&T.

18
19 Q. MR. RICE PROCLAIMS THAT THE PROPOSED MERGER WILL CREATE AN
20 INCENTIVE FOR A COMBINED SBC/AT&T/BELLSOUTH TO INVEST IN NEW

1 TECHNOLOGY AND TO OFFER NEW SERVICES. IS THE HISTORY OF THE
2 INDUSTRY CONSISTENT WITH MR. RICE’S ENTHUSIASM?

3 A. Unfortunately, no. Clearly Mr. Rice is genuinely excited about a number of possibilities
4 for network integration and enhancement that could occur shortly after the completion of
5 the proposed merger. My problem is with his further conclusion (p. 9) that “the merger
6 will allow the combined company to increase the pace of innovation, roll out new
7 services more quickly, and offer those services to a broader range of customers.
8 Moreover, the combined company will have a greater incentive to invest in new products
9 and services than would either company alone.”⁶ While the short-term integration and
10 enhancement that he describes may well occur, Mr. Rice’s projection of the future is
11 directly at odds with the historic behavior of firms with significant market power as
12 described in Dr. Aron’s testimony.

13 As Dr. Aron explains (p. 15), “since the post-depression period, incumbent
14 telephone companies enjoyed the luxury of steady increases, virtually year after year, in
15 demand for their services ... upon the opening of telecommunications markets to
16 competition in the wake of the 1996 Telecommunications Act, and as a result of the
17 dramatic technological developments since that time, however, competition began to
18 threaten that relatively constant demand growth.” In other words, during six decades of

⁶ Mr. Rice reaches similar conclusions at pp. 1, 12-13 of his testimony.

1 monopoly operation the ILECs had the “luxury” of being able to essentially “freeze” the
2 industry; with no competitive threat they had no incentive to make substantial
3 investments in any fundamentally new technology or to replace their obsolete network.
4 Dr. Aron’s “dramatic technological developments” occurred once the ILECs’ markets
5 were (at least in theory) opened to competition, creating a real incentive for the
6 deployment of new technology and for investment in new technology. It is likely that the
7 consolidation of market power post-merger would be the beginning of the end for the
8 current era of technological development and deployment, and the beginning a new
9 period of “stability” consistent with the period of time described by Dr. Aron in which
10 ILECs enjoyed the luxury of constant or increasing demand for existing service offerings.

11
12 Q. MR. RICE DESCRIBES SEVERAL EXAMPLES OF THE EFFECTS OF NETWORK
13 INTEGRATION. HOW SHOULD THE TRA CONSIDER THESE EFFECTS?

14 A. Mr. Rice focuses exclusively on the short-term, engineering implications of this kind of
15 integration, but these are certainly not the only consequences. He describes the new
16 capabilities of a combined SBC/AT&T/BellSouth with an integrated IP-based network.
17 What he does not address, and what Dr. Aron glosses over in her testimony, is the fact
18 that no other carrier will be in a position even remotely similar: the combined
19 SBC/AT&T/BellSouth will control the largest IP network (and absent net neutrality, will
20 control the content), the second largest wireless company, and will have by far the largest

1 ILEC footprint in the country. Dr. Aron asserts that the proposed merger will increase
2 the ability of SBC/AT&T and BellSouth to compete. In a sense, her assertion is literally
3 true the combined entity will enjoy significantly more market power than either of the
4 pre-merger companies or any other competitor. I strenuously disagree, however, with Dr.
5 Aron's implicit assumption that such an increase in market power (or alternatively the
6 euphemism BellSouth's "ability to compete") is a positive development for the people of
7 Tennessee over anything other than the most short run horizon.

8
9 Q. AT P. 4, MR. RICE DESCRIBES THE IMPACT OF THE PROPOSED MERGER ON
10 THE INTERCONNECTION OF IP NETWORKS. DO HIS OBSERVATIONS
11 SUPPORT THE ADOPTION OF MERGER CONDITIONS RELATED TO THESE
12 "PEERING" ARRANGEMENTS?

13 A. Yes. Mr. Rice claims that the integration of BellSouth's network with SBC/AT&T's
14 "backbone" network will result in economies of scale (that is, a cost advantage by both
15 SBC/AT&T and BellSouth) and will increase service quality (as the combined company
16 is better able to control the quality of transmission across its integrated networks). Of
17 course, no other carrier will be able to match this level of control. As a result, it is
18 essential that standards for the interconnection of IP networks be adopted.


19 The Telecommunications Act of 1996 mandated the interconnection of networks
20 and was technology neutral in this mandate. The intent was to allow customers of one

1 carrier to communicate with customers (residential and business customers alike) of
2 another carrier regardless of the technology of the network. While “interconnection” has
3 been implemented between carriers for circuit-based networks, interconnection or
4 “peering” needs to be mandated for IP networks. It is my understanding that the TRA
5 does have the authority to assert jurisdiction over interconnection matters. Because of the
6 importance of this issue, I strongly urge – in addition to the two merger conditions I
7 detailed in my direct testimony – that the TRA order a post-merger
8 SBC/AT&T/BellSouth, along with all other carriers, must interconnect their networks at
9 just and reasonable rates and at any technically feasible point. Exhibit DJW-3 to my
10 testimony is a draft version of a proposed peering agreement that could be used by
11 carriers as a starting point for negotiations to implement the TRA’s Order.

12
13 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

14 A. Yes.

Exhibit DJW-2



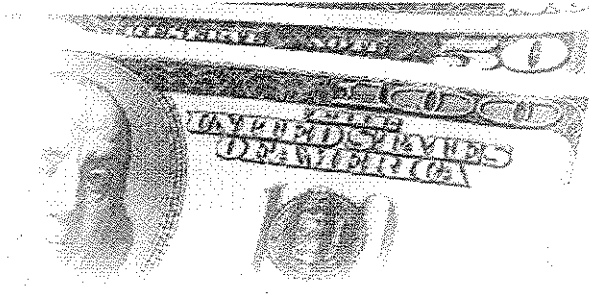
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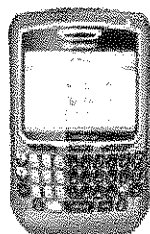
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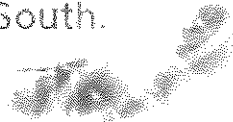

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Exhibit DJW-3

Proposed Peering Agreement

The Parties agree to interconnect or “peer” their respective IP networks on the following terms and conditions:

1. Interconnection

A. The Parties shall agree and from time to time update, modify and further agree, in writing or by exchange of emails between designated representatives, how to interconnect their packet-based networks, including:

- Which packet-based networks (identified by autonomous system numbers for Layer 3 traditional traffic – further known as “IP Peering”) and/or traffic type (e.g., Application Services, Layer 2 Ethernet, Layer 3 Inter-AS for VPN exchange).
- The number, types, locations, bandwidths, and implementation dates of interconnection points
- Performance objectives for cost-effective, quality service for application based services exchanged between networks.
- 24x7 Inter-NOC operating procedures, including procedures for trouble tickets, scheduled and unscheduled maintenance, security issues, and escalation
- Traffic restrictions (e.g., third party routes and routes of last resort on IP Peering traffic)
- Procedures and terms for access to data for operational monitoring and problem diagnosis
- For direct interconnections, if any, which party will be responsible for providing which circuits

B. Each Party agrees not to restrict traffic flowing through the interconnection points based on the subject matter of the traffic unless permitted to do so by either party’s Acceptable Use Policy (which must be visible on each respective parties’ company website) or required to do so by court order or applicable law.

C. Each Party may collect data and create statistics associated with traffic moving through its own network and through the interconnection points. Each Party shall keep all data and statistics concerning the interconnection points confidential. In addition or as otherwise expressly agreed, statistics itemized by the following criteria may not be provided to third parties: service provider, company or other entity, telephone number, MAC address, and/or IP address.

D. Each Party is responsible to its own Intermediate Providers and/or End Users not desiring public Internet access for preventing transmission of their traffic through the interconnection points. Each Party may impose usage

restrictions on its own customers and assist its customers in imposing usage restrictions for the benefit of the requesting customers. Each Party may provide its customers with their own data and statistics.

2. Affiliates

The IP networks interconnected under this Agreement may include networks of the Parties' respective Affiliates. Each Party agrees that each such Affiliate shall be bound by all of the terms and conditions of the Agreement.

3. Financial Matters

3.1. Except as set forth in Section 3.2 below, each Party shall bear its own costs and expenses incurred in connection with this Agreement, without limitation:

- a. Neither Party will owe settlement or other charges of any kind to the other, except where charges of reciprocal compensation are agreed upon for the exchange of Application Services traffic or through previously agreed terms for delivery of Ethernet-based services.
- b. For direct interconnections, each Party shall provide, at its own expense, the Interconnection, to each Party's demarcation point, circuits for which it agrees to assume responsibility. The demarcation point shall be mutually agreed upon by the Parties and subject to availability of the service components required, and subject to the operational and system constraints.
- c. For interconnection at third party facilities, to assist in delivering connectivity to a Party's demarcation point, each Party shall provide, at its own expense, a connection from its packet-based network to the third party facilities.

Exhibit A – IP Peering Requirements

If the Parties peer their domestic IP Backbone Networks, the Parties will exchange information that shows each Party meets the following criteria:

- * Possess a USA-wide IP backbone whose links are primarily OC48 and OC192 (or larger)
- * Have an ability to interconnect networks at a minimum of three mutually agreeable geographically diverse points including one on the USA east coast and one on the USA west coast.
- * Each Party must have a professionally managed, 24x7 NOC, and agree to fix any problems within a reasonable timeframe. Each Party must also agree to actively cooperate to resolve security incidents, denial of service attacks, and other operational problems.
- * OC3 minimum access to each USA interconnection point.
- * Balanced traffic ratio between the networks (no more than 2.5:1.0 ratio of traffic flowing in either direction)
 - * Balanced time of day traffic distribution currently as measured by peak to average traffic levels.
- * Minimum 300 Mbps of peering traffic traveling between the respective networks.

In addition the following criteria are applied:

- * The first two points (east/west) implemented within 60 days of signed agreement
- * Third point to be implemented within 60 days of first implementation
- * The Party will use the same peering AS at each USA interconnection point, and advertise a consistent set of routes at each point. No transit or third party routes are to be announced. All routes exchanged must be the Party's routes and the Party's filter will route announcements from their customers by prefix. Neither Party shall abuse the peering relationship by any of the non-exhaustive list of actions following, such as: pointing a default route at the other or otherwise forwarding traffic for destinations not explicitly advertised, resetting next-hop, selling or giving next-hop to others.

In addition:

- * Loose-source trace routing must be supported on all border routers.

Both Parties agree to meet periodically (no more than 6 months between meetings) to ensure the existing peering relationship is mutually beneficial to each network.

Both Parties agree to maintain continued financial stability as a requirement to maintaining this peering arrangement.

Exhibit B – Application Services Peering Requirements

- Each Party agrees to meet the SLA requirements for Quality of Service parameters as outlined below:
 - Network Availability: 99.999%, Latency 50ms or less, Avg Packet Delivery 99.99%, Jitter <5ms

- Exhibit C – Layer 2 Ethernet Peering Requirements
- Each Party agrees to meet the SLA requirements for Quality of Service parameters as outlined below:
 - Priority 1: Network Availability: 99.999%, Latency 50ms or less, Avg Packet Delivery 99.9%, Jitter <5ms
 - Priority 2: Network Availability: 99.99%, Latency 50ms or less, Avg Packet Delivery 99.7%, Jitter <10ms
 - Priority 3: Network Availability: 99.99%, Latency 50ms or less, Avg Packet Delivery 99.7%, Jitter n/a
 - Priority 4: Network Availability: 99.99%, Latency 50ms or less, Avg Packet Delivery 99.5%, Jitter n/a

Exhibit D – Layer 3 Inter-AS VPN Peering Requirements

- Each Party agrees to meet the SLA requirements for Quality of Service parameters as outlined below:
 - Priority 1: Network Availability: 99.999%, Latency 50ms or less, Avg Packet Delivery 99.9%, Jitter <5ms
 - Priority 2: Network Availability: 99.99%, Latency 50ms or less, Avg Packet Delivery 99.7%, Jitter <10ms
 - Priority 3: Network Availability: 99.99%, Latency 50ms or less, Avg Packet Delivery 99.7%, Jitter n/a
 - Priority 4: Network Availability: 99.99%, Latency 50ms or less, Avg Packet Delivery 99.5%, Jitter n/a