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REBUTTAL TESTIMONY OF JAMES S. KAHAN

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

June 15, 2006

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

4 **Q1. PLEASE STATE YOUR NAME AND TITLE.**

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

7 **Q2. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
8 **PROCEEDING?**

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

14 **Q3. WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?**

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

21 **Q4. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?**

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

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

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

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

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

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

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

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

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

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

3 Crucially, however, prior to its merger with AT&T, SBC alone lost approximately
4 1,200 employees *per month* through normal attrition (voluntary departures and
5 retirement). It is my understanding that BellSouth also experiences significant
6 natural attrition every month – approximately 580 employees every month. For
7 the combined companies, these numbers translate to a total of 1,780 employees
8 per month, over 21,000 employees per year, and over 64,000 employees in three
9 years that leave the business through normal attrition. Moreover, AT&T and
10 BellSouth have both put in place hiring freezes to provide openings for any
11 employees that might be displaced on account of the merger. Accordingly,
12 AT&T expects that it can manage a very significant portion of the headcount
13 reduction through normal attrition.

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

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

4 **Q6. HOW DO YOU RESPOND TO MS. GOLDMAN’S STATEMENT (AT 4)**
5 **THAT “BELLSOUTH AND AT&T HAVE NOT PROVIDED CWA WITH**
6 **ANY COMMITMENTS REGARDING THE EMPLOYMENT SECURITY**
7 **OF OUR MEMBERS”?**

8
9 A6. Ms. Goldman’s statement is incorrect. The employment security of CWA
10 members is a matter of the CWA’s collective bargaining agreements. As it has
11 done in connection with prior mergers, AT&T will continue to honor and comply
12 with existing collective bargaining agreements.

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

20
21 A7. AT&T is completely committed to providing outstanding service to its customers.
22 As I explained in my direct testimony, the marketplace today is extremely
23 competitive, and we have to fight for every customer. One way we fight for those
24 customers is to provide high quality service. We know full well that, in today’s
25 marketplace, if we fail to provide high quality service, customers will leave us for
26 the competition. Consequently, our interests and the interests of Tennessee
27 consumers coincide – namely, the provision of outstanding service quality.

28 **Q8. HAS AT&T SEEN ARGUMENTS SIMILAR TO MS. GOLDMAN’S IN**
29 **CONNECTION WITH OTHER TRANSACTIONS?**

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

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

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).

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

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

17
18 A9. To the extent Ms. Goldman is suggesting that these announcements somehow
19 support her view that AT&T may jeopardize service quality by closing facilities
20 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).

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

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

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

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

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

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

8 **Q11. MS. GOLDMAN ALSO MENTIONS (AT 6) A TELECOMMUNICATIONS**
9 **RELAY SERVICE (“TRS”) FACILITY IN PENNSYLVANIA. PLEASE**
10 **EXPLAIN THE CIRCUMSTANCES SURROUNDING THE ANNOUNCED**
11 **REDUCTION IN FORCE AT THAT FACILITY?**

12
13 A11. The TRS facility mentioned by Ms. Goldman is in New Castle, Pennsylvania.
14 TRS is a service for persons who are hearing or speech-impaired. AT&T
15 personnel at the New Castle center primarily handle “traditional” TRS calls, i.e.,
16 calls that translate a TTY message to voice or a voice message to TTY, thereby
17 allowing hearing or speech-impaired persons to communicate with non-hearing
18 and speech-impaired persons over the Public Switched Telephone Network. In
19 recent years, however, new technology has begun to displace “traditional” TRS
20 calls, causing AT&T and the rest of the industry to experience a decline in
21 volume of traditional TRS calls. In some states, such as Pennsylvania, the decline
22 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.

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

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

11
12 A12. No. Notably, Ms. Goldman does not and cannot identify any evidence to support
13 such an allegation. As I explained above, the 45 person announced layoff at the
14 New Castle center corresponds to lower volumes at that center and would not
15 compromise service quality.

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

19
20 A13. Yes. AT&T has and will fully comply with all of its obligations under applicable
21 collective bargaining agreements in connection with these reductions in force,
22 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.

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

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

8
9 A14. Absolutely not. In explaining the likely employment effects of their merger,
10 legacy AT&T and SBC were honest and straightforward with each and every
11 commission that reviewed the merger. The parties explained that the merger
12 would create a strong, viable competitor that would be a significant and stable
13 employer over the long term. At the same time, the companies stressed that the
14 merger came against the backdrop of significant and continuing job losses in the
15 telecommunications sector, including at legacy AT&T and SBC. And, critically,
16 the companies *made no commitments whatsoever that those job losses would*
17 *cease as a result of the merger.* Instead, the companies explained that, over the
18 long term, it was their expectation that their merger would stem those losses and,
19 eventually, begin to reverse them.

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

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

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

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).

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

15 In fact, the CWA, in supporting the SBC/AT&T merger appeared to understand
16 this fact. At the time, the CWA stressed that “[i]t is clear that [legacy] AT&T, as
17 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).

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

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

9 A15. Yes. As I noted above, when positions are eliminated within AT&T as a result of
10 merger synergies, union employees are offered alternative positions consistent
11 with their collective bargaining agreements. The same is true when positions are
12 eliminated as a result of business decisions necessitated by declines in the amount
13 of work handled by particular facilities. For example, in connection with the
14 Arizona call center noted above, AT&T gave affected employees the opportunity
15 to follow their work to a legacy AT&T call center in Reynoldsburg, Ohio
16 pursuant to the Collective Bargaining Agreement (CBA) with the CWA. AT&T
17 offered those employees a job with the same title in Reynoldsburg along with a
18 relocation expense allowance based on years of service up to \$13,000. Ten of our
19 employees accepted that offer. In making that offer, AT&T fully complied with
20 the job security agreement in the December 11, 2005 CBA with the CWA. Under
21 that agreement, AT&T agreed to offer laid-off employees an available position in
22 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).

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

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

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

15 **II. TIME WARNER TELECOM'S SPECIAL ACCESS ALLEGATIONS ARE**
16 **UNFOUNDED**

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

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

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

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

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

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

1 A18. Yes. Negotiations over an agreement like the one between AT&T and Time
2 Warner Telecom involve substantial gives and takes from both sides. It would
3 obviously frustrate the purpose of those negotiations – and undermine them in the
4 future – if either party could subsequently alter the terms of the deal by
5 challenging one part of the overall agreement before regulatory authorities, as
6 Time Warner Telecom is apparently attempting to do here. Indeed, Ms. Torrez
7 transparently characterizes (at 4) approval proceedings connected with the
8 AT&T/BellSouth merger as an “opportunity” for Time Warner Telecom to exert
9 “leverage” on AT&T and BellSouth, for the purpose of forcing the renegotiation
10 of existing agreements.

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

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

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

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

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

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

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

4 **Q22. MR. WOOD CONTENDS (AT 9) THAT AT&T IS “THE COMPETITOR**
5 **THAT IS BEST-POSITIONED” TO COMPETE WITH BELL SOUTH FOR**
6 **BUSINESS CUSTOMERS, AND THAT THE LOSS OF AT&T AS A**
7 **COMPETITOR WILL DIMINISH COMPETITION IN THE**
8 **ENTERPRISE MARKET. DO YOU AGREE?**

9 A22. No. As we explained in our March 31 Joint Filing, this merger is likely to have
10 little impact on competition in the enterprise market, because there is little
11 horizontal overlap between AT&T and BellSouth in that market. In BellSouth’s
12 region, AT&T focuses mainly on serving the largest retail business customers,
13 many of which have national and international operations. For its part, BellSouth
14 lacks a national network and other assets required to serve this market segment,
15 and it has little organic ability to become a more serious competitor in this
16 segment. The FCC found in the *SBC/AT&T Merger Order*¹⁶ that the enterprise
17 segment is populated by sophisticated customers and a wide and growing range of
18 competitors that now include national interexchange carriers, international
19 carriers, CLECs, IP/data network providers, cable companies, VoIP providers,
20 equipment vendors, and systems integrators. For these reasons, there is no
21 prospect that the merged company could dominate the fiercely competitive
22 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*”).

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

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

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

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

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

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

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

18 **Q24. WHAT WAS THE NATIONAL-LOCAL STRATEGY?**

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

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

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

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

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

19 A26. No. Mr. Gillan is referring to my testimony filed over seven years ago in support
20 of the SBC/Ameritech merger. As I have already described, the competitive
21 landscape has changed dramatically since that time. In approving the SBC/AT&T
22 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").

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

12 **Q27. MR. GILLAN ALSO STATES (AT 6) THAT AT&T’S EXPERIENCE**
13 **WITH THE NATIONAL-LOCAL STRATEGY RAISES CONCERNS**
14 **ABOUT AT&T’S “CREDIBILITY (AND SINCERITY)” HERE. HOW DO**
15 **YOU RESPOND?**

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

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

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

23 **Q29. MR. GILLAN STATES (AT 14) THAT THE MERGER OF AT&T AND**
24 **BELLSOUTH WILL RESULT IN A “RESOURCE IMBALANCE” THAT**
25 **THREATENS IMPLEMENTATION OF THE 1996 ACT. DO YOU**
26 **AGREE?**

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

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

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

10 **IV. THE MERGER SHOULD BE APPROVED WITHOUT CONDITIONS**

11 **Q30. WHAT IS YOUR REACTION TO THE VARIOUS WITNESSES’**
12 **SUGGESTIONS THAT THE AUTHORITY SHOULD PLACE**
13 **CONDITIONS ON ITS APPROVAL OF THE MERGER?**

14
15 A30. Conditions here are unnecessary and inappropriate. To the extent the Authority
16 were to consider conditions, it would only be to mitigate concrete harms directly
17 resulting from the merger. There are none in this case. As I explained above and
18 in my opening testimony, the merger is likely to enhance competition, improve
19 service quality, ensure competitive rates, and buttress the long-term job prospects
20 in the state. In these circumstances, the merger should be approved promptly and
21 unconditionally.

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

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

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

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

1 **Q32. HOW DO YOU RESPOND TO MS. GOLDMAN’S SUGGESTION (AT 6)**
2 **THAT THE MERGED COMPANY SHOULD BE REQUIRED TO**
3 **“COMMIT TO MAINTAIN THE HIGHEST STANDARDS OF SERVICE**
4 **QUALITY”?**

5
6 A32. This condition is unnecessary. First, there has been no showing that the merger
7 will in any way diminish service quality in Tennessee. On the contrary, the only
8 evidence bearing on this point – which is set out in my own direct testimony as
9 well as that of Christopher Rice – makes clear that the merger will, if anything,
10 improve service quality in Tennessee and elsewhere in the BellSouth region.
11 Furthermore, AT&T is *already* committed to maintaining the highest standards of
12 service quality. And, as the direct testimony of Marty Dickens notes, BellSouth is
13 (and will be following the merger) subject to retail service objectives set by this
14 Authority. The condition Ms. Goldman proposes would accordingly accomplish
15 nothing.

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

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

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

7
8 A33. Quite apart from Ms. Goldman’s failure to tie this proposed condition to any harm
9 that would allegedly occur as a result of the merger, this condition appears to be
10 entirely unnecessary. As explained in the rebuttal testimony of Marty Dickens,
11 BellSouth has already upgraded all of the central offices in Tennessee to support
12 DSL. The combined company plainly should not be forced to commit to an
13 action that BellSouth has already completed.

14 **Q34. HOW DO YOU RESPOND TO MS. GOLDMAN’S SUGGESTION (AT 6)**
15 **THAT THE MERGED COMPANY SHOULD BE REQUIRED TO**
16 **“MAINTAIN EMPLOYMENT LEVELS IN THE STATE OF TENNESSEE**
17 **FOR AT LEAST THREE YEARS AT THE SAME LEVEL AS ON THE**
18 **DATE THE MERGER CLOSES”?**

19
20 A34. Here again, Ms. Goldman’s proposal is unrelated to any showing that the merger
21 will diminish the employment outlook in Tennessee. As I have explained above,
22 the merger is unlikely to result in significant job losses in the state in the short
23 term, and, in the long term, it should result in a more viable company and thus a
24 more stable employer.

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

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

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

23
24 A35. This proposal is similar to the proposed “employment levels” condition I
25 discussed immediately above. First, the proposal is not tied to any allegation of
26 harm resulting from the merger. In the absence of such an allegation, there is, in

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

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

21
22 A36. No, I do not. As an initial matter, each merger must be evaluated on its own
23 terms, and, as I noted above, to the extent any conditions are considered at all,
24 they should be considered only if and to the extent necessary to respond to
25 specific harms that will result from the merger at hand. So, for example, contrary

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

6 Equally important, the bulk of the precedent on which Ms. Goldman relies is from
7 a different era. Ms. Goldman centers her testimony largely on conditions that
8 state commissions imposed on mergers that took place in the late 1990s and in
9 2000, such as the SBC/Pacific Telesis, SBC/Ameritech, and Bell Atlantic/GTE
10 mergers. As I explained earlier, the telecommunications industry is vastly
11 different today. Since those mergers were consummated, competition from
12 wireless carriers, cable providers, and IP-based providers has exploded. This
13 competition has transformed the industry, substantially diminishing the revenues
14 of traditional wireline companies such as AT&T and BellSouth and undercutting
15 their competitive positions in the market.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Q44. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

2 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.