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VIA HAND DELIVERY

Filed Electronically in Docket Office on 06/15/06 @ 3:46pm

Hon. Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Joint Filing 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

Dear Chairman Jones:

Enclosed are the original and four paper copies of Rebuttal Testimony on behalf of BellSouth and AT&T from the following witnesses:

Marty G. Dickens
James S. Kahan
Debra J. Aron, Ph.D. (Public Version)

Pages 6, 7 and 8 of Dr. Aron's Rebuttal Testimony contains highly confidential information. A proprietary version of this testimony will be provided to the Authority under separate cover, subject to the Protective Order entered in this proceeding.

A copy is being provided to counsel of record.

Very truly yours,

Guy M. Hicks
BellSouth

Jack W. Robinson, Jr.
For AT&T

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2006, a copy of the foregoing document was served on the following, via the method indicated:

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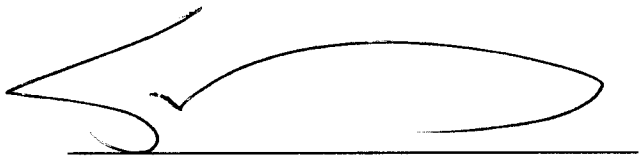

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BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

Joint Filing 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 DEBRA J. ARON ON BEHALF OF AT&T INC. AND BELLSOUTH CORPORATION

JUNE 15, 2006

PUBLIC VERSION

Cautionary Language Concerning Forward-Looking Statements

We have included or incorporated by reference in this document financial estimates and other forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These estimates and statements are subject to risks and uncertainties, and actual results might differ materially from these estimates and statements. Such estimates and statements include, but are not limited to, statements about the benefits of the merger, including future financial and operating results, the combined company ' s plans, objectives, expectations and intentions, and other statements that are not historical facts. Such statements are based upon the current beliefs and expectations of the management of AT&T Inc. and BellSouth Corporation and are subject to significant risks and uncertainties and outside of our control.

Readers are cautioned that the following important factors, in addition to those discussed in this statement and elsewhere in the proxy statement/prospectus to be filed by AT&T with the SEC, and in the documents incorporated by reference in such proxy statement/prospectus, could affect the future results of AT&T and BellSouth or the prospects for the merger: (1) the ability to obtain governmental approvals of the merger on the proposed terms and schedule; (2) the failure of BellSouth shareholders to approve the merger; (3) the risks that the businesses of AT&T and BellSouth will not be integrated successfully; (4) the risks that the cost savings and any other synergies from the merger may not be fully realized or may take longer to realize than expected; (5) disruption from the merger making it more difficult to maintain relationships with customers, employees or suppliers; (6) competition and its effect on pricing, costs, spending, third-party relationships and revenues; (7) the risk that any savings and other synergies relating to the resulting sole ownership of Cingular Wireless LLC may not be fully realized or may take longer to realize than expected; (8) final outcomes of various state and federal regulatory proceedings and changes in existing state, federal or foreign laws and regulations and/or enactment of additional regulatory laws and regulations; (9) risks inherent in international operations, including exposure to fluctuations in foreign currency exchange rates and political risk; (10) the impact of new technologies; (11) changes in general economic and market conditions; and (12) changes in the regulatory environment in which AT&T and BellSouth operate. Additional factors that may affect future results are contained in AT&T ' s, BellSouth's, and Cingular Wireless LLC ' s filings with the Securities and Exchange Commission (" SEC "), which are available at the SEC ' s website (http://www.sec.gov).Neither AT&T nor BellSouth is under any obligation, and expressly disclaim any obligation, to update, alter or otherwise revise any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future events or otherwise.

This document may contain certain non-GAAP financial measures. Reconciliations between the non-GAAP financial measures and the GAAP financial measures are available on the company's website at www.sbc.com/investor_relations.

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REBUTTAL TESTIMONY OF DR. DEBRA J. ARON

I. INTRODUCTION AND PURPOSE

Q.1 PLEASE STATE YOUR NAME AND POSITION.

A.1 My name is Debra J. Aron. I am the Director of the Evanston offices of LECG, LLC, ("LECG") and Adjunct Associate Professor at Northwestern University.

Q.2 ARE YOU THE SAME DEBRA J. ARON THAT SUBMITTED DIRECT TESTIMONY ON BEHALF OF AT&T INC. AND BELLSOUTH CORPORATION IN THIS PROCEEDING?

A.2 Yes.

Q.3 PLEASE DESCRIBE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.

A.3 The purpose of this testimony is to respond to the direct testimonies of Mr. Don Wood, on behalf of Time Warner Telecom of the Mid-South ("TWTC"), Mr. Joseph Gillan, on behalf of NuVox Communications et. al., and Ms. Debbie Goldman, on behalf of Communications Workers of America ("CWA").

Q.4 WHAT ARE YOUR MAJOR CONCLUSIONS?

A.4 My major conclusions are as follows.

- The testimony of the intervenors is notable for its lack of evidentiary support or basis for the opinions offered and remedies sought. Specifically:
- Mr. Wood claims that the proposed merger will result in harm to competition for Type I special access services but provides no factual support for his position. In Section II, I explain why the data available in discovery in this case demonstrate that the possibility of competitive harm for Type I special access services in Tennessee is very limited if it exists at all, and does not warrant the sweeping conditions proposed by Mr. Wood.
- Mr. Gillan claims that the proposed merger will result in harm to competition for multi-location businesses. Mr. Gillan provides no relevant information or analysis to assist the Tennessee Regulatory Authority (TRA) in understanding if such harm is likely. In fact, economists and regulatory bodies have repeatedly concluded that competition for multi-location businesses is robust, and I explain why this will not change with the proposed merger. In Section III, I respond to Mr. Gillan.
- Mr. Wood, Mr. Gillan and Ms. Goldman recommend that the TRA impose numerous conditions on the proposed merger. It is a fundamental principle of merger analysis, as well as sound public policy in general, that if conditions are to be imposed on a merger, they should be designed only to remedy a demonstrated harm directly caused by the merger. They should not be fashioned to address pre-existing grievances that are not caused by the merger. Since there is no showing of harm to competition, there is no appropriate basis for any conditions. I respond to the proposed conditions in Section IV.

I also note here that my explanation in my direct testimony as to why this merger will have no adverse effect on competition for mass market customers was not contradicted by any intervenor testimony.

II. RESPONSE TO MR. WOOD

Q.5 PLEASE SUMMARIZE MR. WOOD'S POSITION REGARDING HARM TO COMPETITION OF THE PROPOSED MERGER.

A.5 Mr. Wood's testimony focuses on the market for Type I special access services, which is a dedicated transmission link between two locations, usually over a high capacity circuit, and offered wholly over a carrier's own facilities. Mr. Wood states that the proposed merger would eliminate AT&T as a significant actual and potential competitor for Type I special access services, which would result in "substantial harm to consumer welfare."[1] He notes that in the SBC/AT&T merger, the Department of Justice (DOJ) and Federal Communications Commission (FCC) relied on a building by building analysis to determine if the SBC/AT&T merger would result in harm to competition in the market for Type I special access services and states that such an analysis is necessary in this merger proceeding.[2]

Q.6 DID MR. WOOD CONDUCT A BUILDING BY BUILDING ANALYSIS OF THE AVAILABILITY OF COMPETITIVE SPECIAL ACCESS SERVICES OR THE OVERLAP OF BELLSOUTH'S AND AT&T'S SPECIAL ACCESS FACILITIES?

A.6 No. Although Time Warner Telecom and other CLECs obtained information in discovery regarding the scope of AT&T's special access facilities in Tennessee, Mr.

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[1] Direct Testimony of Don J. Wood on Behalf of Time Warner Telecom of the Mid-South, LLC, *In Re: Joint Application of AT&T Inc. and Bell South Corporation Together with Its Certificated Tennessee Subsidiaries, Regarding Change of Control of the Operating Authority of BellSouth Corporation's Tennessee Subsidiaries*, Before the Tennessee Regulatory Authority, Docket No. 06-00093, June 2, 2006, (hereafter "*Wood Direct*"), p. 8.

Wood made no attempt to offer any analysis to the TRA, and he chose to ignore information filed in the merger proceeding at the FCC with regard to this issue.

Q.7 WOULD YOU PLEASE EXPLAIN THE PURPOSE AND METHODOLOGY OF THE BUILDING BY BUILDING ANALYSIS OF TYPE I SPECIAL ACCESS SERVICES?

A.7 Yes. In the SBC/AT&T merger proceeding, the FCC and DOJ undertook building by building analyses.[3] The methodologies used by the agencies were consistent, and the FCC determined that the terms of the DOJ consent decree with regard to Type I special access would adequately remedy any likely anticompetitive effects in the provision of this service. The agencies' analysis is described below.

The agencies determined that because Type I special access connects two points, and a customer at one location cannot substitute services available at another location, each customer location of Type I special access constituted a separate geographic market.[4] They determined that there could be harm to competition as a result of the merger only if AT&T were the only competitive provider (that is, the only provider in addition to SBC) of the connection to a given building (the "last-mile" component of special access service). In buildings where SBC had facilities but AT&T did not, or where AT&T had facilities but SBC did not, the merger of SBC and AT&T could have no competitive impact because the merger would result in no decrease in competition. In

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[2] *Wood Direct*, p. 7.

buildings where both had facilities but other competitors also had facilities, the agencies concluded that the merger would not result in significant harm to competition because, although the merger would reduce the number of providers to that building, there would remain sufficient competitive alternatives to preserve consumer welfare.[5]

To determine where the merging firms were the only carriers with a last-mile connection, the DOJ requested and received lists of on-net buildings (in SBC's incumbent region) from AT&T and more than 30 CLECs.[6] This enabled the DOJ to isolate buildings in which only AT&T and SBC provided Type I service (called "2-to-1" buildings, referring to the number of carriers serving the building before and after the merger).

The DOJ then assessed the likelihood of competitive harm at "2-to-1" buildings. It determined that there was no competitive harm at vacant buildings, buildings where a subsidiary of the merging firms was the only customer and buildings with zero current demand for local private lines or related services. Recognizing that entry could occur at some locations in response to a price increase, the DOJ analyzed the likelihood of entry at each of the remaining buildings. Two primary factors used in making this determination were distance to the nearest competitive fiber, and the level of demand at each of the buildings. Buildings for which entry was determined to be likely in response to a post-

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3 Memorandum Opinion and Order, *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control,* Before the Federal Communications Commission, WC Docket No. 05-65, FCC 05-183, Released November 17, 2005, (hereafter "*FCC SBC/AT&T Merger Order*"), ¶40.

4 *FCC SBC/AT&T Merger Order*, ¶28.

5 Plaintiff United States' Response to Public Comments, *U.S. v. SBC Communications, Inc. and AT&T Corp.*, Civil Action No.: 1:05CV02102 (EGS), *U.S. v. Verizon Communications Inc. and MCI, Inc.*, Civil Action No.: 1:05CV02103 (EGS), In the United States District Court (D.C.), March 21, 2006, p. 4.

merger price increase were not considered to be subject to competitive harm.[7] When it completed the analysis, the DOJ determined that there were hundreds of buildings in the SBC service area in which there would be a substantial lessening of competition due to the merger. The remedy was the required divestiture by SBC/AT&T of IRU assets for last-mile connections to these buildings.[8]

Q.8 IS THERE INFORMATION ABOUT POTENTIAL COMPETITIVE HARM IN TYPE I SPECIAL ACCESS SERVICES IN THE PROPOSED AT&T/BELLSOUTH MERGER FOR THE STATE OF TENNESSEE?

A.8 Yes. AT&T provides Type I service using its local fiber networks in three Metropolitan Statistical Areas ("MSAs") in Tennessee – Chattanooga, Knoxville and Nashville.[9] Information provided in response to Time Warner and US LEC data requests shows that in Chattanooga and Knoxville, AT&T's local fiber network is connected to only ** AT&T HIGHLY CONFIDENTIAL [redacted] AT&T HIGHLY CONFIDENTIAL** buildings

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6 Plaintiff United States' Response to Public Comments, *U.S. v. SBC Communications, Inc. and AT&T Corp.*, Civil Action No.: 1:05CV02102 (EGS), *U.S. v. Verizon Communications Inc. and MCI, Inc.*, Civil Action No.: 1:05CV02103 (EGS), In the United States District Court (D.C.), March 21, 2006, p. 23.

7 Plaintiff United States' Response to Public Comments, *U.S. v. SBC Communications, Inc. and AT&T Corp.*, Civil Action No.: 1:05CV02102 (EGS), *U.S. v. Verizon Communications Inc. and MCI, Inc.*, Civil Action No.: 1:05CV02103 (EGS), In the United States District Court (D.C.), March 21, 2006, p. 21.

8 Final Judgment, *U.S. v. SBC Communications, Inc. and AT&T Corp.*, In the United States District Court (D.C.), Civil Action No.1:05CV02102 (EGS), April 5, 2006, Appendix A. An IRU (Indefeasible Right to Use) is the right to exclusive use of specified capacity on a specific network facility, usually for the useful life of the facility.

9 Declaration of Dennis W. Carlton and Hal S. Sider, *Merger of AT&T Inc and BellSouth Corporation: Description of Transaction, Public Interest Showing and Related Demonstrations*, Before the Federal Communications Commission, WC Docket No. 06-74, March 31, 2006, (hereafter "*Carlton/Sider Declaration*"), p. 43, and Footnote 118, p. 41. AT&T does not have a local fiber network in Memphis. The only fiber facility is **AT&T HIGHLY CONFIDENTIAL [redacted] AT&T HIGHLY CONFIDENTIAL** "rifle shot" connection between an AT&T POP and a BellSouth central office located in the same building. This arrangement only supports long distance services; it does not allow AT&T to provide local services to the

in each.[10] In each of these MSAs, **AT&T HIGHLY CONFIDENTIAL [redacted] AT&T HIGHLY CONFIDENTIAL** buildings represent less than one-half of one percent of the estimated number of buildings that could have sufficient demand to warrant special access services.[11] The data request response also shows that AT&T's fiber network connects to only **AT&T HIGHLY CONFIDENTIAL [redacted] AT&T HIGHLY CONFIDENTIAL** buildings in the Nashville MSA,[12] which is also less than one-half of one percent of the estimated buildings that could have sufficient demand to warrant special access services in Nashville.[13] Moreover, the number of AT&T served buildings in each of these metropolitan areas undoubtedly overstates the potential number of buildings in which the merger could result in a lessening of competition because it does not take into account the availability of competitive fiber provided to the same buildings by other CLECs, nor buildings excluded by the other DOJ criteria such as vacant buildings, buildings in which only an AT&T affiliate resides and buildings the DOJ determines that one or more CLECs could economically serve based on building demand and the distance to known CLEC fiber. When these unaffected buildings are excluded, it could be that no buildings will experience a lessening of competition due to the proposed merger. I understand that Drs. Dennis Carlton and Hal Sider are conducting a building by

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customer and does not extend to any customer locations. See AT&T Highly Confidential response to Data Requests TW-DR23-HC000001 and TW DR25-HC-000001.

10 AT&T Highly Confidential response to Data Request TW-DR23-HC000001.

11 The number of buildings that have sufficient demand to warrant special access service is estimated to be those buildings that have more than ten voice grade equivalent lines. This estimate is based on information from Dunn & Bradstreet. The number of buildings in Chattanooga is **AT&T CONFIDENTIAL [redacted] AT&T CONFIDENTIAL**, in Knoxville is **AT&T CONFIDENTIAL [redacted] AT&T CONFIDENTIAL**, and in Nashville is **AT&T CONFIDENTIAL [redacted] AT&T CONFIDENTIAL**.

12 AT&T Highly Confidential response to Time Warner Telecom and US LEC Data Request TW-DR23-HC000001.

13 *Carlton/Sider Declaration*, Footnote 127, p. 46.

building analysis using the DOJ criteria in each MSA in BellSouth's region in which AT&T has local fiber, including the three MSAs in Tennessee, and that additional information regarding this analysis will be available when their declaration is filed at the FCC on June 20, 2006.

Q.9 WHAT DO YOU CONCLUDE FROM THE EVIDENCE AVAILABLE FROM DISCOVERY IN THIS CASE?

A.9 Given the de minimis number of buildings in Tennessee facing a possible reduction in Type I special access service, I conclude that there is no justification for the expansive merger conditions proposed by Mr. Wood.

Q.10 MR. WOOD ASSERTS THAT THE PROPOSED MERGER WILL RESULT IN HARM TO COMPETITION IN THE PROVISION OF SPECIAL ACCESS SERVICES BECAUSE SBC/AT&T IS THE BEST POSITIONED COMPETITOR TO EXPAND IN BELLSOUTH'S REGION.[14] WOULD YOU COMMENT ON THIS?

A.10 In asserting that SBC/AT&T is the competitor best positioned to expand special access service offerings in BellSouth's territory, Mr. Wood overlooks the facts. First, there are many CLECs already offering special access services to businesses in cities throughout Tennessee. In fact, at least **AT&T HIGHLY CONFIDENTIAL ■ AT&T HIGHLY CONFIDENTIAL** CLECs provide special access service to AT&T itself in

[14] *Wood Direct*, p. 9.

Tennessee.[15] Moreover, at least two of these CLECs are continuing to add buildings to their networks. Time Warner Telecom, for example, added over 900 buildings (representing an 18 percent increase) to its network in 2005.[16] Similarly TelCove's on-net buildings increased by more than 20 percent in 2005.[17] By their actions, these CLECs are demonstrating their ability to expand in BellSouth's region. Second, information on the record at the FCC in this merger proceeding indicates that AT&T does not have the largest competitive local fiber network in any of the Tennessee metropolitan areas. Carlton and Sider report that in Knoxville and Nashville, at least one CLEC has more metropolitan fiber than AT&T and in Chattanooga, at least two CLECs have more fiber than AT&T.[18] Contrary to Mr. Wood's assertion, the evidence indicates that a number of CLECs are better positioned than AT&T to expand in BellSouth's region.

[15] AT&T Highly Confidential response to Data Request TW-DR26-HC000001.
[16] Time Warner Telecom 2005 Annual Report, p. 3.
[17] "TelCove 'Building On Net' Jump By More Than 20% In 2005," TelCove Press Release, March 23, 2006.
[18] *Carlton/Sider Declaration*, ¶106.

III. RESPONSE TO MR. GILLAN

Q.11 MR. GILLAN CLAIMS THAT THE PROPOSED MERGER WILL CAUSE HARM TO COMPETITION FOR LARGE (MULTI-LOCATION) BUSINESSES.[19] WHAT IS THE BASIS FOR HIS CLAIM?

A.11 Mr. Gillan provides none. He makes this claim without offering any analysis of competition in this market.

Q.12 HAS THE FCC CONDUCTED AN ANALYSIS OF COMPETITION FOR MULTI-LOCATION BUSINESSES?

A.12 Yes. In the SBC/AT&T merger, the FCC assessed competition for multi-location business customers from the perspective of the availability of suppliers, the nature of transactions, and customer demand. It concluded that although SBC and AT&T both competed for a range of business customers,[20] and despite a high level of market concentration using traditional (backward looking) market share metrics,[21] the SBC/AT&T merger was not likely to result in anticompetitive effects for multi-location enterprise customers for a number of reasons. First, the FCC found that for business customers with locations largely within SBC's region, there were many providers of

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[19] Direct 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., *In Re: Joint Application of AT&T Inc. and Bell South Corporation Together with Its Certificated Tennessee Subsidiaries, Regarding Change of Control of the Operating Authority of BellSouth Corporation's Tennessee Subsidiaries*, Before the Tennessee Regulatory Authority, Docket No. 06-00093, June 5, 2006, (hereafter "*Gillan Direct*"), pp. 11-12.

[20] *FCC SBC/AT&T Merger Order*, ¶68.

[21] *FCC SBC/AT&T Merger Order*, ¶70.

telecommunication services, including CLECs, interexchange carriers, other incumbent LECs, systems integrators and equipment vendors,[22] that would continue to compete in this market. Second, with respect to medium and large businesses with national multi-location operations, the FCC found that although there are fewer competitive options, the merger would nonetheless not harm competition. This is because, first, "SBC's pre-merger presence in this market is nascent, and thus, the post-merger market will have virtually as many competitors as before,"[23] and second, "systems integrators and the use of emerging technologies are likely to make this market more competitive, and ... this trend is likely to continue in the future."[24]

Third, the FCC found that medium and large business customers are sophisticated, high-volume purchasers of communications services that "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 they show that these users are likely to make informed choices based on expert advice about service offerings and prices."[25]

Finally, the FCC observed that by bringing a "true end-to-end solution" to these large business customers, the merger could enhance competition.[26]

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22 *FCC SBC/AT&T Merger Order*, ¶64 and 73.
23 *FCC SBC/AT&T Merger Order*, ¶ 74 (footnotes omitted).
24 *FCC SBC/AT&T Merger Order*, ¶74 (footnotes omitted).
25 *FCC SBC/AT&T Merger Order*, ¶75 (footnotes omitted). The FCC's conclusion applies to medium and large businesses located solely within SBC's service area as well as businesses with locations both inside and outside of SBC's region.

Q.13 MR. GILLAN FOCUSES A GREAT DEAL OF ATTENTION ON THE SBC/AMERITECH MERGER IN 1999. DOES THE FCC'S ORDER IN THAT MERGER SUPPORT HIS POSITION REGARDING COMPETITION IN THE BUSINESS MARKET?

A.13 No, it does not. The FCC had already concluded in 1999, in the SBC/Ameritech merger upon which Mr. Gillan places so much emphasis, that that merger would likely not harm competition for larger (by which it meant not "mass market") business customers.[27] Even in 1999, the FCC recognized that a variety of providers compete in the marketplace for these customers, and that these customers are sophisticated and knowledgeable purchasers of telecommunications services.[28] The FCC's concerns in the 1999 SBC/Ameritech merger pertained only to the mass market,[29] a concern that has not been raised by any of the intervenors in this case, as I indicated earlier, and in any event, in 1999, competition in the marketplace for mass market services was vastly less diverse and robust than it is today. In its 1999 Merger Order, the FCC never even mentions, for example, cable or VoIP as potential competition, let alone wireless.

Q.14 IS THERE EVIDENCE THAT THE FINDINGS OF THE FCC IN THE SBC/AT&T AND THE SBC/AMERITECH MERGERS REGARDING

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[26] *FCC SBC/AT&T Merger Order*, ¶74.

[27] Memorandum Opinion and Order, *In re Applications of AMERITECH CORP., Transferor, AND SBC COMMUNICATIONS INC., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Before the Federal Communications Commission, CC Docket No. 98-141, Released October 8, 1999, (hereafter "*FCC SBC/Ameritech Merger Order*"), ¶ 93.

[28] *FCC SBC/Ameritech Merger Order*, ¶91.

[29] *FCC SBC/Ameritech Merger Order*, ¶91.

COMPETITION FOR BUSINESS CUSTOMERS ARE APPLICABLE TO TENNESSEE IN THE PROPOSED AT&T/BELLSOUTH MERGER?

A.14 Yes. As I explained in my direct testimony, there are many carriers, including Time Warner Telecom, XO Communications, Xspedius Communications, NuVox Communications, TelCove, US LEC, DeltaCom, and Covad, who serve business customers in Tennessee with network facilities in the state and extending to the east/southeast region or across the country.[30] In addition, there is evidence that the Verizon-MCI merger is intensifying competition for business customers. Verizon recently reported that it is ahead of schedule in integrating the Verizon and MCI systems and migrating network traffic; that it launched a new product suite that integrates wireline and wireless services; and that it is adding substantial new business customers and completing new contracts with existing customers.[31]

[30] Direct Testimony of Debra J. Aron on Behalf of AT&T Inc., and BellSouth Corporation, *In Re: Joint Application of AT&T Inc. and Bell South Corporation Together with Its Certificated Tennessee Subsidiaries, Regarding Change of Control of the Operating Authority of BellSouth Corporation's Tennessee Subsidiaries*, Before the Tennessee Regulatory Authority, Docket No. 06-00093, June 2, 2006, (hereafter "*Aron Direct*"), pp. 35 – 36.

[31] "Verizon Reports Strong First-Quarter 2006 Results," Verizon News Release, May 2, 2006.

Q.15 MR. GILLAN ALSO CLAIMS THAT THE MERGER OF AT&T AND BELLSOUTH WILL RESULT IN A DISPARITY OF RESOURCES IN THE REGULATORY ARENA, TO THE DETRIMENT OF SMALLER COMPETITORS. PLEASE COMMENT.

A.15 Mr. Gillan states: "The AT&T acquisition not only creates a massively larger incumbent, but it also ends any hope that AT&T will again champion pro-entry policies."[32] This concern lacks, however, any meaningful connection between this merger and the purported harm. To the extent that AT&T's priorities in regulatory advocacy regarding entry policy have changed, they presumably changed when AT&T decided to cease marketing to the mass market, and certainly upon SBC's acquisition of AT&T. There is no apparent nexus between *this* merger and a change in regulatory priorities for AT&T. Hence, to the extent this argument would have any merit, it would have been in the previous merger, not this one. Yet the FCC flatly rejected the same argument when it was made in the SBC/AT&T merger investigation:

> We disagree with commenters that the loss of AT&T as an advocate for competitive LEC viewpoints in state and federal regulatory proceedings justifies our designating this merger for hearing. As the Applicants point out, there will continue to be numerous competing carriers, trade associations, and other interested parties that remain free to express their positions in regulatory proceedings. Indeed, we note that dozens of commenters participated in the present proceeding, representing a variety of viewpoints. Thus, we do not find that the loss of AT&T as an advocate of competitive LEC interests will unduly weaken the ability of competitors to participate and express their views in Commission and state proceedings.[33]

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[32] *Gillan Direct*, p. 18.

[33] *FCC SBC/AT&T Merger Order*, ¶177 (footnotes omitted).

Q.16 MR. GILLAN PROVIDES A CHART (TABLE 3) THAT PURPORTS TO DEMONSTRATE THE "IMBALANCE" OF RESOURCES BETWEEN INCUMBENTS AND COMPETITORS WITH THE CONSUMMATION OF THE AT&T/BELLSOUTH MERGER. IS THIS A MEANINGFUL COMPARISON?

A.16 No, Mr. Gillan's Table 3 is not a meaningful comparison for several reasons. First, the purported imbalance exhibited in Table 3 is not affected by the merger. Mr. Gillan compares the revenues of all the large ILECs summed together on one side of the chart, with revenues of a selected list of competitors on the other side of the chart. If this chart is intended to demonstrate any effect of the merger on the purported resource imbalance, it fails to do so. Because BellSouth is an ILEC, the total revenue of the incumbents is not affected by AT&T's acquisition of BellSouth—that is, the sum of the revenues in the left column of Mr. Gillan's chart is unaffected by the merger of BellSouth and AT&T. Second, Mr. Gillan's list of competitors is notably incomplete. For example, it fails to include the cable companies, which are multi-billion dollar companies and the ILECs' largest retail competitors. It also fails to account for the resources of other interested parties, such as states' Attorneys General, consumer protection groups, and trade associations, which, as the FCC noted, are free to represent their viewpoints on policy matters.[34] Third, Mr. Gillan treats all incumbents as if they would monolithically bring their resources to bear in unison with AT&T on issues in Tennessee. In fact, in considering competition for business services in Tennessee, Verizon and Qwest are not incumbents, but competitors of BellSouth. In particular, through its acquisition of MCI,

[34] *FCC SBC/AT&T Merger Order*, ¶177.

Verizon is now a major competitor for business customers throughout the country, including in Tennessee.

Q.17 WILL THIS PROPOSED MERGER RESULT IN THE "VIRTUAL RECREATION OF THE BELL SYSTEM"[35] AS MR. GILLAN CLAIMS?

A.17 No. Mr. Gillan's comment harkens back to pre-1984 when AT&T was the monopoly provider of local exchange services and the dominant provider of long distance services. The competitive environment today in no way resembles that of 1984 and would not do so upon close of this merger. Consider that:

- In 1984, mobile wireless services were in their infancy. Cellular phones weighed two pounds, cost nearly $4,000, and had only a half hour of talk time. In 1984, there were fewer than 100,000 wireless subscribers, compared to over 200 million today and rapid displacement of wireline service for wireless.[36]

- Telecommunications competition was primarily exerted through Competitive Access Providers ("CAPs"), who provided high capacity access to long distance services to businesses.[37]

- The term "CLEC" had not even yet entered the standard industry lexicon.

- The Internet had only begun to carry its first commercial emails, and the Worldwide Web did not exist. It was not until a decade later, when Netscape introduced the Mosaic web browser, that broad commercial use of the Internet took hold. It was an additional several years before cable modem and DSL broadband services were introduced to the mass-market.[38]

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35 *Gillan Direct*, p. 3.

36 See "First Cell Phone A True 'Brick,'" *Associated Press*, April 11, 2005, *MSNBC.com*, downloaded June 13, 2006, from http://www.msnbc.msn.com/id/7432915/; See also "CTIA's Semi-Annual Wireless Industry Survey Results: January 2005 – December 2005" CTIA – The Wireless Association, 2006, downloaded June 13, 2006, from http://files.ctia.org/pdf/CTIAEndYear2005Survey.pdf.

37 Huber, Peter W., Michael K. Kellogg and John Thorne, *The Geodesic Network II: 1993 Report on Competition in the Telephone Industry*, (The Geodesic Company, Washington DC), p. 2.24.

38 See Robert H'obbes' Zakon, "Hobbes' Internet Timeline v8.0," downloaded May 26, 2005 from http://www.zakon.org/robert/internet/timeline/; See also Festa, Paul, "Netscape: Bowed but Not Broken," *CNETnews.com*, October 13, 2004, downloaded June 13, 2006 from http://news.com.com/2102-1032_3-

- The notion of telephone competition being provided by cable television providers was visionary and distant, at most, and not part of the industry view of potential competition, let alone actual competition.[39]

Today, mobile wireless and broadband technologies are a routine part of business operations and consumers' lives. The adoption of broadband technology has been dramatic, and since the initial rollout of cable modem broadband service in San Francisco in 1996, household adoption of broadband surpassed four percent nationwide in only four years.[40] In contrast, it took the refrigerator and the television 10 years to reach this threshold, and the personal computer took eight years to penetrate five percent of U.S. households.[41] Vonage, the largest independent VoIP provider today, is adding customers at the rate of 19,000 per week, putting Vonage on a pace of half a million new subscribers every six months.[42] Cable companies are also gaining telephony customers at a rapid rate. One analyst estimates that cable telephony subscribers are growing at a rate of more than 60 percent per year;[43] another estimates that 15 percent of primary household lines

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5406682.html?tag=st.util.print; See also "Cable Timeline," downloaded May 26, 2005 from http://www.cablecenter.org/history/timeline/decade.cfm?start=1995; and Jeff Pelline, "DSL: New kid on the block," *CNET News.com*, November 20, 1997, downloaded May 26 2005 from http://news.com.com/2009-1023-205586.html?tag=rn.

39 See for example, Andrew Pollack, "Bell Facing Fresh Challenges," *The New York Times*, August 28, 1981.

40 James Penhune and Michael Goodman, "Residential Broadband Reaches Critical Mass," The Yankee Group, January 18, 2000, and "Historical Income Tables - Households," U.S. Census Bureau, last revised August 27, 2004, downloaded January 25, 2005 from http://www.census.gov/hhes/income/histinc/h09ar.html.

41 Christophe Van den Bulte, "New Product Diffusion Acceleration: Measurement and Analysis," *Marketing Science*, vol. 19, no. 4 (Fall 2000).

42 *Aron Direct*, p. 25.

43 John C. Hodulik et al., "Wireline Postgame Analysis 13.0," UBS Global Equity Research, March 14, 2006, p. 4.

will be cable telephony by the end of 2010.[44] Furthermore, few observers in 1984 would have imagined that wireless subscription would grow to exceed the number of ILEC traditional landlines or that it would become so ubiquitous that laws would be passed that *constrain* its use.[45] The incredible rate of technological change coupled with rapid consumer adoption of intermodal communications services has transformed the telecommunications industry from a regulated monopoly to a highly diverse, highly dynamic industry. Moreover, the technological forces underlying the radical change in the industry over the last two decades is continuing unabated, which will intensify competition in the future. Under these conditions, it is impossible to return to a market that is even remotely like the pre-divestiture Bell System.

Q.18 WHAT IS THE CONCERN THAT MR. GILLAN RAISES REGARDING A LARGER FOOTPRINT?

A.18 Mr. Gillan believes that the proposed AT&T/BellSouth merger will result in a decline in competition for large businesses because the merged company will have a larger footprint, i.e., cover more states.[46] Mr. Gillan's belief is incorrect on two counts. First, as I explained previously, the merger will not harm competition for business customers.

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[44] Douglas S. Shapiro, David W. Barden, and Joseph Bender, "Battle for the Bundle: Mapping the Battlefield, Our First Report from the Front," *Banc of America Securities Equity Research*, June 14, 2005, p. 1.

[45] "New York hand-held cell phone bill signed into law," *CNN.com*, June 28, 2001, downloaded May 26, 2005 from www.cnn.com/2001/US/06/28/cellphones ("Saying communications technology poses risks as well as advantages, New York Gov. George Pataki signed a bill into law on Thursday banning the use of hand-held cellular phones while driving"); and Lisa Robinson, "Cell Phone Users: 21st Century Pariahs," *Reuters*, February 6, 2002 ("Proposals to restrict or ban the use of cell phones while driving were introduced in 'at least' 41 state governments this year, up from 27 in 2000 and 15 in 1999, said Matt Sundeen, senior policy analyst at the National Council of State Legislatures in Denver.") downloaded May 26, 2005 from www.usatoday.com.

[46] *Gillian Direct*, p. 9.

Second, however, and most fundamentally, the expansion of AT&T's footprint – and the hope and expectation that AT&T will be able to better serve large, multi-location business customers – is not a competitive harm from the merger, but rather it is a social welfare benefit resulting from the merger. It is fundamentally misguided as an economic matter to assert that the creation of a competitor that can operate more efficiently and/or better meet customers' needs amounts to harm to competition. Indeed, it may harm *competitors*, because any time a company can better serve customers' needs, its competitors face a greater burden to find ways to meet that challenge and compete more effectively. Sound antitrust and public policy principles, however, require promoting competition rather than protecting particular competitors, and imposing greater competitive challenges on competitors is not harm to competition, because it benefits customers. The FCC recognized precisely this benefit in the discussion I cited to earlier in which the FCC found that the AT&T/SBC merger may enhance competition for medium and large national customers by creating a company that can more efficiently and effectively serve their end-to-end needs.[47]

It is noteworthy that in its guidance on merger analysis, the DOJ explicitly recognizes the benefit of efficiencies resulting from mergers: "The vast majority of mergers pose no harm to consumers, and many produce efficiencies that benefit consumers in the form of lower prices, higher quality good or services, or investments in innovation."[48] Even when there are likely adverse competitive effects to a merger, the

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[47] *FCC SBC/AT&T Merger Order*, ¶74.

[48] U.S. Department of Justice and Federal Trade Commission, "Commentary on the Horizontal Merger Guidelines," March 2006, p. v, (hereafter "*Merger Guidelines Commentary*").

DOJ will not challenge a proposed merger if "cognizable efficiencies" would likely be sufficient to reverse the potential harm to competition.[49] Thus, the goal of antitrust considerations is not to handicap merging companies, but to permit the realization of efficiencies when it is likely that there is no competitive harm or when efficiencies would reverse the potential harm.

IV. THE PROPOSED MERGER CONDITIONS ARE INAPPROPRIATE

Q.19 MR. WOOD, MR. GILLAN, AND MS. GOLDMAN OF CWA RECOMMEND THAT THE TRA IMPOSE VARIOUS CONDITIONS ON THIS PROPOSED MERGER. HOW DO YOU RESPOND?

A.19 The predicate for conditions on a merger should be, as an initial matter, that the merger would create anticompetitive harm. This predicate does not exist in this case. Ms. Goldman does not put forward a claim of competitive harm related to the proposed AT&T/BellSouth merger, and none of Mr. Wood's or Mr. Gillan's claims of competitive harm withstand scrutiny. Hence, there is no justification for any of the proposed conditions on this merger.

It is a fundamental principle of merger analysis, as well as sound public policy in general, that remedies should fit the harm and not be fashioned to address pre-existing grievances that are not caused by the merger. The U.S. Department of Justice's Antitrust

[49] *Merger Guidelines Commentary*, p. 49.

Division *Policy Guide to Merger Remedies*[50] articulates these principles. According to this *Guide*:

> Remedial provisions in Division decrees must be appropriate, effective, and principled.... There must be a significant nexus between the proposed transaction, the nature of the competitive harm, and the proposed remedial provisions.[51]

The *Guide* also emphasizes that the remedy must be limited to the harm caused by the merger itself, and not expanded to address other competitive issues:

> Although the remedy should always be sufficient to redress the antitrust violation, the purpose of a remedy is not to enhance premerger competition but to restore it. The Division will insist upon relief sufficient to restore competitive conditions the merger would remove.[52]

The *Guide* also cautions against using remedies to assuage competitors:

> The Remedy Should Promote Competition, Not Competitors. Because the goal is reestablishing competition – rather than determining outcomes or picking winners and losers – decree provisions should promote competition generally rather than protect or favor particular competitors.[53]

This is the approach articulated by the FCC in the SBC/AT&T merger:

> Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes. Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.[54]

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50 Antitrust Division Policy Guide to Merger Remedies, U.S. Department of Justice, Antitrust Division, October 2004, (hereafter "*Guide to Merger Remedies*").

51 *Guide to Merger Remedies*, p. 2.

52 *Guide to Merger Remedies*, p. 4.

53 *Guide to Merger Remedies*, p. 5 (footnotes omitted).

54 *FCC SBC/AT&T Merger Order*, ¶ 19 (footnotes omitted; emphasis added).

Q.20 IS THERE HARM TO IMPOSING INAPPROPRIATE MERGER REMEDIES?

A.20 Yes. In any merger, imposing inappropriate conditions can harm, rather than benefit, consumers. This concern is especially apparent in this case. I explained in my direct testimony that this merger can be understood as a response to the rapidly changing conditions and challenges created for incumbents and competitors in the telecommunications marketplace. Conditions that inhibit legitimate and normal competitive responses by the combined firm to changes in the marketplace can impede a company's ability to achieve the efficiency gains and productivity enhancements that were among the motivations for the transaction to begin with, and thereby impede the company's ability to bring the benefits of the transaction to customers. This could take the form of delaying the introduction of new products; delaying price reductions for consumers; and/or protecting competitors so as to dampen competition, and decrease the benefits available to customers.

Q.21 PLEASE COMMENT ON MR. WOOD'S PROPOSED MERGER CONDITIONS.

A.21 Mr. Wood proposes that the TRA: 1) require prices for special access and Ethernet service be regulated for at least ten years, 2) order performance measures with penalties for special access and Ethernet services and 3) require accelerated dispute resolution for all inter-carrier disputes. As I explained in Section II, the analysis used by the FCC and DOJ in assessing potential competitive harm in the market for Type I special access, when applied to AT&T and BellSouth in Tennessee, indicates that the merger would not result in significant competitive harm, and therefore, none of these conditions proposed

by Mr. Wood is necessary or appropriate. There is no compelling logical nexus between the effects of this transaction and the requested conditions. As I have already explained, unnecessary conditions are not benign; they impose administrative costs on the carriers, distort the incentives for investment and innovation, and are detrimental to the development of efficient competition.

Q.22 PLEASE COMMENT ON MR. GILLAN'S PROPOSED CONDITIONS.

A.22 Mr. Gillan proposes five conditions be imposed on this merger: 1) applying price caps to unbundled network elements (UNE) rates;[55] 2) strengthening the Section 271 performance plan;[56] 3) eliminating ILEC audits of high capacity loop and transport UNE combinations (EELs);[57] 4) allowing businesses a "fresh look;"[58] and 5) allowing the TRA to enforce whatever federal conditions may be imposed.[59] Because the proposed merger is not likely to result in harm to competition for business customers, none of these conditions is necessary or appropriate. I comment on two of these conditions in more detail – imposing price caps on UNEs and allowing a "fresh look" for business customers.

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55 *Gillan Direct*, pp. 21 – 29.
56 *Gillan Direct*, pp. 29 – 30.
57 *Gillan Direct*, pp. 30 – 33.
58 *Gillan Direct*, p. 33.
59 *Gillan Direct*, p. 34.

Q.23 PLEASE COMMENT ON MR. GILLAN'S PROPOSAL THAT THE TRA IMPOSE A PRICE CAPS REGULATORY FRAMEWORK ON UNES.

A.23 As with all of Mr. Gillan's conditions, the necessary predicate—that the merger would lead to competitive harm for which such conditions would be designed to provide a remedy—does not exist. Mr. Gillan's desire to have what he calls a "more efficient" system for establishing UNE prices may or may not be justified, but it falls in the category of a pre-existing grievance that is neither created by this merger, nor is reasonably addressed in the context of this merger. Certainly, it is completely inappropriate to consider so significant a change in the process by which prices for UNEs are established in the context of a merger proceeding (even assuming, for the moment, that the TRA has the legal authority to adopt such a change, a legal question about which I am not qualified to opine).

The current TELRIC regulatory pricing regime for UNEs is fundamentally different from that of price caps. Under the Telecommunications Act of 1996, prices for UNEs are to be based on cost,[60] and the FCC's TELRIC methodology is an attempt to implement the law's requirement through a certain sort of cost proceeding. Price caps, in contrast, are a regulatory mechanism designed to create incentives for operational efficiency by severing the relationship between prices and costs.[61] Without endorsing the particular cost method that was chosen by the FCC, and without dismissing the historical merits of price caps as a regulatory mechanism for retail services in *substitute* for (cost-

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[60] 47 USC § 252(d)(1)(A).

[61] David E. M. Sappington, "Price Regulation," *Handbook of Telecommunications Economics Volume I* (Amsterdam: Elsevier Science Publishers B.V., 2002), p. 243.

based) rate-of-return regulation, price caps and TELRIC-based UNE prices are fundamentally different regulatory systems. It is misguided to assume that one can append one on top of the other and arrive at some sort of ad hoc hybrid regulatory mechanism that will necessarily resemble coherent regulatory policy or achieve desirable social welfare outcomes. Rather, any change to the regulatory policy governing the establishment of UNE prices, to the extent state commissions can do so at all, should be conducted in the context of a full proceeding in which the proposals are properly evaluated and a full record is created.

Q.24 DO YOU HAVE ANY COMMENTS ABOUT MR. GILLAN'S PROPOSAL THAT THE COMMISSION SHOULD INVALIDATE EXISTING CONTRACTS BETWEEN CUSTOMERS AND AT&T SO THAT BUSINESS CUSTOMERS CAN HAVE A SO-CALLED "FRESH LOOK"?

A.24 Yes. Contractual commitments are critical to the functioning of a market-based economic system. The standard economic view is that contracts, including those with term and volume commitments, promote efficient investment and advance social welfare.[62] They do this by providing the parties assurance, backed by penalties for breaking the agreement, that the relationship will continue for a length of time that is understood and agreed to by both parties. The assurance of a long term relationship creates incentives for providers to offer deeper discounts than they otherwise would, and

[62] See Posner, Richard A., *Economic Analysis of Law (Fifth Ed.)*, (Boston: Little, Brown & Company, 1986), pp. 102-103; See also Bork, Robert H., *The Antitrust Paradox: A Policy at War with Itself*, (New York: The Free Press, 1978 (1993)), Chapter 15.

creates incentives for providers to make relationship-specific investments. For these reasons, contracts with term commitments are prevalent both in the business and the consumer marketplace. For example, apartment owners often require annual commitments from tenants. Automobile leases,[63] satellite and fixed wireless Internet, and wireless phone service are available with annual or multi-year commitments.

For these reasons, the TRA generally should not abrogate contractual obligations, and certainly there is no dynamic resulting from this merger that would justify imposing a fresh look.

Q.25 WHAT IS MR. GILLAN'S JUSTIFICATION FOR ADVOCATING THAT THE COMMISSION ABROGATE EXISTING CONTRACTS BETWEEN AT&T OR SBC AND THEIR BUSINESS CUSTOMERS?

A.25 His argument is that customers who "left BellSouth for AT&T (or the reverse) [would be] repatriated without choice."[64] I note at the outset that if this were a reasonable basis for a remedy, which it is not, it would only justify allowing customers who in fact left BellSouth for AT&T or vice versa to break their contract. It would not justify a blanket condition by which all customers under contract would have the right to break their agreements despite having benefited from the lower prices thereby enabled, and despite the fact that small investments may have been made by the provider in the relationship.

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[63] For example, according to a model lease available from Ford Credit (www.fordcredit.com), the lessor is warned, "You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars." Ford Credit's lease warns customers that early termination might require payments up to the remaining unpaid lease payments plus any excess wear and use and mileage charges, and all other amounts due under the lease.

[64] *Gillan Direct*, p. 33.

More fundamentally, however, there is no reason to believe that these customers would be harmed by the merger. I understand that the merger will be seamless to all customers and that all customers under contract to AT&T or BellSouth will continue to receive the services they contracted for at the terms of their agreements. Mr. Gillan's assertion that these customers do not "want" to be served by the post-merger company, even it were relevant here, is unsubstantiated. Moreover, the combined entity will have every incentive to provide a high level of service to those customers, including bringing them the benefits of the merger, in the hope that they will choose to remain with AT&T when their contracts expire in the normal course of business.

Q.26 DID THE FCC OR DOJ REQUIRE SPRINT OR NEXTEL TO CANCEL CONTRACTS AND GIVE CUSTOMERS A FRESH LOOK WHEN THE COMPANIES MERGED?

A.26 No, although if Mr. Gillan's logic were valid, it would have applied more persuasively to that merger. In the wireless marketplace, it is commonplace for mass market customers, who arguably do not have the level of sophistication about telecommunications services, competition, or the marketplace that large business customers do, to be served under term contracts. Moreover, many of Sprint's customers may have left Nextel and vice versa. Nevertheless, there was no condition imposed by which customers would be relieved of their contractual obligations, nor was such a condition imposed in any other telecom merger that I know of.

Q.27 PLEASE COMMENT ON MS. GOLDMAN'S PROPOSED CONDITIONS.

A.27 Ms. Goldman asks the TRA to require employment guarantees, DSL investment, service quality standards and retention of technical operations and call centers in Tennessee, claiming that these are in the public interest.[65] Such a requirement would not, however, serve the public interest. A public interest assessment should be focused on consumers; policies that are detrimental to consumers are not in the public interest. The employment guarantees proposed by Ms. Goldman (in the form of holding employment at current levels or preventing the closure of technical operations or call centers) are not in the public interest because, by preventing reorganizations and other means of more effectively deploying personnel, they could increase costs or reduce the merged company's efficiency in operating its business and meeting customers' needs. Employment guarantees can also slow down the deployment of innovative technologies that could provide higher service quality.

Ms. Goldman's appeal for conditions related to service quality standards does not identify precisely the conditions she is requesting, and therefore it is not possible to respond to any specific requested service quality condition. I note, as a general matter, that there is no plausible harm from this merger to which service quality conditions would be a logical remedy. Service quality conditions are inappropriate because, insofar as the merger does not harm competition in Tennessee, there is no merger-related reason to impose service quality conditions. Moreover, competitors have powerful incentives to

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[65] Direct Testimony of Debbie Goldman on Behalf of Communications Workers of America, *In Re: Joint Application of AT&T Inc. and Bell South Corporation Together with Its Certificated Tennessee Subsidiaries,*

provide high quality service in order to win and retain customers and to reduce customer service costs. For example, a recent study shows that service quality is more important than price in customer satisfaction of broadband bundled services.[66] Quality of service is also a key competitive factor in the business market. Verizon Business and Time Warner Telecom provide two very recent examples of telecommunications carriers competing for business customers on the basis of service quality. In March 2006, Verizon Business introduced new customer service standards for VoIP, including guarantees for voice quality and "the industry's best" time-to-repair guarantee.[67] Effective June 2006, Time Warner Telecom announced "significant improvements" to their Service Level Agreements for traditional voice services.[68] Not only are competitors marketing their services to businesses on the basis of quality, but business customers are sophisticated consumers, who often negotiate service quality as well as price when contracting for telecommunications services. For these reasons, there is no need to impose merger-related service quality conditions on behalf of these customers.

Q.28 DOES THIS CONCLUDE YOUR REPLY TESTIMONY?

A.28 Yes.

Regarding Change of Control of the Operating Authority of BellSouth Corporation's Tennessee Subsidiaries, Before the Tennessee Regulatory Authority, Docket No. 06-00093, June 2, 2006, pp. 6-7.

66 "Parks Associates: Satisfaction with Bundled Services Builds Customer Retention and Increases ARPU; Study Finds Satisfaction with Bundled Services Increases Customer Retention by 20% and ARPU for Monthly Dual-Play Services by 11%," *IP Communications.com*, downloaded June 8, 2006 from http://www.tmcnet.com/scripts/print-page.aspx?PagePrint=http%3a%2f%2fipcommunications.tmcnet.com%2fnews%2f2006%2f06%2f08%2f1169063.htm.

67 "Service Matters More Than Ever as IP Transformation Accelerates, Verizon Business President Says," PRNewswire, March 16, 2006 at http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/03-16-2006/0004322079&EDATE=.

68 "Traditional Voice Services – Service Level Agreement," Time Warner Telecom, effective June 1, 2006 at http://www.twtelecom.com/Documents/Resources/PDF/Voice_SLA-12-05.pdf.

REBUTTAL TESTIMONY OF MARTY DICKENS

State President – Tennessee
BellSouth Telecommunications, Inc.

June 15, 2006

REBUTTAL TESTIMONY OF MARTY DICKENS
State President – Tennessee
BellSouth Telecommunications, Inc.*

Q1. PLEASE STATE YOUR NAME AND TITLE.

A1. My name is Marty Dickens. I am the State President – Tennessee for BellSouth Telecommunications, Inc.

Q2. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A2. Yes. I pre-filed direct testimony in this proceeding on June 2, 2006. In that testimony, I explained that the merger between AT&T Inc. and BellSouth Corporation will lead to numerous public interest benefits for the citizens of Tennessee, and that these benefits will come without any countervailing harms.

Q3. WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?

A3. The purpose of my rebuttal testimony is to address certain of the allegations made by Lionor Torrez and Don Wood on behalf of Time Warner Telecom of the Mid-South, LLC ("Time Warner Telecom"), Gene Watkins on behalf of Covad, and Joseph Gillan on behalf NuVox, Xspedius, and ITC^DeltaCom.

Q4. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.

My testimony first responds to Time Warner Telecom's claim that the Authority should impose special access performance measures in this proceeding. I observe that Time Warner Telecom makes this claim even though it does not suggest that

* Please see the Cautionary Language Regarding Forward-Looking Statements included as Attachment A to this testimony.

the existing measures that apply to BellSouth's provision of access services to Time Warner Telecom in Tennessee are in any way insufficient. Rather, Time Warner Telecom's claim appears to be that the TRA should intervene to force the imposition of performance measures on special access services that AT&T provides to Time Warner Telecom in other states, a matter that is plainly not within the proper scope of this proceeding. Insofar as Ms. Torrez directs her claim toward access services provided in Tennessee, the TRA has recently reviewed special access performance measurements and approved a plan agreed to by BellSouth and all of the CLECs that chose to participate in the docket to establish that plan.

Second, I address Mr. Watkins' complaint that BellSouth has not adopted what he characterizes as AT&T's "pro-competitive" line-sharing and line-splitting policies. I explain that BellSouth's policies in this respect are entirely legitimate and pro-competitive and are consistent with relevant TRA rulings.

Finally, I explain that, in light of the competitive and fast-moving state of communications markets today, the imposition of any conditions on the TRA's approval of the merger would be counterproductive. I also specifically address proposals that BellSouth be required to modify its SEEM performance remedy plan, to forego its contractual rights to audit the use of enhanced extended links ("EELs"), and to upgrade central offices to provide DSL capability. In each case I explain that the proposed conditions are unjustified and in any event unrelated to the merger.

I. TIME WARNER'S CLAIMS REGARDING SPECIAL ACCESS ARE MISPLACED

Q5. MS. TORREZ ASKS THE TRA TO ADOPT SPECIAL ACCESS PERFORMANCE MEASURES; IS THIS AN APPROPRIATE PROCEEDING TO MAKE SUCH A REQUEST?

A5. No, it is not. For one thing, Ms. Torrez' testimony appears to be directed at both intra- and inter- state measures. The TRA's authority, however, is limited to intrastate matters. Time Warner Telecom Telecom itself recognized this jurisdictional distinction as evidenced by that fact that it, like several other CLECs, has filed substantial comments at the FCC regarding the supposed need for conditions to address the affect of the merger on special access.[1] In addition, in its review of the SBC/AT&T merger, the FCC (and the Department of Justice), rather than the state commissions, conducted an extensive inquiry into the merger's likely effect on competition in the special access market. As James Kahan notes in his rebuttal testimony, the FCC and Department of Justice are conducting a similar inquiry here.

Furthermore, the TRA has already *completed* two proceedings that addressed special access performance measures. First, as Ms. Torrez notes (at 2), the Authority in Docket No. 01-00193 adopted a set of diagnostic measures for Special Access. Time Warner Telecom Telecom participated in the proceeding, via its witness Mr. Tim Kagele, and specifically asked the Authority to adopt

[1] *See* Petition to Deny of Time Warner Telecom Telecom at 6-16, *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74 (FCC filed June 5, 2006); *see also, e.g.*, Comments of Cbeyond Communications, *et al.* at 60-76, *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74 (FCC filed June 5, 2006); Comments of Paetec Communications at 1-10, *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74 (FCC filed June 5, 2006).

service quality measures for special access services in addition to measurements for UNEs and interconnection. The TRA ultimately adopted, with some modifications, a set of special access measurements proposed by WorldCom in that docket.[2]

Second, less than a year ago, the Authority looked at this precise question of special access measurements again. As a result of that review, the Authority adopted a different set of diagnostic Special Access measures in its *Order Approving Settlement Agreement* dated August 25, 2005, Docket No. 04-00150. This set of special access measurements is the same set of eleven (11) measurements proposed jointly by BellSouth and CompSouth, a coalition of CLECs, in all nine BellSouth states, which has been adopted by eight of the nine states. This measurement set reflects an agreement between BellSouth and a coalition of CLECs on the appropriate way to measure special access performance. That most recent docket included a workshop opportunity for all CLECs, and all CLECs had the opportunity to participate in the docket. BellSouth currently reports data in accordance with these 11 special access measurements each month in eight states.

While the Authority did adopt special access measurements for the purpose of monitoring performance, it never indicated any intent, or authority, to exercise

[2] The October 4, 2002 Order, to which Ms. Torrez refers, noted that the special access measurements ordered were the same measurements included as Attachment B to the *Amended Final order Granting Reconsideration and Clarification and Setting Performance Measurements, Benchmarks and Enforcement Mechanisms* issued on June 28, 2002.

jurisdiction over measurements with respect to interstate traffic or to impose penalties in conjunction with these measurements. The inclusion of these diagnostic measures - without penalties - is a feature of the agreed compromise reached in that docket and approved by the TRA.

Despite all of this work over a period of years by the Authority in the area of special access measurements, Ms. Torrez today proposes an entirely new measurement set. Her request is noteworthy for a few reasons, including the fact that she has not demonstrated any problems with the existing set of measures. Moreover, she has not even attempted to explain how new special access measures are even tangentially related to this merger, or why she believes that Time Warner Telecom cannot pursue this request with the TRA in a separate proceeding.

Even a cursory review of Ms. Torrez's proposal highlights the fact that Time Warner Telecom's view of appropriate special access measures is quite different from the measurements already agreed to by BellSouth and the CLEC Coalition, and approved by the Authority. Moreover, her request is different from other CLEC-supported proposals in other dockets. For example, the Joint Competitive Industry Group ("JCIG") filed a very different set of Special Access measures with the FCC in CC Docket No. 01-321. There is also a different set of such measurements that are currently used pursuant to section 272 audits, related to non-accounting safeguards. If nothing else, these differing views highlight the complexity of this issue and demonstrate why the Authority should not attempt to re-invent the wheel in the context of a holding company merger.

Q6. HAS BELLSOUTH NEGOTIATED A CUSTOMIZED SET OF SPECIAL ACCESS MEASUREMENTS WITH TIME WARNER?

A6. Yes. This is another reason that Time Warner Telecom's attempt to alter the existing measures does not make sense. Not only is Time Warner Telecom asking the Authority to undo work it completed less than a year ago in its performance measurements docket, Time Warner Telecom is also asking the Authority to interfere with a contract that Time Warner Telecom itself negotiated with BellSouth that contains a set of performance measurements to which Time Warner Telecom voluntarily agreed. The contract is an FCC tariff contract and became effective October 1st, 2005 and BellSouth's service levels for Time Warner Telecom have been high since that time. I am not aware of any performance issues with this contract tariff.

Notably, Time Warner Telecom makes no suggestion that the measures in its contract with BellSouth are in any way insufficient. On the contrary, its complaint appears to be that its contract tariff with AT&T, covering services that AT&T provides Time Warner Telecom *in other states outside BellSouth's region*, does not include comparable measures. It is impossible to see how that concern – *i.e.*, whether AT&T is subject to performance measures when it provides access services to Time Warner Telecom in other states – is properly the subject of a TRA proceeding.

Q7. DO YOU HAVE ANY OTHER OBJECTIONS TO MS. TORREZ'S PERFORMANCE MEASURES PROPOSAL?

A7. Yes. As I noted, to the extent Ms. Torrez's proposal would apply to interstate services, it is beyond the scope of the TRA's jurisdiction. Again, the contract

tariff between Time Warner Telecom and BellSouth is a federal tariff on file with the FCC. Insofar as Ms. Torrez's proposal would alter the remedies that BellSouth would pay under that tariff, it would violate the FCC tariff.

II. COVAD'S LINE-SHARING/LINE-SPLITTING CLAIMS ARE MISPLACED

Q8. MR. WATKINS CRITICIZES BELLSOUTH'S ALLEGED REFUSAL TO PROVIDE LINE SHARING VIA A COMMERCIAL AGREEMENT, AS WELL AS ITS ALLEGED REFUSAL TO FACILITATE LINE SPLITTING WITH CLECS THAT HAVE EXECUTED A COMMERCIAL AGREEMENT FOR SWITCHING. IS THIS AN APPROPRIATE FORUM FOR THOSE COMPLAINTS?

A8. No. This is another attempt to reverse TRA decisions in prior dockets (dockets that addressed those specific issues) in the unrelated context of this merger proceeding. This proceeding should not be used as a second opportunity to litigate every issue the TRA has already considered. First, because line sharing is neither a required element under section 251 or 271 of the Act, BellSouth has no regulatory obligation to provide line sharing. I am not a lawyer, but I understand that this same legal issue has already been decided by the TRA. This precise legal issue was ruled upon by the Authority in Docket No. 04-00381, the generic change of law proceeding. (It was Issue 17.) The TRA ruled that, consistent with FCC orders, BellSouth has no legal obligation to provide line sharing to new CLEC customers after October 1, 2004. The TRA also ruled that the parties should follow the transition plan adopted by the FCC for existing customers. (This was Issue 18.) The merger provides no reason to depart from that decision on what BellSouth is (and is not) obligated to do under federal law. That being said, BellSouth has engaged in extensive negotiations with Covad for a

commercial agreement for line sharing; however, the parties have never been able to agree on certain key elements of the deal. The failure to reach an agreement, however, is a far cry from refusing to negotiate.

With respect to line splitting, Covad presumably is referring to the issue surrounding an ILEC's alleged obligation to provide line splitting in a situation in which BellSouth is required to allow the commingling of a section 251 element and a section 271 element. Again, the TRA has already decided this issue. This precise issue (Issue 19) was ruled upon by the Authority in Docket No. 04-00381. The TRA ruled that BellSouth must provide a splitter when requested to do so by a CLEC or permit the CLEC to provide the splitter on its own or through another CLEC. BellSouth must also modify its OSS to facilitate line splitting.

Covad has the right to appeal TRA orders with which it disagrees, and I am confident that the TRA and the courts will follow an orderly process to resolve any appeals. Again, Covad's requests are unrelated to the merger itself. There is no need for the Authority to revisit this issue in this docket.

Q9. IS THIS MERGER-REVIEW PROCEEDING AN APPROPRIATE VENUE TO RESOLVE THE VALIDITY OF BELLSOUTH'S POLICIES?

A9. Absolutely not. As Dr. Aron explains in more detail, this proceeding should be restricted to considering the likely effects of the merger in Tennessee. Here, Covad holds out the hope that, in the wake of the merger, BellSouth will alter its policies by adopting an AT&T policy position that Covad believes is pro-competitive. Covad has thus not even alleged, much less proven, that the merger

will result in any harm whatsoever. In the absence of such an allegation, the TRA should reject Covad's claim.

Moreover, there is no need for the TRA to reconsider myriad prior regulatory decisions in this proceeding. Importantly, the TRA will continue to have the same regulatory oversight it has today over BellSouth after the merger. CLECs will continue to have the same access to the TRA to raise legal issues when questions or conflicts arise.

III. THE MERGER SHOULD BE APPROVED WITHOUT CONDITIONS.

Q10. MS. TORREZ, MR. WOOD AND MR. GILLAN EACH IDENTIFY PROPOSED CONDITIONS THAT THEY CLAIM THE TRA SHOULD ATTACH TO ANY APPROVAL OF THE MERGER. ARE CONDITIONS WARRANTED HERE?

A10. No. As I noted above, and as Dr. Aron and James Kahan discuss in more detail, to the extent the Authority is to consider conditions at all, and it should not, it would only be to address concrete harms that the Authority believes will result as a direct result of the merger. Here, there is no evidence that such harms will occur. On the contrary, the merger between AT&T and BellSouth is good for Tennessee customers and good for BellSouth. The basis for the Authority's consideration of conditions is accordingly absent.

Beyond this, the conditions proposed by these witnesses would be affirmatively harmful. The combined AT&T/BellSouth will compete in a fast-moving, competitive marketplace. The Tennessee General Assembly has repeatedly recognized the importance to Tennessee customers of speeding offers to market without unnecessary delays. Likewise, the General Assembly and the TRA have

seen the importance of allowing the marketplace to work. The combined AT&T/BellSouth's primary competitors, such as cable and wireless providers, do not operate under the constraints the witnesses seek to have the Authority impose on the combined company. Such unique regulatory constraints would thus hinder the combined company's ability to compete in the marketplace, and make it less likely that it could deliver on its potential to provide innovative services to customers in Tennessee and elsewhere. Those restraints would also be inconsistent with the TRA and General Assembly's consistent move toward market-based regulation.

Q11. DO YOU HAVE ANY ADDITIONAL OBSERVATIONS ABOUT THE CONDITIONS PROPOSED BY THESE WITNESSES?

A11. Yes. I have discussed above why Ms. Torrez's proposal for special access performance measures is unwarranted. I would also like to address Mr. Gillan's proposal for revising BellSouth's SEEM performance plan, as well as his proposal that BellSouth be foreclosed from exercising its contractual right to audit CLECs for compliance with certain safeguards designed to ensure that EELs are used lawfully. In addition, I will address Ms. Goldman's claim that BellSouth should be required to upgrade central offices in Tennessee to support DSL.

Q12. MR. GILLAN PROPOSES (AT 29) THAT BELLSOUTH'S PENALTY PAYMENTS UNDER ITS "SEEMS" PLAN BE INCREASED? DO YOU AGREE THAT SUCH AN INCREASE IS WARRANTED?

A12. No. Less than one year ago, the Authority approved a new wholesale performance (SQM and SEEMs) plan pursuant to an agreement by the parties in

that docket.[3] (All CLECs were, of course, permitted to intervene in that docket. Some chose not to participate.) No CLEC opposed this performance plan. The TRA's order approving the plan notes that Bellsouth and the CLECs reached a settlement with respect to the terms of the plan. This same plan is being used by eight of the nine states in BellSouth's territory. There is no factual or procedural reason for the Authority to revisit that decision in the context of this docket. This is particularly true given that BellSouth's performance has remained at or above the level of service provided to CLECs at the time of section 271 approval. The following high level summary shows the percent of performance measurements for which BellSouth provided service to CLECs at or above the level of parity for the years 2001 – 2006 (1st quarter) for Tennessee.

Percent of Measurements at or above Parity by Year - Tennessee						
Year	2001	2002	2003	2004	2005	2006
Percent	83.5	85.99	84.61	84.03	87.58	87.91

This summary demonstrates that not only has BellSouth's performance not declined, it actually has improved since BellSouth received section 271 approval. Arbitrarily increasing penalties under the current Plan when performance levels remain high is contrary to purpose of the Plan.

Mr. Gillan's request is particularly ironic given that the current Tennessee plan was the result of an agreement between BellSouth and CompSouth. NuVox,

[3] This docket was the same docket in which the TRA adopted the most recent set of special access measures that I discussed above.

Xspedius, DeltaCom and Covad are all members of CompSouth and thus were parties to the settlement that resulted in the current plan. It is nothing short of disingenuous for those same parties to now seek an arbitrary and unsubstantiated increase in the SEEMs penalties to which they previously agreed.

Furthermore, Mr. Gillan's rationale for increasing BellSouth's payments – that the increased revenue of the combined company requires increases in the penalty payments – makes no sense. The penalties are designed to ensure that they provide an adequate incentive for BellSouth, as an ILEC, to adhere to its obligations to provide CLECs a meaningful opportunity to compete. It makes no difference that, after the merger, BellSouth will be under common indirect ownership with a CLEC that operates in the state. That change will in no way alter BellSouth's incentives, nor will it undermine the incentives the Authority has already put in place to help ensure nondiscriminatory performance.

In short, the performance measurements, penalty structure, and penalty amounts are based on the input, analysis and review from BellSouth, the CLEC Coalition (CompSouth) and several state regulatory entities. BellSouth's penalty plan already is designed to generate significant payments by BellSouth when BellSouth fails to meet applicable benchmarks or retail analogues for measurements included in the plan.

Q13. PLEASE COMMENT ON MR. GILLAN'S TESTIMONY REGARDING THE SO-CALLED "STAND-ALONE" NATURE OF THE PENALTY PLAN.

A13. Mr. Gillan (p.30) states: "[t]he Authority should make clear that the Tennessee §271 performance plan is a stand-alone obligation, unrelated to performance plans in others states." While his testimony is not entirely clear, it appears that he takes issue with BellSouth's practice of crediting a balance in one state with an overpayment in another state. Mr. Gillan's concern with the practice defies common sense --- it is inefficient for BellSouth and a particular CLEC to exchange monies back and forth on a state-specific basis when the payments can be handled more efficiently by credits and debits region-wide.

To be clear, BellSouth absolutely *calculates* penalty payments on an individual state basis according to the individual state's penalty plan. All that is at issue is the means by which BellSouth and the CLECs reconcile those payments. As an initial matter, Tier 2 penalty payments are always handled on a state-by-state basis because Tier 2 payments are made to separate state regulatory bodies. This same approach is, however, impractical for Tier 1 payments because they are made to individual CLECs. With respect to Tier 1 payments for SEEM, BellSouth processes CLEC data for each state in accordance with the requirements specified in that state's penalty plan as ordered by the specific state commission. A determination of any resulting Tier 1 penalty payments is made for each CLEC in each state. Thus, BellSouth complies with the requirements established by the separate state commission in determining the Tier 1 SEEM payment requirements.

When BellSouth calculates the Tier 1 remedy amounts for individual CLECs, this is done with the understanding that most of the CLECs operate in more than one

state. It is not reasonable to expect BellSouth to issue potentially nine separate checks to a particular CLEC each month when it would make much more sense to simply issue one check each month to a specific CLEC. Moreover, the various state plans do not require BellSouth to prepare a separate check for each state in which is operates. BellSouth's obligation to provide CLECs with nondiscriminatory access to its OSS has nothing to do with the manner in which a check is issued.

The fact that, for a given CLEC, there may be a positive balance for one state and a negative balance (as a result of a prior overpayment) for another state does not change the fact that each CLEC is entitled to receive only the payments required under the plan. Consequently, if BellSouth makes an overpayment to a CLEC, BellSouth has every right to expect the amount of the overpayment to be returned. Rather than requesting payment from the CLEC that was overpaid, BellSouth simply offsets the overpayment against amounts that BellSouth owes to the CLEC. The net effect to the CLEC is the same unless Mr. Gillan is suggesting that some CLECs would attempt to improperly retain amounts overpaid to them in error. That type of gaming is obviously not proper. CLECs are in no way entitled to retain the amount of any overpayment, except as specifically agreed to by BellSouth.

In any event, creating a requirement that BellSouth issue separate checks for each state would add yet another layer of regulatory burden to BellSouth that its intermodal competitors do not face.

Q14. MR. GILLAN ALSO PROPOSES THAT BELLSOUTH'S PERFORMANCE PLAN SHOULD BE "PRIVATELY" AUDITED EVERY THREE YEARS. DO YOU AGREE?

A14. No. Mr. Gillan's proposal is not necessary. The current Tennessee SQM document contains BellSouth's audit policy and already includes provisions for independent third-party audits of the performance measurements. Not only does the current Tennessee Plan clearly state that BellSouth will agree to undergo an audit of the Plan conducted by an independent third party auditor if requested by the Authority, but it also states that BellSouth currently provides CLECs with certain audit rights as a part of their individual interconnection agreements. Consequently, under the existing terms of the Tennessee Plan, BellSouth may be required to undergo an audit by an independent third party auditor more frequently than every three years.

Beyond these more formal audit provisions, BellSouth has a SEEM and SQM Data Reconciliation Policy that is posed on BellSouth's PMAP website, https://pmap.Bellsouth.com . This policy includes a process for CLECs to submit data inquiries and problems to BellSouth's CLEC Interface Group (CIG) for resolution. In fact, for the period from January 2005 – May 2006, CLECs submitted 622 inquiries to BellSouth through this process. Of those submitted inquiries submitted, less than 1.5% could loosely be considered inquiries involving data validity. Further, all of these inquiries were successfully resolved. Additionally, of 622 inquiries logged through this process, the total for Nuvox, Xspedius and DeltaCom (all of which sponsored Mr. Gillan's testimony), was only 21 combined. Of these 21 inquiries, none involved data validity issues.

Q15. MR. GILLAN ALSO RECOMMENDS THAT BELLSOUTH BE REQUIRED TO CEASE AUDITING CLECS FOR COMPLIANCE WITH PRE-TRIENNIAL REVIEW ORDER EELS SAFEGUARDS. HOW DO YOU RESPOND?

A15. Once again, the TRA has already addressed this issue, and there is no basis to re-plow that ground in this proceeding. This request is nothing more than a transparent effort by NuVox in particular to avoid a term in its current interconnection agreement pursuant to which BellSouth is entitled to audit NuVox's EEL circuits for compliance with the EELs safeguards set out in the FCC's *Supplemental Order Clarification*.[4] In addition to the TRA's decision in the DeltaCom/XO EELs audit case (TRA Docket No. 02-01203), BellSouth's contractual right to audit has also been upheld by the Georgia, North Carolina and Kentucky commissions. Granting the relief sought by Mr. Gillan for existing interconnection agreements would result in the invalidation of otherwise valid contract terms for no justifiable reason.

With respect to audits going forward, the Authority specifically addressed that issue in Docket No. 04-00381. The TRA ruled that that such audits could go forward provided that BellSouth selected an independent auditor and provided the CLEC 30 days advance notice. (This was Issue 29.) Once again, there is no reason for the Authority to revisit that issue here in a docket that should be restricted to a review of this holding company merger.

[4] *See* Supplemental Order Clarification, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 9587 (2000), aff'd, Competitive Telecomms. *Ass'n v. FCC* 309 F.3d 8 (D.C. Cir. 2002).

Finally, and in all events, this proposal plainly has nothing to do with the merger. As explained in the Joint Filing, this transaction will occur solely at the holding company level. That means, among other things, that BellSouth will continue to have all the rights under its interconnection agreements after the merger that it had prior to the merger. If NuVox, Xspedius, or DeltaCom want to avoid further audits for compliance with the pre-TRO EELs safeguards, they can amend their agreements to take into account *all* of the TRO (and TRRO) rules. Alternatively, these parties can elect to adhere to the terms of their existing agreements, in which case they will have nothing to fear from an audit. Either way, the merger has no effect on the resolution of this issue, and the issue accordingly should not be considered here.

Q16. MS. GOLDMAN STATES (AT 6) THAT THE MERGED COMPANY SHOULD BE REQUIRED TO "COMMIT TO UPGRADE EVERY CENTRAL OFFICE IN THE STATE FOR DSL CAPABILITY WITHIN TWO YEARS." DO YOU AGREE?

A16. No. Most importantly, the General Assembly has explicitly stated that broadband is regulated by the FCC, so it should not be part of this state review. In addition, there has been no showing that this condition would remediate any harm that would occur as a result of the merger. Finally, and in all events, BellSouth has already upgraded all of the central offices in Tennessee.

Q17. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY AT THIS TIME?

A17. Yes.

Attachment A

Cautionary Language Concerning Forward-Looking Statements

We have included or incorporated by reference in this document financial estimates and other forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These estimates and statements are subject to risks and uncertainties, and actual results might differ materially from these estimates and statements. Such estimates and statements include, but are not limited to, statements about the benefits of the merger, including future financial and operating results, the combined company's plans, objectives, expectations and intentions, and other statements that are not historical facts. Such statements are based upon the current beliefs and expectations of the management of AT&T Inc. and BellSouth Corporation and are subject to significant risks and uncertainties and outside of our control.

Readers are cautioned that the following important factors, in addition to those discussed in this statement and elsewhere in the proxy statement/prospectus to be filed by AT&T with the SEC, and in the documents incorporated by reference in such proxy statement/prospectus, could affect the future results of AT&T and BellSouth or the prospects for the merger: (1) the ability to obtain governmental approvals of the merger on the proposed terms and schedule; (2) the failure of BellSouth shareholders to approve the merger; (3) the risks that the businesses of AT&T and BellSouth will not be integrated successfully; (4) the risks that the cost savings and any other synergies from the merger may not be fully realized or may take longer to realize than expected; (5) disruption from the merger making it more difficult to maintain relationships with customers, employees or suppliers; (6) competition and its effect on pricing, costs, spending, third-party relationships and revenues; (7) the risk that any savings and other synergies relating to the resulting sole ownership of Cingular Wireless LLC may not be fully realized or may take longer to realize than expected; (8) final outcomes of various state and federal regulatory proceedings and changes in existing state, federal or foreign laws and regulations and/or enactment of additional regulatory laws and regulations; (9) risks inherent in international operations, including exposure to fluctuations in foreign currency exchange rates and political risk; (10) the impact of new technologies; (11) changes in general economic and market conditions; and (12) changes in the regulatory environment in which AT&T and BellSouth operate. Additional factors that may affect future results are contained in AT&T's, BellSouth's, and Cingular Wireless LLC's filings with the Securities and Exchange Commission ("SEC"), which are available at the SEC's website (http://www.sec.gov). Neither AT&T nor BellSouth is under any obligation, and expressly disclaim any obligation, to update, alter or otherwise revise any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future events or otherwise.

This document may contain certain non-GAAP financial measures. Reconciliations between the non-GAAP financial measures and the GAAP financial measures are available on the company's website at www.sbc.com/investor_relations.

REBUTTAL TESTIMONY OF JAMES S. KAHAN

Senior Executive Vice President – Corporate Development
AT&T Inc.

June 15, 2006

REBUTTAL TESTIMONY OF JAMES S. KAHAN
Senior Executive Vice President – Corporate Development
AT&T Inc.*

Q1. PLEASE STATE YOUR NAME AND TITLE.

A1. My name is James S. Kahan. I am the Senior Executive Vice President for Corporate Development of AT&T Inc. ("AT&T").

Q2. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A2. Yes. I filed direct testimony in this proceeding on June 2, 2006. That testimony described the market developments that led AT&T and BellSouth to agree to merge, explained why the combination of AT&T and BellSouth will benefit consumers in Tennessee, and described why the merger will not have a negative effect on either competition or employment in Tennessee.

Q3. WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?

A3. The purpose of my rebuttal testimony is to respond to various portions of the testimonies of Debbie Goldman on behalf of the Communications Workers of America ("CWA"), Lionor Torrez and Don Wood on behalf of Time Warner Telecom of the Mid-South, LLC, and Joseph Gillan on behalf of NuVox, Xspedius, and ITC^DeltaCom. I also touch briefly on the testimony of Gene Watkins on behalf of Covad.

Q4. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?

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* Please see the Cautionary Language Regarding Forward-Looking Statements included as Attachment A to this testimony.

A4. My rebuttal testimony first addresses the issue of jobs, and in particular rebuts Ms. Goldman's contention that the merger may result in a reduction in service quality in Tennessee as a result of the elimination of jobs in the State. I explain that, although AT&T obviously cannot guarantee that no jobs will be lost in Tennessee, the merger is unlikely to have an adverse effect on employment in the state. I further explain that, to the extent Ms. Goldman relies on employment decisions AT&T has made in other states, her explanation of those decisions – which in all events have nothing to do with any merger – is incomplete in many respects.

Second, my rebuttal testimony addresses special access issues raised by Time Warner Telecom. I explain in particular that, while Ms. Torrez appears to complain about special access performance measures in a previously negotiated contract between AT&T and Time Warner Telecom, those measures were mutually agreed upon by the parties to meet Time Warner Telecom's expressed desire for improved service quality. I also briefly rebut Mr. Wood's suggestion that the merger is likely to lessen competition in the enterprise market.

Third, my testimony addresses Mr. Gillan's inaccurate discussion of the National-Local strategy previously pursued by SBC Communications Inc. ("SBC"). I explain that Mr. Gillan is wrong to suggest that SBC did not "follow through" on the strategy, and I further explain that the primary lesson Mr. Gillan attempts to draw from SBC's experience – that only RBOC-sized companies can compete in the enterprise space – is demonstrably wrong. In this section, I also briefly

address Mr. Gillan's contention that the merger will result in a "resource imbalance" that will frustrate the purposes of the 1996 Act.

Finally, my rebuttal testimony addresses the conditions proposed by the intervenors. I explain that conditions are unwarranted here, because there has been no showing that they are necessary to remediate a concrete harm specifically resulting from the merger. I also explain that conditions would be counterproductive, insofar as they would force the combined company to operate inefficiently, and thus frustrate its ability to compete. I also address several of the specific proposed conditions, including Ms. Goldman's job-related conditions, Ms. Torrez's and Mr. Wood's special access-related conditions, and Mr. Gillan's proposals regarding price caps, fresh look, and enforcement of federal conditions at the state level. In each case I explain that the proposed condition is unrelated to the merger and wholly unnecessary.

I. THE MERGER IS LIKELY TO HAVE BENEFICIAL EFFECTS ON EMPLOYMENT OVER THE LONG TERM

Q5. WHAT IS THE LIKELY EFFECT OF THE MERGER ON EMPLOYMENT IN TENNESSEE?

A5. As I explained in my opening testimony, the merger is unlikely to have a negative effect on employment in Tennessee. AT&T expects merger synergies to lead to a headcount reduction of approximately 10,000 jobs globally across *all* companies (including AT&T, BellSouth, and Cingular, whose combined workforce will be more than 300,000 employees) over three years between 2007 and 2009. These synergies are expected to result from consolidation and the elimination of

duplication in corporate headquarters functions, network and sales operations, information technology support, and procurement, to name a few.

Crucially, however, prior to its merger with AT&T, SBC alone lost approximately 1,200 employees *per month* through normal attrition (voluntary departures and retirement). It is my understanding that BellSouth also experiences significant natural attrition every month – approximately 580 employees every month. For the combined companies, these numbers translate to a total of 1,780 employees per month, over 21,000 employees per year, and over 64,000 employees in three years that leave the business through normal attrition. Moreover, AT&T and BellSouth have both put in place hiring freezes to provide openings for any employees that might be displaced on account of the merger. Accordingly, AT&T expects that it can manage a very significant portion of the headcount reduction through normal attrition.

I would also note that, in each of SBC's previous major mergers involving holding companies with incumbent local exchange operations, most management employees retained their current positions or were offered new opportunities within the new company. In fact, there are numerous examples of management employees from the acquired companies whose careers were enhanced as a result of the merger through promotions and expanded job responsibilities in network, marketing and sales, external affairs, information technology, and procurement. Management employees whose jobs are eliminated as a result of merger synergies have typically been offered positions in other departments or locations. With respect to employees represented by the CWA, I would also note that in prior

mergers those union employees whose positions have been eliminated as a result of merger synergies also have generally been offered other positions within the company in accordance with their collective bargaining agreements.

Q6. HOW DO YOU RESPOND TO MS. GOLDMAN'S STATEMENT (AT 4) THAT "BELLSOUTH AND AT&T HAVE NOT PROVIDED CWA WITH ANY COMMITMENTS REGARDING THE EMPLOYMENT SECURITY OF OUR MEMBERS"?

A6. Ms. Goldman's statement is incorrect. The employment security of CWA members is a matter of the CWA's collective bargaining agreements. As it has done in connection with prior mergers, AT&T will continue to honor and comply with existing collective bargaining agreements.

Q7. MS. GOLDMAN ALSO STATES (AT 5) THAT THE MERGER OF BELLSOUTH INTO A "NATIONAL COMPANY" SUCH AS AT&T "COULD RESULT IN THE CLOSING OF TECHNICAL OPERATIONS, CALL CENTERS, OR OTHER FACILITIES IN TENNESSEE AND MOVEMENT OF WORK OUT OF STATE" AND THAT THIS COULD ADVERSELY AFFECT SERVICE QUALITY. HOW DO YOU RESPOND?

A7. AT&T is completely committed to providing outstanding service to its customers. As I explained in my direct testimony, the marketplace today is extremely competitive, and we have to fight for every customer. One way we fight for those customers is to provide high quality service. We know full well that, in today's marketplace, if we fail to provide high quality service, customers will leave us for the competition. Consequently, our interests and the interests of Tennessee consumers coincide – namely, the provision of outstanding service quality.

Q8. HAS AT&T SEEN ARGUMENTS SIMILAR TO MS. GOLDMAN'S IN CONNECTION WITH OTHER TRANSACTIONS?

A8. Yes. For example, in the SBC/AT&T merger, in New Jersey – the headquarters state of AT&T Corp. (now a subsidiary of AT&T Inc. and referred to herein as "legacy AT&T") – the Division of Ratepayer Advocate ("RPA") argued that service quality would suffer as a result of the merger and advocated that the New Jersey Board of Public Utilities condition its approval of the merger, among other things, on a requirement that the new company commit to retain the same level and mix of legacy AT&T New Jersey employees and legacy AT&T Labs employees for a period of three years.[1] I testified there, as I have here, that the merger would not adversely affect service quality, and that the merger would not have an adverse effect on employment, both because we expected to manage a significant portion of any headcount reductions through attrition and because, over the long term, the merger would result in a stronger and more stable employer.[2] The New Jersey Board approved the SBC/AT&T merger without conditions.[3]

More recently, the New Jersey RPA reviewed the current employment situation in New Jersey in the context of its review of the AT&T/BellSouth merger. In a

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[1] Initial Brief on Behalf of the RPA, *Joint Petition of SBC Communications, Inc. and AT&T Corp., Together With Its Certificated Subsidiaries for Approval of a Merger*, Docket No. TM05020186, at 3, 16-17 (NJ BPU filed July 8, 2005). *See also* Direct Testimony of Susan M. Baldwin on Behalf of the RPA, *Joint Petition of SBC Communications, Inc. and AT&T Corp., Together With Its Certificated Subsidiaries for Approval of a Merger*, Docket No. TM05020186, at 57 (NJ BPU filed May 4, 2005).

[2] Rebuttal Testimony of James S. Kahan, *Joint Petition of SBC Communications, Inc. and AT&T Corp., Together With Its Certificated Subsidiaries for Approval of a Merger*, Docket No. TM05020186, at 17-18, 19-20 (NJ BPU filed June 1, 2005).

[3] Order, *Joint Petition of SBC Communications, Inc. and AT&T Corp., Together With Its Certificated Subsidiaries for Approval of a Merger*, Docket No. TM05020186, at 8, 11, 22 (NJ BPU filed June 1, 2005).

letter addressed to the Board, the RPA noted that AT&T had provided information showing that employment and investment in AT&T Labs had *increased* since the closing of the SBC/AT&T merger, and that the "sharp downward trend in employment and investment" for the legacy AT&T global network operations center and enterprise marketing group that was occurring prior to the SBC/AT&T merger had moderated.[4] Hence, the RPA indicated that it did not oppose the merger between AT&T and BellSouth and instead urged the Board to approve it "expeditiously."[5] The Board did so without conditions.[6] This supports my contention that this merger, like the SBC/AT&T merger, will create a more vibrant and efficient competitor resulting in more (not less) opportunities for both management and union employees.

Q9. MS. GOLDMAN STATES (AT 5-6) THAT, SHORTLY AFTER CLOSING THE MERGER BETWEEN SBC COMMUNICATIONS INC. AND AT&T CORP., AT&T ANNOUNCED THE CLOSURE OF LEGACY AT&T CORP. CONSUMER CALL CENTERS IN PENNSYLVANIA, ARIZONA, AND MASSACHUSETTS. HOW DO YOU RESPOND?

A9. To the extent Ms. Goldman is suggesting that these announcements somehow support her view that AT&T may jeopardize service quality by closing facilities in Tennessee after it merges with BellSouth, she is incorrect. Indeed, AT&T's

[4] Letter from Christopher White, New Jersey Division of Ratepayer Advocate to Kristi Izzo, New Jersey Board of Public Utilities, *Joint Verified Petition of AT&T Inc., BellSouth Corp. and BellSouth Long Distance Inc. for Approval of Merger*, Docket No. TM06030262, at 1 (NJ BPU dated May 18, 2006) (attached as Attach. B).

[5] *Id.* at 2.

[6] *See* Order, *Joint Verified Petition of AT&T Inc., BellSouth Corp. and BellSouth Long Distance Inc. for Approval of Merger*, Docket No. TM06030262 (NJ BPU June 9, 2006).

decision in February 2006 to close these three call centers had nothing whatsoever to do with the merger of SBC and legacy AT&T, let alone this merger. As I noted in my opening testimony, in 2004, well before the announcement of the SBC/AT&T merger, legacy AT&T made a unilateral, irreversible decision to stop actively marketing local and long-distance service to mass market customers. That decision led to a steady decline in the number of mass market customers that legacy AT&T serves, which continues to this day. As legacy AT&T has steadily lost mass market customers, it needs fewer facilities to serve those customers. AT&T's decision to close the three call centers in Pennsylvania, Massachusetts, and Arizona that Ms. Goldman mentions – which are legacy AT&T call centers serving mass market customers – is a direct reflection of that basic fact, which in turn is a direct result of legacy AT&T's decision to cease marketing wireline service to mass market customers. Simply put, legacy AT&T has lost mass market customers, and it therefore needs fewer call centers. This decline in the number of call centers needed to service those customers would have occurred whether or not SBC and legacy AT&T merged. Most important, this need for fewer call centers has nothing whatsoever to do with the AT&T/BellSouth merger and fails to support the contention that this merger will result in call center closings. Finally, although Ms. Goldman appears to suggest that the closing of these call centers will somehow result in a decline in service quality, she does not – nor could she – present any evidence to support that conclusion.

Q10. CAN YOU ELABORATE ON THE REASONS BEHIND THE CLOSING OF EACH OF THESE THREE CALL CENTERS?

A10. Yes. The Fairhaven, Massachusetts call center mentioned by Ms. Goldman handled traditional long distance services for legacy AT&T. Legacy AT&T has experienced, and continues to experience, severe erosion in the traditional long distance segments supported by the Fairhaven call center, as consumers have shifted usage to wireless carriers and other technologies. The resulting decline in the number of mass market long distance customers served by legacy AT&T was the reason behind the closure, not the SBC/AT&T merger.

The Mesa, Arizona call center mentioned by Ms. Goldman serves the small business segment for legacy AT&T. Legacy AT&T had already reduced staffing at this center to the point that, as of November 18, 2005 when the SBC/AT&T merger closed, the center had only 57 non-management employees remaining. Given the declining call volume and declining small business customer base supported by that center, legacy AT&T decided that maintaining those functions at the Mesa facility would be inefficient and costly as compared to moving them to larger legacy AT&T call centers in Ohio and Indianapolis. In short, AT&T's decision to close the Mesa facility was because of declining volumes as a result of pre-merger legacy AT&T's withdrawal from the residential and small business markets, not the SBC/AT&T merger.

The Pittsburgh call center mentioned by Ms. Goldman serves consumer long distance and bundled services for legacy AT&T. Again, the decision to close that center resulted from legacy AT&T's withdrawal from the residential and small business markets and had nothing to do with the SBC/AT&T merger.

Each of these situations is consistent with my basic point, which is that employment follows success or the lack thereof in the marketplace. Legacy AT&T was no longer growing in the consumer and small business market segments and, in fact, had discontinued actively marketing in those segments. As a direct result of that irreversible business decision, customer volumes declined and therefore fewer facilities and employees were necessary to service the remaining customers.

Q11. MS. GOLDMAN ALSO MENTIONS (AT 6) A TELECOMMUNICATIONS RELAY SERVICE ("TRS") FACILITY IN PENNSYLVANIA. PLEASE EXPLAIN THE CIRCUMSTANCES SURROUNDING THE ANNOUNCED REDUCTION IN FORCE AT THAT FACILITY?

A11. The TRS facility mentioned by Ms. Goldman is in New Castle, Pennsylvania. TRS is a service for persons who are hearing or speech-impaired. AT&T personnel at the New Castle center primarily handle "traditional" TRS calls, i.e., calls that translate a TTY message to voice or a voice message to TTY, thereby allowing hearing or speech-impaired persons to communicate with non-hearing and speech-impaired persons over the Public Switched Telephone Network. In recent years, however, new technology has begun to displace "traditional" TRS calls, causing AT&T and the rest of the industry to experience a decline in volume of traditional TRS calls. In some states, such as Pennsylvania, the decline averages 20% a year.[7] The new types of relay services, which include Internet

[7] In 2006, AT&T expects to handle 20% fewer minutes of traditional intrastate TRS calls at the New Castle facility than it handled a year earlier.

Relay, and Video Relay, and "captioned telephone service,"[8] are not currently processed by AT&T's TRS centers. All of this means, of course, that AT&T needs fewer employees in its TRS centers. In February 2006, AT&T announced it would need to reduce its workforce in the New Castle center by 45 employees out of approximately 200 at that facility. Of these, 19 employees volunteered to leave with a termination package. This announced reduction had nothing to do with the SBC/AT&T merger.

Q12. TO THE EXTENT MS. GOLDMAN SUGGESTS THAT THE ANNOUNCED REDUCTION AT THE NEW CASTLE TRS CENTER WOULD COMPROMISE SERVICE QUALITY, DO YOU AGREE?

A12. No. Notably, Ms. Goldman does not and cannot identify any evidence to support such an allegation. As I explained above, the 45 person announced layoff at the New Castle center corresponds to lower volumes at that center and would not compromise service quality.

Q13. HAS AT&T COMPLIED WITH ITS OBLIGATIONS UNDER ITS COLLECTIVE BARGAINING AGREEMENTS IN CONNECTION WITH THESE ANNOUNCEMENTS?

A13. Yes. AT&T has and will fully comply with all of its obligations under applicable collective bargaining agreements in connection with these reductions in force, including all obligations to offer affected employees the opportunity to follow

[8] Captioned telephone service, which is also known as CapTel, is used by persons who have a hearing disability but some residual hearing. It uses a special telephone that has a text screen to display captions of what the other party is saying. A captioned telephone allows the user, on one line, to speak to the called party and to simultaneously listen to the other party and read captions of what the other party is saying.

their work to other call centers, to pay severance and to pay relocation allowances.

Q14. MS. GOLDMAN SUGGESTS (AT 5) THAT THESE ANNOUNCEMENTS WERE INCONSISTENT WITH REPRESENTATIONS TO STATE COMMISSIONS THAT THE SBC/AT&T MERGER WOULD HAVE "A POSITIVE IMPACT ON EMPLOYMENT IN THE STATES." DO YOU AGREE?

A14. Absolutely not. In explaining the likely employment effects of their merger, legacy AT&T and SBC were honest and straightforward with each and every commission that reviewed the merger. The parties explained that the merger would create a strong, viable competitor that would be a significant and stable employer over the long term. At the same time, the companies stressed that the merger came against the backdrop of significant and continuing job losses in the telecommunications sector, including at legacy AT&T and SBC. And, critically, the companies *made no commitments whatsoever that those job losses would cease as a result of the merger.* Instead, the companies explained that, over the long term, it was their expectation that their merger would stem those losses and, eventually, begin to reverse them.

For example, in Pennsylvania, in the testimony and pleadings SBC and legacy AT&T submitted to the commission in support of their merger, the companies explained that the merger would not change legacy AT&T's decision to cease actively marketing to mass market residential customers, nor would it alter legacy

AT&T's need to trim its workforce as its customer base declined.[9] That joint SBC/AT&T testimony explained that legacy AT&T's decision to halt consumer marketing would mean a steady reduction in the workforce required to support that segment of the business. That evidence was cited in the Pennsylvania ALJ's initial decision on the merger,[10] and was adopted in its entirety, insofar as labor issues were concerned, in that commission's October 6, 2005 decision approving the transaction.[11] Furthermore, it is worth noting that the Pennsylvania commission on June 1, 2006, approved the AT&T/BellSouth merger, without any conditions or suggestion that the commission anticipates an adverse effect on employment in the state.[12]

Likewise, in Arizona, legacy AT&T witness Tom Pelto explained that, in the wake of the decision to cease actively marketing service to the mass market,

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[9] *See, e.g.*, Rebuttal Testimony of Michael Morrissey on behalf of AT&T, *Joint Application of SBC Communications, Inc., AT&T Corp., and Its Certificated Pennsylvania Subsidiaries, AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, and TCG Delaware Valley, Inc., for Approval of Merger*, Docket No. A-311163F0006, *et al.*, at 8 (PA PUC filed July 15, 2005) (providing estimated job losses through the end of 2005 stemming from decision to cease marketing service to the mass market); *see also* Direct Testimony of James Kahan on behalf of SBC, *Joint Application of SBC Communications, Inc., AT&T Corp., and Its Certificated Pennsylvania Subsidiaries, AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, and TCG Delaware Valley, Inc., for Approval of Merger*, PA PUC Docket No. A-311163F0006, *et al.*, at 12 (PA PUC filed May 12, 2005) (noting legacy AT&T's irreversible decision in mid-2004 to discontinue marketing service to the mass market).

[10] *See* ALJ Initial Decision, *Joint Application of SBC Communications Inc. and AT&T Corp. Together with Its Certificated Pennsylvania Subsidiaries for Approval of Merger*, Docket Nos. A-31163F0006, *et al.*, at 13-15 (PA PUC filed Sept. 13, 2005).

[11] *See* Opinion and Order, *Joint Application of SBC Communications Inc. and AT&T Corp. Together with Its Certificated Pennsylvania Subsidiaries for Approval of Merger*, Docket Nos. A-31163F0006, *et al.*, at 28-38, 61-62 (PA PUC Oct. 6, 2005).

[12] *See* Order, *Joint Application of AT&T Inc., BellSouth Corporation and BellSouth Long Distance, Inc. for Approval of a Merger Whereby BellSouth Corporation Will Become a Wholly-Owned Subsidiary of AT&T Inc.*, Docket No. A-310503F0004 (PA PUC June 1, 2006).

legacy AT&T expected that its "customer base will dwindle away over time through churn;" that the consequence of this development had been "headcount reductions, principally in the areas of marketing and customer care;" and that "[legacy] AT&T [would] continue to scale back customer care functions and institute additional headcount reductions through 2005 as its customer base continues to decline."[13] Furthermore, at the Arizona commission's hearing on the SBC/AT&T merger, Mr. Pelto was asked, "So within a year of this merger, is there a possibility that you could close facilities in Arizona?" He candidly responded, "Yes, I would have to acknowledge that that would be a possibility."[14] In short, SBC and legacy AT&T never claimed that, in the wake of the merger, there would be no further job losses at the combined company. Instead, the companies maintained – and continue to maintain today – that the combined company would be a more stable employer with a better long-term employment outlook than either company standing alone.

In fact, the CWA, in supporting the SBC/AT&T merger appeared to understand this fact. At the time, the CWA stressed that "[i]t is clear that [legacy] AT&T, as a stand-alone business, can only go in one direction, and that involves shrinking

[13] Direct Testimony of Thomas C. Pelto on behalf of AT&T Corp., *Joint Notice of Intent of SBC Communications, et al., and AT&T Corp., et al., for Approval of Merger*, Docket Nos. T-03346-A-05-0149, *et al.*, at 6-7 (Ariz. Corp. Comm. filed May 31, 2005).

[14] Transcript of July 21, 2005 Hearing, *Joint Notice of Intent of SBC Communications, et al., and AT&T Corp., et al., for Approval of Merger*, Docket Nos. T-03346-A-05-0149, *et al.*, at 49-50 (Ariz. Corp. Comm. July 21, 2005) (quoting Thomas C. Pelto on behalf of AT&T).

revenues, shrinking income, shrinking investment and shrinking jobs."[15] Simply put, the CWA supported the SBC/AT&T merger because it would result in fewer job losses than would have occurred otherwise, not because the combined company would somehow be able to avoid the possibility of lay-offs altogether. To the extent Ms. Goldman suggests otherwise, she is mistaken.

Q15. WHEN POSITIONS ARE ELIMINATED BECAUSE OF DECLINING VOLUMES, ARE UNION EMPLOYEES OFFERED ALTERNATIVE POSITIONS?

A15. Yes. As I noted above, when positions are eliminated within AT&T as a result of merger synergies, union employees are offered alternative positions consistent with their collective bargaining agreements. The same is true when positions are eliminated as a result of business decisions necessitated by declines in the amount of work handled by particular facilities. For example, in connection with the Arizona call center noted above, AT&T gave affected employees the opportunity to follow their work to a legacy AT&T call center in Reynoldsburg, Ohio pursuant to the Collective Bargaining Agreement (CBA) with the CWA. AT&T offered those employees a job with the same title in Reynoldsburg along with a relocation expense allowance based on years of service up to $13,000. Ten of our employees accepted that offer. In making that offer, AT&T fully complied with the job security agreement in the December 11, 2005 CBA with the CWA. Under that agreement, AT&T agreed to offer laid-off employees an available position in the same Force Adjustment Region (if available) and, if not available, an available

[15] Letter from Joe Gosiger, Representative, CWA, to Jeff Hatch-Miller, Chairman, Arizona Corporation Commission, Docket Nos. T-03346-A-05-0149, *et al.* (Ariz. Corp. Comm. filed June 15, 2005).

position nationwide. I also note that, although the CBA does not require AT&T to offer those employees a position with the same title, AT&T did so here nonetheless.

Q16. WHAT CONCLUSIONS SHOULD THE AUTHORITY DRAW FROM THE JOB-RELATED ANNOUNCEMENTS DISCUSSED ABOVE?

A16. First, the Authority should recognize that none of these announcements resulted from the SBC/AT&T merger as suggested by Ms. Goldman. Second, the Authority should understand that the mere fact that AT&T decides to close or reduce employment at certain specific facilities is no evidence of a reduction in service quality. Third, the Authority should understand that, particularly in competitive markets, companies need the flexibility to manage their workforce and facilities to operate most efficiently to meet the needs of their customers. And, lastly, as I stated above, the new company will be stronger and more efficient competitor with more opportunities for all employees.

II. <u>TIME WARNER TELECOM'S SPECIAL ACCESS ALLEGATIONS ARE UNFOUNDED</u>

Q17. ON BEHALF OF TIME WARNER TELECOM, MS. TORREZ CRITICIZES THE PERFORMANCE MEASURES INCLUDED IN ITS SPECIAL ACCESS CONTRACT TARIFF WITH AT&T. HOW DO YOU RESPOND?

A17. For one thing, I do not believe this is an appropriate forum in which to raise these issues. The services AT&T provides under its contract tariff with Time Warner Telecom are interstate special access services that are subject to the FCC's exclusive jurisdiction. In addition, the contract that Time Warner Telecom discusses involves access services provided by AT&T's ILEC subsidiaries;

accordingly, none of those services are provided or even available in Tennessee. AT&T's contract tariff with Time Warner Telecom is accordingly doubly irrelevant to this proceeding.

Beyond that, Ms. Torrez neglects to mention that the parties mutually agreed to the performance measures in the AT&T-Time Warner Telecom contract tariff. In particular, in business-to-business negotiations, Time Warner Telecom explained that its primary interest in performance measures was not, as Ms. Torrez now appears to claim, to receive payments in the event of performance shortcomings, but rather to ensure high quality service. To that end, the parties negotiated and agreed on certain specific performance metrics, and they further agreed that, in the event AT&T were to miss those metrics, AT&T would set aside funds for the purpose of improving the quality of the services provided to Time Warner Telecom.

Notably, Time Warner Telecom has not argued that the provisions of its existing agreement with AT&T are somehow unfair, or that they are insufficient to encourage AT&T to provide the quality of service Time Warner Telecom desires. Instead, Ms. Torrez says only that Time Warner Telecom "prefer[s]" direct credits. Nor does Time Warner Telecom argue that the quality of service it receives from AT&T has in fact been deficient. Thus, Time Warner Telecom has not even attempted to demonstrate that the existing arrangements have any material adverse effect on its business.

Q18. DID AT&T AGREE TO THIS PERFORMANCE FRAMEWORK AS PART OF A PACKAGE OF RELATED TERMS AND CONDITIONS?

A18. Yes. As Debra Aron explains in her rebuttal testimony, special access services are highly competitive. As a result, negotiations over an agreement like the one between AT&T and Time Warner Telecom involve substantial gives and takes from both sides. It would obviously frustrate the purpose of those negotiations – and undermine them in the future – if either party could subsequently alter the terms of the deal by challenging one part of the overall agreement before regulatory authorities, as Time Warner Telecom is apparently attempting to do here. Indeed, Ms. Torrez transparently characterizes (at 4) approval proceedings connected with the AT&T/BellSouth merger as an "opportunity" for Time Warner Telecom to exert "leverage" on AT&T and BellSouth, for the purpose of forcing the renegotiation of existing agreements.

Q19. IS IT APPROPRIATE TO REVISIT THESE PERFORMANCE METRICS HERE?

A19. No. Apart from the reasons noted above, the contract tariff between AT&T and Time Warner Telecom – which has a five-year term – has only been in effect for one year. That contract – including the innovative performance metrics arrangements agreed to by the parties – should be permitted to run its course, absent *mutual* agreement to revise its terms. This is particularly true since, as noted above, there has been no suggestion that AT&T's performance under the contract has been insufficient.

Q20. HOW DO YOU RESPOND TO MS. TORREZ'S SUGGESTION (AT 4) THAT TIME WARNER TELECOM SHOULD BE ABLE TO NEGOTIATE A NEW SPECIAL ACCESS CONTRACT WITH THE COMBINED COMPANY THAT WOULD TAKE EFFECT AFTER THE MERGER CLOSES?

A20. If Ms. Torrez means to suggest that Time Warner Telecom wishes to negotiate a contract today with a combined AT&T/BellSouth that would take effect after the merger, that suggestion is untenable. AT&T and BellSouth remain separate companies today, and there are significant limitations on their ability to plan for post-merger integration. In view of those limitations, it is unrealistic to suggest that AT&T and BellSouth should be forced to negotiate a consolidated special access agreement with Time Warner Telecom that would take effect after the merger.

Q21. DO YOU AGREE WITH MR. WOOD'S SUGGESTION (AT 8) THAT THE AUTHORITY SHOULD CONSIDER THE EFFECT OF THE MERGER ON SPECIAL ACCESS?

A21. No. A comprehensive review of the effects that this proposed merger may have on the special access market will be carried out by the FCC and the Department of Justice. In reviewing the AT&T-SBC merger, the Department of Justice studied the special access market in extraordinary detail, and it ultimately forced the combined company, as a condition for consummating the transaction without challenge under the Hart-Scott-Rodino Antitrust Improvements Act, to provide indefeasible rights of use to special access facilities in those locations where the Department believed the merger was likely to diminish competition. Likewise, the FCC's review of the SBC/AT&T merger included a painstaking review of the special access market and the likely impact that that merger would have on competition in various submarkets. Both the Department of Justice and the FCC are engaging in a similar, equally thorough analysis of these issues this time around. Furthermore, Mr. Wood and his clients have had an opportunity to raise

these concerns with the FCC. Particularly in view of the fact that most special access is jurisdictionally interstate, there is simply no reason for the Authority to consider these issues here.

Q22. MR. WOOD CONTENDS (AT 9) THAT AT&T IS "THE COMPETITOR THAT IS BEST-POSITIONED" TO COMPETE WITH BELLSOUTH FOR BUSINESS CUSTOMERS, AND THAT THE LOSS OF AT&T AS A COMPETITOR WILL DIMINISH COMPETITION IN THE ENTERPRISE MARKET. DO YOU AGREE?

A22. No. As we explained in our March 31 Joint Filing, this merger is likely to have little impact on competition in the enterprise market, because there is little horizontal overlap between AT&T and BellSouth in that market. In BellSouth's region, AT&T focuses mainly on serving the largest retail business customers, many of which have national and international operations. For its part, BellSouth lacks a national network and other assets required to serve this market segment, and it has little organic ability to become a more serious competitor in this segment. The FCC found in the *SBC/AT&T Merger Order*[16] that the enterprise segment is populated by sophisticated customers and a wide and growing range of competitors that now include national interexchange carriers, international carriers, CLECs, IP/data network providers, cable companies, VoIP providers, equipment vendors, and systems integrators. For these reasons, there is no prospect that the merged company could dominate the fiercely competitive enterprise market.

[16] Memorandum Opinion and Order, *SBC Communications Inc. and AT&T Corp., Applications for Approval of Transfer of Control*, WC Docket No. 05-65, FCC 05-183, 20 FCC Rcd 18290 (rel. Nov. 17, 2005) ("*SBC-AT&T Merger Order*").

Q23. MR. WOOD ALSO COMPLAINS (AT 12) THAT THE MERGER WILL "IMPAIR[] THE ABILITY OF REGULATORS TO PERFORM BENCHMARKING ANALYSIS AMONG THE REMAINING RBOCS, RESULTING IN SUBSTANTIAL PUBLIC INTEREST HARMS." HOW DO YOU RESPOND?

A23. Mr. Wood appears to be referring to an observation that the FCC made over six years ago in its orders approving the SBC/Ameritech and Bell Atlantic/GTE mergers, where the FCC expressed a concern that such mergers would eliminate "benchmarks" that were then "critical" to the FCC's regulation of incumbent LECs. The FCC found that each of these incumbent LECs was then a dominant provider of local exchange and exchange access services in its region and that each had the ability and the incentive to act to prevent competitive alternatives from developing. The facts and industry structure have changed dramatically since the FCC reached that conclusion.

Indeed, even in those earlier orders where the FCC identified benchmarking as an issue, the FCC recognized that the need for benchmarking would not last forever. In the *Bell Atlantic/GTE Merger Order* (¶ 159), the FCC "agree[d]" that the marketplace is highly dynamic and could reasonably be expected to "evolve[]" in ways that would eliminate the need for the benchmarks that multiple independent incumbent LECs theoretically offer.

The FCC's expectations have now been fully realized, and the AT&T/BellSouth merger does not remotely raise the benchmarking-related concerns identified in prior orders. Section 271 authorization has been granted in all states; local markets are fully and irreversibly open to competition; and the industry and regulators now have many years of experience with unbundling, interconnection,

other section 251 arrangements, and performance measurement plans. Moreover, there have been fundamental changes in the BOCs and their incentives, for they now operate as both purchasers and sellers of access and interconnection. Also, today's converged marketplace is characterized by robust intermodal competition across all services and customer segments that not only removes any basis for competitive concerns, but also provides additional "benchmark" companies to which regulators could turn if there remained any need for benchmarking comparisons.

Beyond all of this, "benchmarking" across Bell companies has always been primarily, if not exclusively, a federal issue. In this respect, Mr. Wood does not identify any circumstances in which AT&T has been used as a "benchmark" to inform regulatory decisions of this Authority, and I am not aware of any such instances. It is obviously difficult to claim that the merger will create harm by diminishing this Authority's ability to "benchmark" between BellSouth and AT&T, when the Authority has apparently never even done so.

III. MR. GILLAN DRAWS THE WRONG LESSONS FROM THE NATIONAL-LOCAL STRATEGY

Q24. WHAT WAS THE NATIONAL-LOCAL STRATEGY?

A24. The "National-Local" strategy was SBC's organic attempt, involving the expenditure of substantial resources and more than $1 billion, to expand out-of-region by focusing on markets where SBC's in-region business customers had a substantial presence. In pursuit of this strategy, SBC spent in excess of $1 billion

over five years on facilities, start-up sales and marketing costs, and introduction of SBC's products.

Q25. MR. GILLAN CLAIMS (AT 10) THAT AT&T DID NOT "FOLLOW THROUGH" ON THE NATIONAL-LOCAL STRATEGY. IS THAT ACCURATE?

A25. No. While SBC experienced only limited success in winning a prime supplier role for large enterprise customers, the facts simply do not support the contention that SBC did not try to compete out-of-region or that SBC somehow violated the conditions the FCC attached to its approval of the SBC/Ameritech merger to ensure commitment to the National-Local strategy. Indeed, in 2002, independent auditors confirmed that SBC, in fact, did exactly what it said it would with regard to that strategy.[17] Furthermore, as I have noted, SBC spent more than $1 billion over five years in its effort to pursue the National-Local strategy.

Q26. MR. GILLAN STATES (AT 8) THAT YOUR PRIOR TESTIMONY REGARDING THE NATIONAL-LOCAL STRATEGY "RECOGNIZE[S] THAT THE ONLY CARRIERS REMOTELY SIZED TO COMPETE WITH SBC . . . WERE THE *OTHER* RBOCS," INCLUDING BELLSOUTH. IS THAT ACCURATE?

A26. No. Mr. Gillan is referring to my testimony filed over seven years ago in support of the SBC/Ameritech merger. As I have already described, the competitive landscape has changed dramatically since that time. In approving the SBC/AT&T merger just last year, the FCC has recognized that "competition for medium and

[17] *See* Letter from Caryn D. Moir, SBC, to Marlene H. Dortch, FCC, CC Docket No. 98-141 (Aug. 21, 2002) (detailing how SBC had fulfilled each of the requirements in Condition 21 – the out-of-region condition); Ernst & Young Report of Independent Accountants, CC Docket No. 98-141, at 1 (FCC filed Oct. 29, 2002) (concluding that SBC "complied, in all material respects, with Condition 21").

large enterprise customers should remain strong after the merger because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services that demand high-capacity communications services, *and because there will remain a significant number of carriers competing in the market.*" *SBC-AT&T Merger Order* ¶ 56 (emphasis added). Moreover, "there are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors." *Id.* ¶ 64. The FCC further found that "available market share data does not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless usage." *Id.* ¶ 73.

Q27. MR. GILLAN ALSO STATES (AT 6) THAT AT&T'S EXPERIENCE WITH THE NATIONAL-LOCAL STRATEGY RAISES CONCERNS ABOUT AT&T'S "CREDIBILITY (AND SINCERITY)" HERE. HOW DO YOU RESPOND?

A27. Mr. Gillan is wrong. As I have already explained, SBC committed substantial resources to carry out the National-Local strategy. Indeed, as part of that strategy, SBC committed, in each of 30 out-of-region markets (including Memphis and Nashville), to (a) install a switch or obtain switching capacity; (b) collocate in 10 wire centers; (c) offer facilities-based local exchange service to all business and residential customers served by the 10 wire centers; and (d) offer local exchange service to all business and residential customers in the market. SBC fully complied with these commitments, and it spent more than $1 billion in doing so. Those facts hardly demonstrate a lack of sincerity.

Q28. MR. GILLAN STATES (AT 12) THAT "THE ONLY WAY THAT MEANINGFUL COMPETITION CAN SUCCEED AGAINST A CARRIER . . . WITH A UBIQUITOUS LOCAL NETWORK IS IF THE ENTRANT IS ABLE TO USE THAT NETWORK TO PROVISION SERVICE TO ITS CUSTOMERS AS WELL." DO YOU AGREE?

A28. No. Mr. Gillan fails to recognize how much the competitive landscape has changed since 1996. Mandating ubiquitous access to the incumbent carrier's network is simply not necessary for "meaningful competition" to succeed under today's market conditions. With respect to the mass market, rapid advances in IP technology permit cable companies to offer voice services to their customers. By bundling telephone services with their dominant video and data services, cable companies have won millions of telephone customers, and their telephone subscribership is growing exponentially. Meanwhile, the number of wireless subscribers exceeds the number of wireline customers, including here in Tennessee. Wireless carriers have become leading long distance providers, many wireless customers are "cutting the cord" and giving up their landline phones altogether, and CLECs also continue to compete for mass market customers. With respect to the enterprise market, the FCC has already found it populated by sophisticated customers and a wide and growing range of competitors that now includes national interexchange carriers, international carriers, CLECs, IP/data network providers, cable companies, VoIP providers, equipment vendors and systems integrators.

Q29. MR. GILLAN STATES (AT 14) THAT THE MERGER OF AT&T AND BELLSOUTH WILL RESULT IN A "RESOURCE IMBALANCE" THAT THREATENS IMPLEMENTATION OF THE 1996 ACT. DO YOU AGREE?

A29. No. For one thing, Mr. Gillan's comparison of the "Incumbent LEC Sector" and the "Competitive Sector" is highly misleading. Mr. Gillan counts Verizon as an ILEC, for example, even though to my knowledge Verizon has no ILEC operations in Tennessee. Mr. Gillan also appears to use revenue figures for AT&T and Verizon, for example, that include their wireless operations. To my knowledge, neither Cingular nor Verizon Wireless has injected itself into the 1996 Act arbitration disputes that Mr. Gillan's testimony seems to focus on. At the very least, if Mr. Gillan is going to "count" the revenues of Cingular and Verizon Wireless in the ILEC column, he should include the substantial wireless operations of T Mobile, Sprint Nextel and the various regional wireless carriers, such as Alltel, in the CLEC column. Yet Mr. Gillan simply ignored those significant revenues, thereby distorting the facts. Furthermore, as Dr. Aron notes in her rebuttal testimony, Mr. Gillan's list of the "Competitive Sector" simply ignores *all* cable operators, including the ones discussed in my and Dr. Aron's opening testimony that are aggressively competing for voice customers in Tennessee.

Beyond this, it is factually incorrect to suggest that this merger will result in any significant increase in the size of BellSouth as an incumbent LEC in Tennessee. AT&T is not an incumbent LEC in Tennessee. While it is correct to say that the merger will result in a *stronger* BellSouth in Tennessee – among other things, BellSouth will be better positioned to bring real video competition, as well as other new and innovative services, to Tennessee citizens – it simply is not true that the merger will result in a markedly "bigger" BellSouth.

Finally, I believe that Mr. Gillan is wrong to state that a resource "balance" is a baseline assumption of the 1996 Act. The Act authorizes CLECs to obtain ILEC services for resale at a regulated discount, and it further provides access to interconnection and unbundled network elements. Furthermore, the Act provides CLECs a number of options in the event they believe that they do not have the resources to negotiate and/or litigate against incumbents, including the ability to opt in to existing interconnection agreements. The existence of such options suggests to me that Congress did not, contrary to Mr. Gillan's assumption, assume a "balance" of resources in local exchange competition.

IV. THE MERGER SHOULD BE APPROVED WITHOUT CONDITIONS

Q30. WHAT IS YOUR REACTION TO THE VARIOUS WITNESSES' SUGGESTIONS THAT THE AUTHORITY SHOULD PLACE CONDITIONS ON ITS APPROVAL OF THE MERGER?

A30. Conditions here are unnecessary and inappropriate. To the extent the Authority were to consider conditions, it would only be to mitigate concrete harms directly resulting from the merger. There are none in this case. As I explained above and in my opening testimony, the merger is likely to enhance competition, improve service quality, ensure competitive rates, and buttress the long-term job prospects in the state. In these circumstances, the merger should be approved promptly and unconditionally.

Importantly, the imposition of conditions would de detrimental to competition and consumers in Tennessee. The telecommunications marketplace, in Tennessee as elsewhere, is highly competitive and evolving rapidly. Forcing a company to

commit to a specific course of conduct in such an environment carries with it the risk that the company will be forced to operate inefficiently, which in turn can frustrate its ability to compete and lead to delays in the introduction of new products and the delivery of benefits to consumers. Such risks cannot be justified here. The combined AT&T/BellSouth will have to fight hard to win and keep every customer, not just against cable operators, but also, and increasingly, against wireless providers as well as independent IP-based providers. The self-serving conditions proposed by the various parties would, in effect, force the combined company – alone among the host of service providers in a highly competitive and quickly evolving marketplace – to operate inefficiently in Tennessee. And that result, in turn, would compromise the combined company's ability to develop and deploy new products and to make those products available across the full range of customers that the combined company otherwise intends to serve, to the detriment of customers in Tennessee and elsewhere.

Q31. MR. GILLAN STATES (AT 13) THAT A LESSON OF THE NATIONAL-LOCAL STRATEGY IS THAT "CONDITIONS NEED TO BE AS SELF-EFFECTUATING AS POSSIBLE." DO YOU AGREE WITH THAT STATEMENT?

A31. No. As I have already discussed, SBC fully satisfied the FCC's condition relating to the National-Local strategy in the SBC-Ameritech merger. The marketplace has changed so dramatically since 1999 that any attempt to draw conclusions from what did or did not occur then is meaningless. Indeed, in today's fast-moving and competitive environment, it is impossible and inappropriate for regulators to dictate how precisely companies should compete.

Q32. HOW DO YOU RESPOND TO MS. GOLDMAN'S SUGGESTION (AT 6) THAT THE MERGED COMPANY SHOULD BE REQUIRED TO "COMMIT TO MAINTAIN THE HIGHEST STANDARDS OF SERVICE QUALITY"?

A32. This condition is unnecessary. First, there has been no showing that the merger will in any way diminish service quality in Tennessee. On the contrary, the only evidence bearing on this point – which is set out in my own direct testimony as well as that of Christopher Rice – makes clear that the merger will, if anything, improve service quality in Tennessee and elsewhere in the BellSouth region. Furthermore, AT&T is *already* committed to maintaining the highest standards of service quality. And, as the direct testimony of Marty Dickens notes, BellSouth is (and will be following the merger) subject to retail service objectives set by this Authority. The condition Ms. Goldman proposes would accordingly accomplish nothing.

At the same time, the proposed condition raises many of the dangers I noted above. A "service quality" condition is likely to give rise to questions and complaints to this Authority – whether from competitors that wish to blame difficulties in the marketplace on wholesale "service quality" provided by the combined company, or from entities such as the CWA that believe particular employment actions pose a threat to "service quality." To the extent that anyone has any issues concerning either retail or wholesale service quality, there are already mechanisms to bring them before the Authority. But there is no basis to expand the Authority's jurisdiction to permit investigation of the "service quality" ramifications of any and all actions by the combined company. Such a mandate

would serve only to increase the costs of the combined company and thus hinder its ability to innovate and bring benefits to Tennessee customers.

Q33. HOW DO YOU RESPOND TO MS. GOLDMAN'S SUGGESTION (AT 6) THAT THE MERGED COMPANY SHOULD BE REQUIRED TO "COMMIT TO UPGRADE EVERY CENTRAL OFFICE IN THE STATE FOR DSL CAPABILITY WITHIN TWO YEARS"?

A33. Quite apart from Ms. Goldman's failure to tie this proposed condition to any harm that would allegedly occur as a result of the merger, this condition appears to be entirely unnecessary. As explained in the rebuttal testimony of Marty Dickens, BellSouth has already upgraded all of the central offices in Tennessee to support DSL. The combined company plainly should not be forced to commit to an action that BellSouth has already completed.

Q34. HOW DO YOU RESPOND TO MS. GOLDMAN'S SUGGESTION (AT 6) THAT THE MERGED COMPANY SHOULD BE REQUIRED TO "MAINTAIN EMPLOYMENT LEVELS IN THE STATE OF TENNESSEE FOR AT LEAST THREE YEARS AT THE SAME LEVEL AS ON THE DATE THE MERGER CLOSES"?

A34. Here again, Ms. Goldman's proposal is unrelated to any showing that the merger will diminish the employment outlook in Tennessee. As I have explained above, the merger is unlikely to result in significant job losses in the state in the short term, and, in the long term, it should result in a more viable company and thus a more stable employer.

Moreover, apart from the failure to tie this condition to any proposed harm stemming from the merger, Ms. Goldman's proposal is, from a competitive point of view, utterly unrealistic. As I explained above, the combined company will

compete in a highly competitive, fast evolving marketplace. Indeed, today, AT&T and BellSouth ILECs lose over 16,000 switched access lines *each business day* – a fact that demonstrates the evolving and competitive nature of the communications space. In such an environment, companies have to make sound strategic decisions for the long-term benefit of the company, and they have to make those decisions quickly. Failure to make such decisions promptly can result in substantial business reversals, and even failure of the enterprise. Ms. Goldman's proposed condition would paralyze the company and prevent it from making the decisions it may need to make in order to compete. AT&T has every intention of being a robust and stable employer in Tennessee. It values BellSouth's existing employees, and it values the network the company has developed and deployed, and currently maintains, in the state. But the combined company simply cannot be required to commit to a certain number of employees in the state. To do so would interfere with its ability to compete in the market by placing employees where they are needed to respond to customer needs and, in the long run, result in a less competitive company that is, as a result, able to provide fewer jobs than would otherwise be the case.

Q35. HOW DO YOU RESPOND TO MS. GOLDMAN'S SUGGESTION (AT 6-7) THAT THE MERGED COMPANY SHOULD BE REQUIRED TO "NOT CLOSE ANY TECHNICAL OPERATIONS, CALL CENTERS, OR OTHER FACILITIES IN THE STATE OF TENNESSEE FOR THREE YEARS AFTER THE MERGER CLOSES"?

A35. This proposal is similar to the proposed "employment levels" condition I discussed immediately above. First, the proposal is not tied to any allegation of harm resulting from the merger. In the absence of such an allegation, there is, in

my view, no basis even to discuss such a proposed condition. Beyond that, the proposed condition would severely undercut the combined company's ability to compete. To take just one example, as I explained in my opening testimony, AT&T is in the midst of an ambitious effort to push fiber deep into its network to enable the delivery of video service and higher broadband transmission speeds to mass market customers. One benefit of the merger with BellSouth are the efficiencies the combined company will realize in its efforts to provide video service, and thus the increased likelihood that the combined company will be able to provide video service in the BellSouth region. Ms. Goldman's proposed condition – which would prevent the combined company from closing *any* "technical operations, call centers, or other facilities" in the State – could frustrate that development by forcing the company to devote resources not to innovative new services such as video, but rather to areas where, from a competitive standpoint, they are no longer needed. Particularly where, as here, there has been no allegation of harm that the proposed condition is intended to remedy, such a condition would be contrary to sound policy.

Q36. MS. GOLDMAN PROVIDES (AT 7-10) NUMEROUS EXAMPLES OF MERGER CONDITIONS THAT SHE SUGGESTS SERVE AS PRECEDENT FOR THE IMPOSITION OF CONDITIONS HERE. DO YOU AGREE?

A36. No, I do not. As an initial matter, each merger must be evaluated on its own terms, and, as I noted above, to the extent any conditions are considered at all, they should be considered only if and to the extent necessary to respond to specific harms that will result from the merger at hand. So, for example, contrary

to Ms. Goldman's apparent view, the fact that the Utah Public Service Commission may have imposed conditions on the US West/Qwest merger, or that the Kentucky Public Service Commission may have imposed requirements on Alltel as a condition of certain divestitures, has no bearing on the propriety of imposing conditions on the Authority's approval of *this* transaction.

Equally important, the bulk of the precedent on which Ms. Goldman relies is from a different era. Ms. Goldman centers her testimony largely on conditions that state commissions imposed on mergers that took place in the late 1990s and in 2000, such as the SBC/Pacific Telesis, SBC/Ameritech, and Bell Atlantic/GTE mergers. As I explained earlier, the telecommunications industry is vastly different today. Since those mergers were consummated, competition from wireless carriers, cable providers, and IP-based providers has exploded. This competition has transformed the industry, substantially diminishing the revenues of traditional wireline companies such as AT&T and BellSouth and undercutting their competitive positions in the market.

From the perspective of merger review, this transformation in the industry makes an enormous difference. It means, first, that any potential for harm stemming from a merger between traditional wireline carriers such as AT&T and BellSouth is nowhere near what it was previously, before the onslaught of competition from wireless, cable, and IP-based providers. And it also means that the merging companies can ill-afford the costs – in terms of both resources and regulatory disabilities – that come with conditions. As I explained above, a combined AT&T and BellSouth will compete in a highly competitive, rapidly changing

marketplace. The ability of the combined firm to thrive in such a marketplace – and to bring the benefits to consumers that we believe this merger will make possible – depends on the ability to act quickly and direct resources where the market demands them. Today – far more than in the prior mergers Ms. Goldman discusses – the imposition of conditions would frustrate the combined company's ability to act in this fashion and would thus inhibit its ability to compete.

Indeed, notably absent from Ms. Goldman's list of precedents are any examples of employment-based conditions stemming from the far more recent SBC/AT&T merger. As explained above in response to Question 8, not only did parties in that context seek to impose conditions similar to those Ms. Goldman recommends here, but also, in at least one case, the same party that proposed those conditions subsequently conceded that the merger has in fact been good for employment. In view of this more recent precedent, Ms. Goldman's reliance on transactions dating back many years is telling.

Q37. ON BEHALF OF TIME WARNER TELECOM, MS. TORREZ AND MS. WOOD RECOMMEND THAT THE TRA ADOPT SPECIAL ACCESS PERFORMANCE MEASURES AS A CONDITION OF APPROVING THE MERGER. DO YOU AGREE?

A37. No, for several reasons. First, as I explained above, Time Warner Telecom *negotiated mutually agreeable* special access performance measures with AT&T. As Marty Dickens explains in his rebuttal testimony, Time Warner Telecom did the same with BellSouth. Time Warner Telecom has not even alleged, moreover, that those measures are insufficient in any way.

Second, as Marty Dickens explains in his rebuttal testimony, this Authority has recently approved diagnostic special access measures, pursuant to a voluntary settlement in a generic performance measurements proceeding. Time Warner Telecom could have participated in that proceeding and apparently chose not to. It should not be permitted a second bite at the apple here.

Third, to the extent Time Warner Telecom's proposal would encompass interstate special access, that service falls within the exclusive jurisdiction of the FCC.

Q38. MR. WOOD ALSO PROPOSES (AT 14) A DISPUTE RESOLUTION MECHANISM. HOW DO YOU RESPOND?

A38. Once again, this proposal has nothing to do with the merger. Moreover, there is no evidence that current procedures – all of which have been negotiated and approved as part of the interconnection agreement process – are somehow inadequate to deal with the disputes that arise among carriers. If CLECs are concerned that the process for resolving disputes is not working properly, they can negotiate alternative arrangements when negotiating a new interconnection agreement.

Q39. MR. WOOD FURTHER PROPOSES (AT 14) THAT THE MERGED COMPANY SHOULD BE REQUIRED TO CONTINUE TO OFFER ACCESS TO UNDERLYING FACILITIES – INCLUDING SPECIAL ACCESS AND ETHERNET – FOR "AT LEAST TEN YEARS." HOW DO YOU RESPOND?

A39. Again, Mr. Wood has failed to tie this proposal to any harm that would result from the merger. Beyond this, Mr. Wood's 10-year time frame is mind-boggling. Competition requires that competitors be able to rapidly adapt to marketplace conditions and customer demand. The notion that any company in any industry

should be compelled to commit to provide the same service for *10* years is counter to basic principles of competition. That is especially so in communications, where 10 years is an eternity. I can only surmise that Mr. Wood intends this condition as a means to handicap the combined company's ability to compete in the marketplace, and thus give his client, Time Warner Telecom, a leg up. If that is the case, it is obviously an improper aim.

Q40. MR. GILLAN PROPOSES (AT 20-21) THAT THE TRA CONDITION ITS APPROVAL OF THE MERGER ON THE IMPOSITION OF PRICE CAPS FOR UNES. WHAT IS YOUR RESPONSE?

A40. The merger will have no effect on BellSouth's obligations to provide UNEs, on the prices of UNEs, or on the Authority's regulatory oversight of these issues. Furthermore, the imposition of price caps here would work a fundamental and far-reaching change on how the Authority sets the rates for UNEs. If the Authority is to consider this wholly unprecedented proposal, it should be in a deliberate and comprehensive fashion, in which the Authority could properly consider the many questions raised, such as whether it is even consistent with the 1996 Act and the FCC's TELRIC rules.

Q41. MR. GILLAN ALSO PROPOSES (AT 33) THAT AT&T GIVE ALL EXISTING CUSTOMERS A "FRESH LOOK" – IE, THE ABILITY TO TERMINATE EXISTING CONTRACTS WITHOUT CONTRACTUAL PENALTIES. HOW DO YOU RESPOND?

A41. In simple terms, Mr. Gillan's proposal is that the Authority invalidate the negotiated terms of BellSouth's and AT&T's contracts with its customers in Tennessee. The preposterous nature of this proposal, and the obvious competitive maneuvering that it reflects, should be evident on its face. The sophisticated

businesses that entered into discounted volume- and term-contracts with BellSouth and AT&T did so with the understanding that, in exchange for such discounts, they were committing to a contract with a particular term. In Tennessee, there is no requirement to enter into such contracts. They are purely optional. There is no evidence or even an allegation that these businesses were coerced into entering into these arrangements. By entering into a long-term contract, these customers received a better price. The Authority has no legitimate basis to abrogate the parties' contractual obligations, and there is certainly nothing in this merger that would justify such an extraordinary action. This is yet another example where Mr. Gillan is asking this Authority to impose a condition that has no relationship whatsoever to this merger.

Q42. MR. GILLAN PROPOSES (AT 34) THAT THE AUTHORITY TAKE UPON ITSELF THE ROLE OF ENFORCING ANY CONDITIONS IMPOSED ON THE MERGER BY THE FCC. HOW DO YOU RESPOND?

A42. For one thing, because the merger will result in substantial public interest benefits with no countervailing harms, I don't believe the FCC should or will impose any conditions. In any case, if the FCC elects to impose conditions, it should be the FCC alone that enforces them. The FCC knows best what its conditions require, and it is fully capable of enforcing those requirements, as it has in prior mergers. If states were to enforce such FCC conditions, different states may well read the same condition differently, leading to different applications of the same requirement in different locations. That result makes no sense at all. Moreover, parties would have the choice of raising the same issues in multiple forums, perhaps simultaneously. That would be inefficient and lead to improper gaming.

Finally, even Mr. Gillan concedes in footnote 48 of his testimony that "some conditions may not be amenable to state resolution."

Beyond all this, state commissions generally don't even have the authority to enforce or implement FCC orders, unless Congress has expressly authorized that, which is not the case here.

Q43. ON BEHALF OF COVAD, MR. WATKINS SUGGESTS (AT 5) THAT THE MERGED COMPANY SHOULD BE REQUIRED TO EXTEND AT&T'S LINE SHARING AND LINE SPLITTING POLICIES TO THE BELLSOUTH REGION. HOW DO YOU RESPOND?

A43. First, I am pleased to learn that Covad has found AT&T's line sharing and line splitting policies to be pro-competitive and useful. As I have explained, communications markets are highly competitive today, and nowhere is that more true than in broadband. We have every incentive to reach mutually agreeable commercial deals with Covad and similar companies.

Beyond that, my response to Mr. Watkins is similar to my response to Ms. Torrez's suggestion that we should be negotiating deals for the combined company. The merger is still a planned merger, and there are significant legal restrictions with regard to making post-merger plans until the merger closes. Because it is possible that BellSouth's local network and circumstances may differ in material respects from AT&T's, we will have to analyze whether we can offer the same terms in different geographic regions following the merger. At this point, we simply do not know at this time what exactly the combined company's line sharing and line splitting policies will be in Tennessee after the merger closes.

Q44. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A44. Yes.

Attachment A

Cautionary Language Concerning Forward-Looking Statements

We have included or incorporated by reference in this document financial estimates and other forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These estimates and statements are subject to risks and uncertainties, and actual results might differ materially from these estimates and statements. Such estimates and statements include, but are not limited to, statements about the benefits of the merger, including future financial and operating results, the combined company's plans, objectives, expectations and intentions, and other statements that are not historical facts. Such statements are based upon the current beliefs and expectations of the management of AT&T Inc. and BellSouth Corporation and are subject to significant risks and uncertainties and outside of our control.

Readers are cautioned that the following important factors, in addition to those discussed in this statement and elsewhere in the proxy statement/prospectus to be filed by AT&T with the SEC, and in the documents incorporated by reference in such proxy statement/prospectus, could affect the future results of AT&T and BellSouth or the prospects for the merger: (1) the ability to obtain governmental approvals of the merger on the proposed terms and schedule; (2) the failure of BellSouth shareholders to approve the merger; (3) the risks that the businesses of AT&T and BellSouth will not be integrated successfully; (4) the risks that the cost savings and any other synergies from the merger may not be fully realized or may take longer to realize than expected; (5) disruption from the merger making it more difficult to maintain relationships with customers, employees or suppliers; (6) competition and its effect on pricing, costs, spending, third-party relationships and revenues; (7) the risk that any savings and other synergies relating to the resulting sole ownership of Cingular Wireless LLC may not be fully realized or may take longer to realize than expected; (8) final outcomes of various state and federal regulatory proceedings and changes in existing state, federal or foreign laws and regulations and/or enactment of additional regulatory laws and regulations; (9) risks inherent in international operations, including exposure to fluctuations in foreign currency exchange rates and political risk; (10) the impact of new technologies; (11) changes in general economic and market conditions; and (12) changes in the regulatory environment in which AT&T and BellSouth operate. Additional factors that may affect future results are contained in AT&T's, BellSouth's, and Cingular Wireless LLC's filings with the Securities and Exchange Commission ("SEC"), which are available at the SEC's website (http://www.sec.gov). Neither AT&T nor BellSouth is under any obligation, and expressly disclaim any obligation, to update, alter or otherwise revise any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future events or otherwise.

This document may contain certain non-GAAP financial measures. Reconciliations between the non-GAAP financial measures and the GAAP financial measures are available on the company's website at www.sbc.com/investor_relations.

Attachment B

State of New Jersey
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JON S. CORZINE
Governor

SEEMA M. SINGH, Esq.
Ratepayer Advocate and Director

May 18, 2006

VIA HAND DELIVERY

Kristi Izzo
Board Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07101

RE: I/M/O the Joint Verified Petition of AT&T Inc., BellSouth Corporation and BellSouth Long Distance, Inc., for approval of Merger
BPU Docket No. TM06030262

Dear Ms. Izzo:

The New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") hereby submits its comments in the above referenced matter. AT&T Inc. ("AT&T") and BellSouth Corporation and BellSouth Long Distance, Inc. (hereinafter "Joint Petitioners") ask for approval of its proposed merger by the New Jersey Board of Public Utilities ("Board"). In the Verified Petition, Joint Petitioners state that statutory standards set forth in N.J.S.A. 48: 51.1 are met and that positive benefits will flow to customers and to the State of New Jersey on competition, rates, employment, and on the provision of safe, adequate and proper service here in New Jersey.

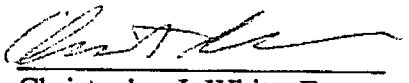
In meetings with the Ratepayer Advocate, Joint Petitioners have provided information showing that employment and investment in New Jersey at the AT&T Labs has ceased to decline and in fact, shows an increase in 2006 compared to 2005. Also, AT&T has provided information showing that the sharp downward trend in employment and investment for the GNOC, Labs and Enterprise segments that was occurring prior to the SBC/AT&T merger has moderated. Joint Petitioners also point to the fact that BellSouth has a deminimus presence in New Jersey. The Joint Petitioners have stated that while these trends will not be directly affected by the Merger, the expectation is that the Merger will only provide additional growth possibilities in New Jersey going forward.

CMS
Artale
Gilbert
Solo

Based on the above, the Ratepayer Advocate does not oppose the Merger and urges the Board to issue an order approving the Merger expeditiously.

Very truly yours,

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE

By: 
Christopher J. White, Esq.
Deputy Ratepayer Advocate

I/M/O the Joint Verified Petition of AT&T, inc. bellSouth Corporation and BellSouth Long Distance for Approval of Merger

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