

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 29, 2007

IN RE:)	
)	DOCKET NO.
JOINT FILING OF AT&T INC. AND)	06-00093
BELLSOUTH CORPORATION)	
TOGETHER WITH ITS CERTIFICATED)	
TENNESSEE SUBSIDIARIES)	
REGARDING CHANGE OF CONTROL)	
OF THE OPERATING AUTHORITY OF)	
BELLSOUTH CORPORATION'S)	
TENNESSEE SUBSIDIARIES)	

DISSENTING OPINION OF DIRECTOR RON JONES

This docket came before a panel of the Tennessee Regulatory Authority ("Authority") at an Authority Conference held on July 10, 2006 for consideration of the *Joint Filing of AT&T Inc., BellSouth Corporation, and BellSouth's Certificated Tennessee Subsidiaries Regarding Change of Control* ("Joint Filing") filed on March 31, 2006. During the Authority Conference, the majority voted to grant approval of the *Joint Filing* contingent on approval by the Federal Communications Commission and the Department of Justice. In reaching this conclusion, the majority determined that the intervening parties did not provide "proof showing a linkage between the proposed conditions and the resulting benefit to consumers or competition" or "persuasive evidence that this merger will harm competition."¹ Because I do not agree with the analysis or conclusions of the majority, I respectfully dissent from the majority and provide this opinion in support of my vote.

¹ *Order*, 12 (Nov. 1, 2007).

I. DISCUSSION

Tennessee Code Annotated section 65-4-113 requires approval of a transfer of a certificate of convenience and necessity and applies to this transaction. Specifically, we are called upon here to consider the transfer of the certificates of convenience and necessity held by BellSouth Telecommunications, Inc. (“BST”) and BellSouth Long Distance, Inc. (“BSLD”) to the proposed new owner of the companies, AT&T Inc. Section 65-4-113 requires regulators to consider at a minimum three factors when evaluating a transfer. These are: (1) the suitability, financial responsibility, and capability of the receiving entity, here AT&T Inc., (2) the benefit to the consuming public, and (3) the furtherance of the public interest.²

A. SUITABILITY, FINANCIAL RESPONSIBILITY, AND CAPABILITY OF AT&T INC.

The record establishes that AT&T Inc. is capable of controlling and is suited to control the certificates of convenience and necessity held by BST and BSLD. AT&T Inc. currently controls four other entities certificated in Tennessee to provide telecommunications services.³ Further, AT&T Inc. has the financial means to act as the parent of BST and BSLD.⁴

B. BENEFIT TO THE CONSUMING PUBLIC

The next factor for consideration is the benefit of the transaction to the consuming public. I view this consideration very narrowly and without regard to any potential harm to consumers as I will discuss that aspect of this case later in the discussion of the third consideration – the public interest. The joint filers adamantly maintain that the benefits to

² See Tenn. Code Ann. § 65-4-113(b) (2004).

³ The four subsidiaries are SBC Long Distance, LLC d/b/a AT&T Long Distance; SNET America, Inc. d/b/a AT&T Long Distance East; AT&T Communications of the South Central States, LLC; and TCG Midsouth, Inc.

⁴ See James S. Kahan, Pre-Filed Direct Testimony, p. 9 (Jun. 2, 2006).

consumers will be great.⁵ For example, they assert that consumers will receive more effective disaster recovery efforts and enhanced wireline, wireless, and video services through the research efforts of AT&T Laboratories and the integration of the companies' networks and operations.⁶ I must conclude from the evidence that the proposed merger will likely result in such benefits to the consuming public. This agency has on numerous occasions recognized the advantages created through the combining of companies' resources when evaluating a request made pursuant to Tennessee Code Annotated section 65-4-113.⁷

C. FURTHERANCE OF THE PUBLIC INTEREST

Finally, there is the public interest to evaluate. In 1995, the Tennessee General Assembly defined the term public interest through the declaration of the telecommunications services policy in Tennessee Code Annotated section 65-4-123. In that statute, the General Assembly instructed this agency to "foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets."⁸ The General Assembly further proclaimed in this statute that our regulation "shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider."⁹ Thus, an action is in the public interest for the purposes of telecommunications in Tennessee if the action at a minimum permits competition, protects consumer interests, and does not unreasonably

⁵ See generally Marty Dickens, Pre-Filed Direct Testimony, pp. 7-10 (Jun. 2, 2006).

⁶ See Christopher Rice, Pre-Filed Direct Testimony, *passim* (Jun. 2, 2006), James S. Kahan, Pre-Filed Direct Testimony, pp. 7-13 (Jun. 2, 2006), Debra J. Aron, Pre-Filed Direct Testimony, p. 23 (Jun. 2, 2006).

⁷ See, e.g., Transcript of Authority Conference, p. 13 (Apr. 16, 2007) (approving a transfer of control pursuant to Tenn. Code Ann. § 65-4-113 based, in part, on a finding that according to the parties' representations, the transactions will create stronger competitors in Tennessee's telecommunications marketplace.)

⁸ Tenn. Code Ann. §65-4-123 (2004).

⁹ *Id.*

disadvantage any telecommunications service providers. With this standard in mind, I evaluated the record in this case.

The intervenors in this docket raised significant concerns with regard to the effect of approval of the *Joint Filing* and proposed numerous conditions for the Authority to evaluate.¹⁰ The competing local exchange carriers (“CLECs”) argue that the merger will adversely affect competition for business customers and thereby adversely affect the service provided to those customers. The CLECs contend that the merged entity will immediately acquire a market share of sufficient size while at the same time eliminating a significant competitor thereby forcing competitors out of the business markets in Tennessee.¹¹ Also, the CLECs contend that the merger along with recent deregulation legislation will make it more difficult for regulators to identify and police anti-competitive behavior.¹² The Communications Workers of America, AFL-CIO (“CWA”) contend that job loss and technical operation closures could harm service quality.¹³ It is my opinion that while these arguments raise substantial concerns, they alone do not support denying approval of the transfer of the certificates of convenience and necessity to AT&T Inc. However, the arguments do cause me to evaluate whether a need exists to impose conditions to ensure that the public interest is maintained after the merger.

The joint filers assert that conditions should only be used “to address concrete harms that the Authority believes will result as a direct result of the merger.”¹⁴ It is my opinion that such a standard is far too rigid and fails to allow the flexibility necessary for this agency to

¹⁰ A list of the proposed conditions is attached to this order as Appendix A.

¹¹ Don J. Wood, Pre-Filed Rebuttal Testimony, pp. 17-18, 20-21 (Jun. 15, 2006); Joseph Gillan, Pre-Filed Direct Testimony, pp. 8-9, 17-18 (Jun. 3, 2006), Joseph Gillan, Pre-Filed Rebuttal Testimony, pp. 13-15 (Jun. 15, 2006).

¹² See Lionor M. Torrez, Pre-Filed Direct Testimony, pp. 5-6 (Jun. 2, 2006); Don J. Wood, Pre-Filed Direct Testimony, pp. 11-13 (Jun. 2, 2006), Don J. Wood, Pre-Filed Rebuttal Testimony, pp. 6-7 (Jun. 15, 2006).

¹³ Debbie Goldman, Pre-Filed Direct Testimony, pp. 2, 6 & 14 (Jun. 2, 2006).

¹⁴ Marty Dickens, Pre-Filed Rebuttal Testimony, p. 9 (Jun. 15, 2006).

fulfill its obligation to promote an environment that fosters and sustains competition. If the joint filers' standards were adopted, it is likely, if not certain, that conditions would never be justified under any circumstances.

The joint filers rely on studies and statistics used in similar merger dockets along with the testimony of Dr. Aron to establish that competition, particularly business market competition, will not be adversely affected.¹⁵ This evidence is weighty, but it does not address the market dominance and resources that the merged entities will immediately attain as a result of the transfer. The CLECs were compelling in my opinion in their testimony that they potentially could experience disadvantage and that no matter what the nature of competition in a particular Tennessee market, the transfer will make it more difficult post-merger for a competitor to access that market.

In my opinion, Tennessee's telecommunications policy imposes an affirmative obligation on the directors of this agency to ensure that providers and consumers alike suffer no direct, indirect, or collateral disadvantage. It is only through the imposition of safeguards on access to the last mile and other incumbent controlled facilities that the current environment, which I have concluded encourages competition without regard to technology, will flourish. Moreover, the imposition of conditions on approval will not hamper the merged entities' freedom to provide consumers the benefits set forth as a justification for this agency's approval of the transfer. In fact, past mega-merger conditions involving AT&T Inc. have not dampened the approval process, but have strengthened the competitive environment.

¹⁵ See James S. Kahan, Pre-Filed Direct Testimony, pp. 3-16 (Jun. 2, 2006); Marty Dickens, Pre-Filed Direct Testimony, pp. 11-12 (Jun. 2, 2006), Debra J. Aron, Pre-Filed Direct Testimony, pp. 8-14, 35-42 (Jun. 2, 2006); Debra J. Aron, Pre-Filed Rebuttal Testimony, pp. 6-9 (Jun. 15, 2006).

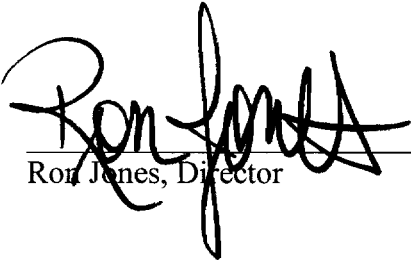
In my opinion, the imposition of conditions is consistent with the State of Tennessee's declaration of its telecommunications services policy and is supported by the record.

As to the arguments of CWA, I agree with the proposition that lost jobs and operational closures can degrade the quality of service received by customers. However, I am unable to find based on the record here that such degradation will or is likely to happen as a result of the merger. The record is unclear as to the number of jobs that will be lost in Tennessee or operations that will be closed. Until further information is received from AT&T Inc., necessary conditions, if any, addressing this issue cannot be crafted. Further, without this additional information, it cannot be determined that the Authority's service quality rules alone afford consumers sufficient protection. Thus, it is my opinion that this issue be developed more fully in future proceedings.

II. CONCLUSION

Based on the foregoing, it is my conclusion that the transfer should be approved pursuant to Tennessee Code Annotated section 65-4-113 contingent upon approval by the Federal Communications Commission and completion of the investigative processes of the Department of Justice and Federal Trade Commission. Additionally, it is my conclusion that the public interest analysis required by Tennessee Code Annotated section 65-4-113 weighs in favor of imposing conditions on the post-merger entity to ensure the continuation of quality service and an environment that permits the level of competition that Tennessee has enjoyed over the past ten years. In order to evaluate which of the conditions the Authority should impose or whether to craft our own conditions, the Authority should defer further consideration of the appropriate conditions until this transaction is addressed by federal agencies and further information is attained from AT&T Inc. regarding the number of jobs

that will be lost in Tennessee or Tennessee operations that will be closed. Because the majority voted against imposing any conditions other than approval by the Federal Communications Commission and the Department of Justice, I respectfully dissent from the *Order* issued on November 1, 2007.¹⁶



Ron Jones, Director

¹⁶ On December 29, 2007, the members of the Federal Communications Commission granted approval of the transfer of control of licenses and authorizations from BellSouth Corporation to AT&T Inc. *In re: AT&T, Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, *Memorandum Opinion and Order*, para. 226 (Released Mar. 26, 2007). As a condition of the grant, the Federal Communications Commission adopted specific conditions, which are attached hereto as Appendix B. *Id.* at para. 227 (referring to pp. 147-57 of the *Memorandum Opinion and Order* marked as Appendix F).

APPENDIX A: PROPOSED CONDITIONS

1. The Authority should set initial rates and adopt price-adjusting parameters using the applicable inflation rate (GDP-PI) and productivity factor. No individual rate element should be permitted to increase more than ten percent per year. Rates should be adjusted annually and linked to the filing of ARMIS business line data. Joseph Gillan, Pre-Filed Direct Testimony, pp. 21-29 (Jun. 3, 2006).
2. Penalty payments should be increased in proportion to the increase in Tennessee revenue by the merged entity. *Id.* at 29.
3. The merged entity should be required to have the performance plan independently audited by an Authority-selected auditor every three years. *Id.* at 28-29.
4. The section 271 Performance Plan should be applied as a stand-alone plan – separate and apart from other states. *Id.* at 29.
5. Pre-Triennial Review Order Enhanced Extended Loops standards should be permanently retired because the requirements were intended to protect BellSouth from inter-exchange carriers, the FCC has abandoned the relevant EEL provisions, and AT&T (formerly SBC) has not used audits. *Id.* at 30-32.
6. Former BellSouth and AT&T customers should be given relief from tariffed or contractual termination penalties and a one-year window to choose a new provider. *Id.* at 33.
7. The merged entity must agree that the Authority may enforce conditions adopted by the FCC. *Id.* at 34.
8. The merged entity should be subject to an accelerated dispute resolution process for all inter-carrier disputes including anti-competitive pricing complaints. Don J. Wood, Pre-Filed Direct Testimony, p. 14 (Jun. 2, 2006).
9. The merged entity must continue to offer access to underlying facilities for at least ten years—namely, special access and Ethernet— at just and reasonable rates. *Id.*
10. The TRA order performance measures and penalties for special access and Ethernet. *Id.*, Lionor M. Torrez, Pre-Filed Direct Testimony, p. 6 & Exh. E (Jun. 2, 2006).
11. The TRA order the post-merger entity, along with all other carriers, to interconnect their networks at just and reasonable rates and at any technically feasible point. Don J. Wood, Pre-Filed Rebuttal Testimony, pp. 21-22 (Jun. 2, 2006).
12. The merged entity must maintain the highest standards of service quality. Debbie Goldman, Pre-Filed Direct Testimony, pp. 2, 6 & 14 (Jun. 2, 2006).
13. The merged entity commits to upgrade every Tennessee central office to Digital Subscriber Line (“DSL”) capability within two years. *Id.*
14. The merged entity maintains employment levels in Tennessee for at least three years at the same level as on the date the merger closes. *Id.*
15. The merged entity commits that the merged entity will not close any technical operations, call centers or other facilities in Tennessee for three years after the merger closes. *Id.*
16. The TRA should impose conditions to prevent anti-competitive behavior by the merged entity with regard to line sharing and line splitting. Charles E. Watkins, Pre-Filed Direct Testimony, p. 5 (Jun. 2, 2006).

APPENDIX B: CONDITIONS IMPOSED BY THE FEDERAL COMMUNICATIONS COMMISSION

Federal Communications Commission

FCC 06-189

APPENDIX F

Conditions

The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them. Unless otherwise specified herein, the commitments described herein shall become effective on the Merger Closing Date. The commitments described herein shall be null and void if AT&T and BellSouth do not merge and there is no Merger Closing Date.

It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

MERGER COMMITMENTS

For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.

Repatriation of Jobs to the U.S.

AT&T BellSouth¹ is committed to providing high quality employment opportunities in the U.S. In order to further this commitment, AT&T BellSouth will repatriate 3,000 jobs that are currently outsourced by BellSouth outside of the U.S. This repatriation will be completed by December 31, 2008. At least 200 of the repatriated jobs will be physically located within the New Orleans, Louisiana MSA.

Promoting Accessibility of Broadband Service

1. By December 31, 2007, AT&T BellSouth will offer broadband Internet access service (i.e., Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T BellSouth in-region territory.² To meet this commitment, AT&T BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the "Wireline Buildout Area"). AT&T BellSouth will make available broadband Internet access service to the remaining living units using alternative

¹ AT&T BellSouth refers to AT&T Inc., BellSouth Corporation, and their affiliates that provide domestic wireline or Wi-Max fixed wireless services.

² As used herein, the "AT&T BellSouth in-region territory" means the areas in which an AT&T or BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i). "AT&T in-region territory" means the area in which an AT&T operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i), and "BellSouth in-region territory" means the area in which a BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i).

technologies and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.³

2. AT&T BellSouth will provide an ADSL modem without charge (except for shipping and handling) to residential subscribers within the Wireline Buildout Area who, between July 1, 2007, and June 30, 2008, replace their AT&T BellSouth dial-up Internet access service with AT&T BellSouth's ADSL service and elect a term plan for their ADSL service of twelve months or greater.

3. Within six months of the Merger Closing Date, and continuing for at least 30 months from the inception of the offer, AT&T BellSouth will offer to retail consumers in the Wireline Buildout Area, who have not previously subscribed to AT&T's or BellSouth's ADSL service, a broadband Internet access service at a speed of up to 768 Kbps at a monthly rate (exclusive of any applicable taxes and regulatory fees) of \$10 per month.

Statement of Video Roll-Out Intentions

AT&T is committed to providing, and has expended substantial resources to provide, a broad array of advanced video programming services in the AT&T in-region territory. These advanced video services include Uverse, on an integrated IP platform, and HomeZone, which integrates advanced broadband and satellite services. Subject to obtaining all necessary authorizations to do so, AT&T BellSouth intends to bring such services to the BellSouth in-region territory in a manner reasonably consistent with AT&T's roll-out of such services within the AT&T in-region territory. In order to facilitate the provision of such advanced video services in the BellSouth in-region territory, AT&T BellSouth will continue to deploy fiber-based facilities and intends to have the capability to reach at least 1.5 million homes in the BellSouth in-region territory by the end of 2007. AT&T BellSouth agrees to provide a written report to the Commission by December 31, 2007, describing progress made in obtaining necessary authorizations to roll-out, and the actual roll-out of such advanced video services in the BellSouth in-region territory.

Public Safety, Disaster Recovery

1. By June 1, 2007, AT&T will complete the steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory in the event of an extended service outage caused by a hurricane or other disaster.

2. In order to further promote public safety, within thirty days of the Merger Closing Date, AT&T BellSouth will donate \$1 million to a section 501(c)(3) foundation or public entities for the purpose of promoting public safety.

³ For purposes of this commitment, a low income living unit shall mean a living unit in AT&T BellSouth's in-region territory with an average annual income of less than \$35,000, determined consistent with Census Bureau data. *see* California Public Utilities Code section 5890(j)(2) (as added by AB 2987) (defining low income households as those with annual incomes below \$35,000), and a rural area shall consist of the zones in AT&T BellSouth's in-region territory with the highest deaveraged UNE loop rates as established by the state commission consistent with the procedures set forth in section 51.507 of the Commission's rules. 47 C.F.R. § 51.507.

Service to Customers with Disabilities

AT&T/BellSouth has a long and distinguished history of serving customers with disabilities. AT&T/BellSouth commits to provide the Commission, within 12 months of the Merger Closing Date, a report describing its efforts to provide high quality service to customers with disabilities.

UNEs

1. The AT&T and BellSouth ILECs shall continue to offer and shall not seek any increase in state-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. For purposes of this commitment, an increase includes an increased existing surcharge or a new surcharge unless such new or increased surcharge is authorized by (i) the applicable interconnection agreement or tariff, as applicable, and (ii) by the relevant state commission. This commitment shall not limit the ability of the AT&T and BellSouth ILECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.
2. AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (*i.e.*, own or manage the optics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.
3. AT&T/BellSouth shall cease all ongoing or threatened audits of compliance with the Commission's EELs eligibility criteria (as set forth in the *Supplemental Order Clarification's* significant local use requirement and related safe harbors, and the *Triennial Review Order's* high capacity EEL eligibility criteria), and shall not initiate any new EELs audits.

Reducing Transaction Costs Associated with Interconnection Agreements

1. The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.
2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.
3. The AT&T/BellSouth ILECs shall allow a requesting telecommunications carrier to use its pre-existing interconnection agreement as the starting point for negotiating a new agreement.

4. The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.

Special Access

Each of the following special access commitments shall remain in effect until 48 months from the Merger Closing Date.

1. AT&T/BellSouth affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Act ("AT&T/BellSouth BOCs")⁴ will implement, in the AT&T and BellSouth Service Areas,⁵ the Service Quality Measurement Plan for Interstate Special Access Services ("the Plan"), similar to that set forth in the SBC/AT&T Merger Conditions, as described herein and in Attachment A to this Appendix F. The AT&T/BellSouth BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed therein. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T/BellSouth BOCs' monthly performance in delivering interstate special access services within each of the states in the AT&T and BellSouth Service Areas. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T and BellSouth section 272(a) affiliates, (ii) their BOC and other affiliates, and (iii) non-affiliates.⁶ The AT&T/BellSouth BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The AT&T/BellSouth BOCs shall implement the Plan for the first full quarter following the Merger Closing Date. This commitment shall terminate on the earlier of (i) 48 months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T/BellSouth files its 16th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.

2. AT&T/BellSouth shall not increase the rates paid by existing customers (as of the Merger Closing Date) of DS1 and DS3 local private line services that it provides in the AT&T/BellSouth in-region territory pursuant to, or referenced in, TCG FCC Tariff No. 2 above their level as of the Merger Closing Date.

3. AT&T/BellSouth will not provide special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.

4. To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified

⁴ For purposes of clarity, the special access commitments set forth herein do not apply to AT&T Advanced Solutions, Inc. and the Amertech Advanced Data Services Companies, doing business collectively as "ASI."

⁵ For purposes of this commitment, "AT&T and BellSouth Service Areas" means the areas within AT&T/BellSouth's in-region territory in which the AT&T and BellSouth ILECs are Bell operating companies as defined in 47 U.S.C. § 153(4)(A).

⁶ BOC data shall not include retail data.

contract tariffed service under section 69.727(a) of the Commission's rules to its own section 272(a) affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates. AT&T-BellSouth also will not unreasonably discriminate in favor of its affiliates in establishing the terms and conditions for grooming special access facilities.

5. No AT&T-BellSouth ILEC may increase the rates in its interstate tariffs, including contract tariffs, for special access services that it provides in the AT&T-BellSouth in-region territory, as set forth in tariffs on file at the Commission on the Merger Closing Date, and as set forth in tariffs amended subsequently in order to comply with the provisions of these commitments.

6. In areas within the AT&T-BellSouth in-region territory where an AT&T-BellSouth ILEC has obtained Phase II pricing flexibility for price cap services ("Phase II areas"), such ILEC will offer DS1 and DS3 channel termination services, DS1 and DS3 mileage services, and Ethernet services,⁸ that currently are offered pursuant to the Phase II Pricing Flexibility Provisions of its special access tariffs,⁹ at rates that are no higher than, and on the same terms and conditions as, its tariffed rates, terms, and conditions as of the Merger Closing Date for such services in areas within its in-region territory where it has not obtained Phase II pricing flexibility. In Phase II areas, AT&T-BellSouth also will reduce by 15% the rates in its interstate tariffs as of the Merger Closing Date for Ethernet services that are not at that time subject to price cap regulation. The foregoing commitments shall not apply to DS1, DS3, or Ethernet services provided by an AT&T-BellSouth ILEC to any other price cap ILEC, including any affiliate of such other price cap ILEC,¹⁰ unless such other price cap ILEC offers DS1 and DS3 channel termination and mileage services, and price cap Ethernet services in all areas in which it has obtained Phase II pricing flexibility relief for such services (hereinafter "Reciprocal Price Cap Services") at rates, and on the terms and conditions, applicable to such services in areas in which it has not obtained Phase II pricing flexibility for such services, nor shall AT&T-BellSouth provide the aforementioned 15% discount to such price cap ILEC or affiliate thereof unless such ILEC makes generally available a reciprocal discount for any Ethernet service it offers outside of price cap regulation (hereinafter "Reciprocal Non-Price Cap Services"). Within 14 days of the Merger Closing Date, AT&T-BellSouth will provide notice of this commitment to each price cap ILEC that purchases, or that has an affiliate that purchases, services subject to this commitment from an AT&T-BellSouth ILEC. If within 30 days thereafter, such price cap ILEC does not: (i) affirmatively inform AT&T-BellSouth and the Commission of its intent to sell Reciprocal

⁷ Neither this merger commitment nor any other merger commitment herein shall be construed to require AT&T-BellSouth to provide any service through a separate affiliate if AT&T-BellSouth is not otherwise required by law to establish or maintain such separate affiliate.

⁸ The Ethernet services subject to this commitment are AT&T's interstate OPT-E-MAN, GigaMAN and DecaMAN services and BellSouth's interstate Metro Ethernet Service.

⁹ The Phase II Pricing Flexibility Provisions for DS1 and DS3 services are those set forth in Ameritech Tariff FCC No. 2, Section 21; Pacific Bell Tariff FCC No. 1, Section 31; Nevada Bell Tariff FCC No. 1, Section 22; Southwestern Bell Telephone Company Tariff FCC No. 73, Section 39; Southern New England Telephone Tariff FCC No. 39, Section 24; and BellSouth Telecommunications Tariff FCC No. 1, Section 23.

¹⁰ For purposes of this commitment, the term "price cap ILEC" refers to an incumbent local exchange carrier that is subject to price cap regulation and all of its affiliates that are subject to price cap regulation. The term "affiliate" means an affiliate as defined in 47 U.S.C. § 153(1) and is not limited to affiliates that are subject to price cap regulation.

Price Cap Services in areas where it has received Phase II pricing flexibility for such services at the rates, terms, and conditions that apply in areas where it has not received such flexibility, and to provide a 15% discount on Reciprocal Non-Price Cap Services; and (ii) file tariff revisions that would implement such changes within 90 days of the Merger Closing Date (a "Non-Reciprocating Carrier"). the AT&T/BellSouth ILECs shall be deemed by the FCC to have substantial cause to make any necessary revisions to the tariffs under which they provide the services subject to this commitment to such Non-Reciprocating Carrier, including any affiliates, to prevent or offset any change in the effective rate charged such entities for such services. The AT&T/BellSouth ILECs will file all tariff revisions necessary to effectuate this commitment, including any provisions addressing Non-Reciprocating Carriers and their affiliates, within 90 days from the Merger Closing Date.

7. AT&T/BellSouth will not oppose any request by a purchaser of interstate special access services for mediation by Commission staff of disputes relating to AT&T/BellSouth's compliance with the rates, terms, and conditions set forth in its interstate special access tariffs and pricing flexibility contracts or to the lawfulness of the rates, terms, and conditions in such tariffs and contracts, nor shall AT&T/BellSouth oppose any request that such disputes be accepted by the Commission onto the Accelerated Docket.

8. The AT&T/BellSouth ILECs will not include in any pricing flexibility contract or tariff filed with the Commission after the Merger Closing Date access service ratio terms which limit the extent to which customers may obtain transmission services as UNEs, rather than special access services.

9. Within 60 days after the Merger Closing Date, the AT&T/BellSouth ILECs will file one or more interstate tariffs that make available to customers of DS1, DS3, and Ethernet service reasonable volume and term discounts without minimum annual revenue commitments (MARC) or growth discounts. To the extent an AT&T/BellSouth ILEC files an interstate tariff for DS1, DS3, or Ethernet services with a varying MARC, it will at the same time file an interstate tariff for such services with a fixed MARC. For purposes of these commitments, a MARC is a requirement that the customer maintain a minimum specified level of spending for specified services per year.

10. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC, AT&T/BellSouth will offer an alternative proposal that gives the customer the option of obtaining a volume and/or term discount(s) without a MARC. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC that varies over the life of the contract, AT&T/BellSouth will offer an alternative proposal that includes a fixed MARC.

11. Within 14 days of the Merger Closing Date, the AT&T/BellSouth ILECs will give notice to customers of AT&T/BellSouth with interstate pricing flexibility contracts that provide for a MARC that varies over the life of the contract that, within 45 days of such notice, customers may elect to freeze, for the remaining term of such pricing flexibility contract, the MARC in effect as of the Merger Closing Date, provided that the customer also freezes, for the remaining term of such pricing flexibility contract, the contract discount rate (or specified rate if the contract sets forth specific rates rather than discounts off of referenced tariffed rates) in effect as of the Merger Closing Date.

Transit Service

The AT&T and BellSouth ILECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T and BellSouth ILECs provide in the AT&T/BellSouth in-region territory.¹¹

ADSL Service¹²

1. Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the "Implementation Date" in that state. For purposes of this commitment, the "Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth's in-region territory in that state.¹³ Within twenty days after meeting the Implementation Date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.

2. AT&T/BellSouth will extend until thirty months after the Merger Closing Date the availability within AT&T's in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the *SBC/AT&T Merger Order* (FCC 05-183).

3. Within twelve months of the Merger Closing Date, AT&T/BellSouth will make available in its in-region territory an ADSL service capable of speeds up to 768 Kbps to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service ("Stand Alone 768 Kbps service"). AT&T/BellSouth will continue to offer the 768 Kbps service in a state for thirty months after the "Stand Alone 768 Kbps Implementation Date" for that state. For purposes of this commitment, the "Stand Alone 768 Kbps Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer the Stand Alone 768 Kbps service to eighty percent of the ADSL-capable premises in AT&T/BellSouth's in-region territory in that state. The Stand Alone 768 Kbps service will be offered at a rate of not more than \$19.95 per month (exclusive of regulatory fees and taxes). AT&T/BellSouth may make available such services at other speeds at prices that are competitive with the broadband market taken as a whole.

ADSL Transmission Service

AT&T/BellSouth will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the

¹¹ Tandem transit service means tandem-switched transport service provided to an originating carrier in order to indirectly send intraLATA traffic subject to § 251(b)(5) of the Communications Act of 1934, as amended, to a terminating carrier, and includes tandem switching functionality and tandem switched transport functionality between an AT&T/BellSouth tandem switch location and the terminating carrier.

¹² The commitments set forth under the heading "ADSL Service" are, by their terms, available to retail customers only. Wholesale commitments are addressed separately under the heading "ADSL Transmission Service."

¹³ After meeting the implementation date in each state, AT&T/BellSouth will continue deployment so that it can offer the service to all ADSL-capable premises in its in-region territory within twelve months of the Merger Closing Date.

combined AT&T/BellSouth territory that is functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date.¹⁴ Such wholesale offering will be at a price not greater than the retail price in a state for ADSL service that is separately purchased by customers who also subscribe to AT&T/BellSouth local telephone service.

Net Neutrality

1. Effective on the Merger Closing Date, and continuing for 30 months thereafter, AT&T/BellSouth will conduct business in a manner that comports with the principles set forth in the Commission's Policy Statement, issued September 23, 2005 (FCC 05-151).

2. AT&T/BellSouth also commits that it will maintain a neutral network and neutral routing in its wireline broadband Internet access service.¹⁵ This commitment shall be satisfied by AT&T/BellSouth's agreement not to provide or to sell to Internet content, application, or service providers, including those affiliated with AT&T/BellSouth, any service that privileges, degrades or prioritizes any packet transmitted over AT&T/BellSouth's wireline broadband Internet access service based on its source, ownership or destination.

This commitment shall apply to AT&T/BellSouth's wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, defined as the point of interconnection that is logically, temporally or physically closest to the customer's premise where public or private Internet backbone networks freely exchange Internet packets.

This commitment does not apply to AT&T/BellSouth's enterprise managed IP services, defined as services available only to enterprise customers¹⁶ that are separate services from, and can be purchased without, AT&T/BellSouth's wireline broadband Internet access service, including, but not limited to, virtual private network (VPN) services provided to enterprise customers. This commitment also does not apply to AT&T/BellSouth's Internet Protocol television (IPTV) service. These exclusions shall not result in the privileging, degradation, or prioritization of packets transmitted or received by AT&T/BellSouth's non-enterprise customers' wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, as defined above.

¹⁴ An ADSL transmission service shall be considered "functionally the same" as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date if the ADSL transmission service relies on ATM transport from the DSLAM (or equivalent device) to the interface with the Internet service provider, and provides a maximum asymmetrical downstream speed of 1.5Mbps or 3.0Mbps, or a maximum symmetrical upstream/downstream speed of 384Kbps or 416Kbps, where each respective speed is available (the "Broadband ADSL Transmission Service"). Nothing in this commitment shall require AT&T/BellSouth to serve any geographic areas it currently does not serve with Broadband ADSL Transmission Service or to provide Internet service providers with broadband Internet access transmission technology that was not offered by AT&T to such providers in its in-region territory as of the Merger Closing Date.

¹⁵ For purposes of this commitment, AT&T/BellSouth's wireline broadband Internet access service and its Wi-Max fixed wireless broadband Internet access service are, collectively, AT&T/BellSouth's "wireline broadband Internet access service."

¹⁶ "Enterprise customers" refers to that class of customer identified as enterprise customers on AT&T's website (<http://www.att.com>) as of December 28, 2006.

This commitment shall sunset on the earlier of (1) two years from the Merger Closing Date, or (2) the effective date of any legislation enacted by Congress subsequent to the Merger Closing Date that substantially addresses "network neutrality" obligations of broadband Internet access providers, including, but not limited to, any legislation that substantially addresses the privileging, degradation, or prioritization of broadband Internet access traffic.

Internet Backbone

1. For a period of three years after the Merger Closing Date, AT&T BellSouth will maintain at least as many discrete settlement-free peering arrangements for Internet backbone services with domestic operating entities within the United States as they did on the Merger Closing Date, provided that the number of settlement-free peering arrangements that AT&T BellSouth is required to maintain hereunder shall be adjusted downward to account for any mergers, acquisitions, or bankruptcies by existing peering entities or the voluntary election by a peering entity to discontinue its peering arrangement. If on the Merger Closing Date, AT&T and BellSouth both maintain a settlement free peering arrangement for Internet backbone services with the same entity (or an affiliate thereof), the separate arrangements shall count as one settlement-free peering arrangement for purposes of determining the number of discrete peering entities with whom AT&T BellSouth must peer pursuant to this commitment. AT&T BellSouth may waive terms of its published peering policy to the extent necessary to maintain the number of peering arrangements required by this commitment.

Notwithstanding the above, if within three years after the Merger Closing Date, one of the ten largest entities with which AT&T BellSouth engages in settlement free peering for Internet backbone services (as measured by traffic volume delivered to AT&T BellSouth's backbone network facilities by such entity) terminates its peering arrangement with AT&T BellSouth for any reason (including bankruptcy, acquisition, or merger), AT&T BellSouth will replace that peering arrangement with another settlement free peering arrangement and shall not adjust its total number of settlement free peers downward as a result.

2. Within thirty days after the Merger Closing Date, and continuing for three years thereafter, AT&T BellSouth will post its peering policy on a publicly accessible website. During this three-year period, AT&T BellSouth will post any revisions to its peering policy on a timely basis as they occur.

Forbearance

1. AT&T BellSouth will not seek or give effect to a ruling, including through a forbearance petition under section 10 of the Communications Act (the "Act") 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

2. AT&T BellSouth will not seek or give effect to any future grant of forbearance that diminishes or supersedes the merged entity's obligations or responsibilities under these merger commitments during the period in which those obligations are in effect.

Wireless

1. AT&T BellSouth shall assign and/or transfer to an unaffiliated third party all of the 2.5 GHz spectrum (broadband radio service (BRS), educational broadband service (EBS)) currently licensed to or leased by BellSouth within one year of the Merger Closing Date.

2. By July 21, 2010, AT&T BellSouth agrees to: (1) offer service in the 2.3 GHz band to 25% of the population in the service area of AT&T BellSouth's wireless communications services (WCS)

licenses, for mobile or fixed point-to-multi-point services, or (2) construct at least five permanent links per one million people in the service area of AT&T BellSouth's WCS licenses, for fixed point-to-point services. In the event AT&T BellSouth fails to meet either of these service requirements, AT&T BellSouth will forfeit the unconstructed portion of the individual WCS licenses for which it did not meet either of these service requirements as of July 21, 2010; provided, however, that in the event the Commission extends the July 21, 2010, buildout date for 2.3GHz service for the WCS industry at large ("Extended Date"), the July 21, 2010 buildout date specified herein shall be modified to conform to the Extended Date. The wireless commitments set forth above do not apply to any 2.3 GHz wireless spectrum held by AT&T BellSouth in the state of Alaska.

Divestiture of Facilities

Within twelve months of the Merger Closing Date, AT&T BellSouth will sell to an unaffiliated third party(ies) an indefeasible right of use ("IRU") to fiber strands within the existing "Lateral Connections," as that term is defined in the *SBC/AT&T Consent Decree*,¹⁷ to the buildings listed in Attachment B to this Appendix F ("BellSouth Divestiture Assets"). These divestitures will be effected in a manner consistent with the divestiture framework agreed to in the *SBC/AT&T Consent Decree*, provided that such divestitures will be subject to approval by the FCC, rather than the Department of Justice.

Tunney Act

AT&T is a party to a Consent Decree entered into following the merger of SBC and AT&T (the "Consent Decree"). The Consent Decree documents the terms under which AT&T agreed to divest special access facilities serving 383 buildings within the former SBC in-region ILEC territory (the "SBC Divestiture Assets"). In its Order approving the AT&T-SBC merger, the Commission also required the divestiture of these same facilities on the terms and conditions contained in the Consent Decree. The Consent Decree is currently under review pursuant to the Tunney Act in the U.S. District Court for the District of Columbia (the "Court") in *U.S. v. SBC Communications, Inc. and AT&T Corp.*, Civil Action No. 1:05CV02102 (EGS) (D.D.C.), where the Court is reviewing the adequacy of the remedy contained in the Consent Decree to address the competitive concerns described in the Complaint filed by the Department of Justice (DOJ).

If it is found in a final, non-appealable order, that the remedy in the Consent Decree is not adequate to address the concerns raised in the Complaint and AT&T and the DOJ agree to a modification of the Consent Decree (the "Modified Consent Decree"), then AT&T agrees that (1) AT&T BellSouth will conform its divestiture of the BellSouth Divestiture Assets to the terms of the Modified Consent Decree; and (2) AT&T BellSouth will negotiate in good faith with the Commission to determine whether the conditions imposed on AT&T BellSouth in the Commission order approving the merger of AT&T and BellSouth satisfies, with respect to the BellSouth territory, the concerns addressed in the Modified Consent Decree.

Certification

AT&T BellSouth shall annually file a declaration by an officer of the corporation attesting that AT&T BellSouth has substantially complied with the terms of these commitments in all material

¹⁷ See *United States v. SBC Communications, Inc.*, Civil Action No. 1:05CV02102, Final Judgment (D.D.C. filed Oct. 27, 2005).

respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, and the second, third, and fourth declarations shall be filed one, two, and three years thereafter, respectively.