

independent SBC and AT&T IP networks was exchanged through a limited number of hand-off, or “peering” points. This arrangement often subjected such traffic to convoluted, inefficient routes. These problems will be avoided on a unified network where traffic flows from source to destination “on-net” and without inter-network hand-offs. The efficiency increase of avoiding traffic hand-offs at fixed peering points will be up to 25 or even 50% over current inter-network traffic handling.¹¹⁸ Equally significant will be the cost savings of using AT&T’s IP network in place of the fee-based transiting and backbone access arrangements SBC currently has with third parties. Repatriating off-net traffic onto an integrated network will also decrease off-net mileage charges paid to other networks.¹¹⁹ In-region, the density of the SBC network will reduce mileage charges for the combined company, and therefore reduce access costs for customers. Similarly, out of region, the density of the AT&T network will reduce mileage charges for the combined company, and therefore reduce access costs for customers.¹²⁰

Network integration will result in a substantial decrease in spending planned for boosting IP network capacity to handle anticipated growth due to increased adoption of IP-based services. The flexibility and capacity realized by the addition of AT&T’s IP network will allow greater routing flexibility and load balancing as additional traffic can be absorbed onto the AT&T network. This allows SBC to avoid investments it would otherwise have to make to increase capacity organically.¹²¹

¹¹⁸ *Id.* ¶ 8.

¹¹⁹ *Id.* ¶ 14.

¹²⁰ *Id.* ¶ 14.

¹²¹ *Id.* ¶¶ 8, 18.

2. Network Integration Will Improve Network Performance and the Quality of Services Offered To All Customers.

Network integration not only reduces costs, but also improves network performance. The improvement translates into a higher level of service quality, which the combined company can offer to its customers. Service quality improvements are primarily brought about by eliminating traffic hand-offs at peering points. Each hand-off involves some degree of processing overhead, which processing introduces delay (latency) and introduces risk of packet loss (reliability). Even where networks are engineered to high standards – for example, moving traffic across an individual network with no more than three internal routing “hops” – traffic that crosses multiple individual networks endures the sum of each of the individual networks’ delays. Network integration will result in more traffic being carried entirely on the combined company’s network, thus avoiding the latency and reliability issues associated with traversing multiple networks. Network integration, as noted above, will avoid traffic hand-offs at fixed peering points, resulting in an efficiency increase of up to 25 or even 50% over current traffic handling on the SBC network. Decreased latency, improved reliability, and increased “on-net” routing efficiencies translate not only into providing customers with better levels of service, but being able to *guarantee* that higher level of service.¹²²

The quality improvements brought about by network integration will flow through to customers as obvious and tangible benefits. IP-based services such as voice, video, and teleconferencing are real-time intensive and thus require minimal latencies to ensure acceptable levels of service quality. Consequently, customers of such services are

¹²² *Id.* ¶ 8.

demanding that IP network providers guarantee a level of service. In the present case, the improvements in quality and reliability that will result from network integration will allow the combined company to guarantee its customers a higher quality of service (“QoS”), and thus offer stricter Service Level Agreements (“SLAs”). SLAs are service warranties, specifying service performance, providing clear rules for measuring that performance, and specifying exactly what the consequences are should the service provider fail to meet the required QoS. SLAs typically include such performance metrics as: network latency (the time it takes a data packet to travel roundtrip between two points in the network), network uptime (the percentage of a given measure of time, such as a month, that the network will be available without problems), and mean time to restore (how long it will take to remedy a problem).¹²³

The improved service quality and reliability, and particularly the reductions in latency and packet loss, are critical to service providers who offer “real time” services. Thus network integration will make the combined network much better suited, over a much larger area, and over many more customers for such twenty-first century services as voice over IP (“VoIP”), video, video conferencing, and collaboration.¹²⁴

3. Network Integration Will Result in a More Rapid and Cost-Effective Deployment of VoIP.

Integration of the SBC and AT&T networks will result in deployment of VoIP services, both in and out of SBC’s region, in a more rapid and cost-effective manner.

¹²³ *Id.* ¶¶ 9-10.

¹²⁴ *Id.* ¶ 12.

SBC intends to continue the AT&T CallVantage service, which will benefit from the merged firm's greater financial and marketing resources.¹²⁵

4. Network Integration Will Result in a More Rapid Deployment of Advanced IP Services.

The integration of the networks also will result in a broader and more rapid deployment of services using IP networks. The combined firm will have a broader reach of MPLS than either firm provides on its own, facilitating carriage of Layer 2 and Layer 3 traffic on the same backbone, with increased scale driving costs down. SBC is presently deploying additional fiber optic facilities deeper into its local networks to enable delivery of IP-based voice and ultra-high speed data and video services. However, SBC lacks the extensive backbone network necessary to efficiently interconnect all of its content sources and subscribers. AT&T, on the other hand, has the backbone capabilities but lacks broad local access facilities. The combined assets will create a seamless, high quality and cost-effective end-to-end IP network for next-generation applications.¹²⁶

F. The Merger Will Result in Substantial Cost Savings.

The merger of SBC and AT&T will result in substantial savings in both the fixed and variable costs of operations, which will benefit customers by making the combined company a more effective competitor and supporting the combined company's increased

¹²⁵ Kahan Decl. ¶ 33.

¹²⁶ *Id.* ¶ 35.

research, development, and innovation. Anticipated savings are over and above benefits expected from each company's on-going productivity initiatives in the absence of a transaction. Improved efficiencies and cost savings will be derived from areas such as: elimination of duplicate facilities; elimination of overlapping staff and related administrative expenses; consolidation of billing and operating support systems; greater utilization of network assets by combining the companies' traffic streams (especially as applications increasingly become IP); greater scalability from business process improvements (including mechanization functions and higher flow-through rates); improved pricing from equipment and service providers; greater scalability from standardization and automation of IT systems and elimination of duplicative IT development projects; and reduction of off-net third party network expenses. The synergies are anticipated to commence immediately and provide a run rate of \$2 billion annually by 2008. SBC estimates that the net present value of these synergies, net of costs to achieve them, is approximately \$15 billion.¹²⁷

VIII. THE MERGER WILL NOT REDUCE COMPETITION FOR MASS MARKET CUSTOMERS

The Applicants have described in great detail the significant public interest benefits that will result from this merger, and now they will demonstrate that these

¹²⁷ *Id.* ¶ 37. The sources of and amounts of these synergies are described more fully in materials presented at the Special Analyst meeting by SBC and AT&T on February 1, 2005. Meeting transcripts *available at* <http://www.sec.gov/Archives/edgar/data/5907/000104746905002185/0001047469-05-002185-index.htm>, and meeting slides *available at* <http://www.sec.gov/Archives/edgar/data/5907/000095012305001014/y05276d8defa14a.htm>.

benefits will not be accompanied by any reduction in competition. With respect to mass market services, this proceeding raises a single, straightforward question: whether the removal of AT&T as a service provider to mass market customers as a result of this transaction will lessen competition in the provision of mass market services. The answer to this question is clear: the merger not only will not – but cannot – have such an anticompetitive effect because AT&T made a unilateral, irreversible decision prior to the merger to stop actively marketing mass market services.¹²⁸ Constraints on SBC’s mass market prices come, and will continue to come, from existing and emerging active participants other than AT&T whose competitive activities are unaffected by the merger, as well as by continuing regulatory constraints and oversight.¹²⁹ Accordingly, this proceeding does not need to delve into the issues concerning regulatory treatment and definitional issues surrounding the rapidly changing technologies for consumer services that are the subject of other Commission proceedings. The merger simply will not harm mass market competition, regardless of market boundaries, legacy market shares, or views about how mass market competition will evolve.¹³⁰

Even if the Commission were to undertake a more granular competitive analysis, that inquiry would likewise demonstrate that the merger will not harm competition. The Commission has already ruled that all the local markets in SBC’s states are irreversibly

¹²⁸ Polumbo Decl. ¶ 2, 9; Horton Decl. ¶¶ 2, 7. MCI announced a similar decision to end marketing services to mass market customers in 2004. *See* Christopher Stern, *MCI Hires Advisers for Likely Sale Bid; Legal Banking Firms Retained*, WASH.POST, Sept. 21, 2004, at E01 (“In July, AT&T announced that it would no longer compete for new residential customers and would instead focus on its business customer base. MCI has quietly taken similar steps and is no longer competing in the residential business.”).

¹²⁹ Carlton & Sider Decl. ¶ 52.

¹³⁰ *Id.* ¶ 107; Schwartz Decl. ¶ 38.

open to competition.¹³¹ In this regard, SBC today increasingly competes with facilities-based competitors. This competitive activity is only expected to increase in the near term as cable and other competitors carry out their publicly announced expansion plans in response to VoIP and other technological innovations that enhanced their ability to provide competitive alternatives.¹³²

¹³¹ See, e.g., *In re Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization to Provide In-Region, Interlata Services in California*, Memorandum Opinion and Order, 17 FCC Rcd. 25650 ¶ 1 (2002) (“We grant Pacific Bell’s application in this Order based on our conclusion that Pacific Bell has taken the statutorily required steps to open its local exchange markets in California to Competition”), ¶ 12 (“We conclude, as did the California Commission, that Pacific Bell satisfies the requirements of Track A in California”), ¶ 20 (“we find that Pacific Bell’s UNE rates in California are just, reasonable, and nondiscriminatory, and satisfy checklist item two”), ¶ 145 (“Based on the record before us, we conclude that Pacific Bell has demonstrated that it will comply with the requirements of section 272.”), ¶ 148 (“We conclude that approval of this application is consistent with the public interest. From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in California’s local exchange market have been removed, and that the local exchange market is open to competition.”).

¹³² See Stephen Lawson, *Comcast Moves Into Phone Service*, NETWORK WORLD FUSION (Jan. 11, 2005) available at <http://www.nwfusion.com/news/2005/0111comcamoves.html>. (“Cable operator Comcast plans roll out a VoIP service reaching 15 million homes by year-end, and offering unlimited local and domestic long-distance call for \$39.95 a month. . . . Comcast is the last of the major cable complaints to lay out details of its VoIP plans”); Forbes/Wolfe Nanotech Report, *Comcast VoIP Rollout Seen as Inexpensive* (May 26, 2004) available at <http://www.forbes.com> (“Comcast has said it would begin the rollout of telephone service in 2005 and expects that 95% of its network will be able to accommodate the telephone calls by the end of that year.”); Peter Grant, *Comcast Plans Major Rollout of Phone Service Over Cable*, WALL ST. J., Jan. 10, 2005, at B1 (“Comcast Corp., the nation’s largest cable-TV operator, is set to announce today an ambitious push into the phone business, a major escalation in the telecom wars that promises to pose one of the biggest challenges ever to the U.S.’s phone giants.”); Bernstein Research, “Cable and Telecom: VoIP Will Reshape Competitive Landscape in 2005,” at 1, Dec. 17, 2004 (“Over the past few months, virtually every cable MSO has accelerated its plans for VoIP. . . . VoIP was virtually nonexistent six months ago. By the end of 2006, it will be offered almost ubiquitously by cable operators, according to our forecasts.”). See also *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, *Eleventh Annual Report*, ¶¶ 50-51, FCC 05-13 (rel. Feb. 4, 2005); Analysis: *Cox Adopts VoIP at the Core* (June 19, 2003) available at <http://www.americasnetwork.com>; Ken Auderberg, *Looming Storm*, COMMUNICATION NEWS (Jan. 1, 2004) (“MCI and Sprint will assist Time Warner Cable in the provisioning of phone service to customers, termination of voice IP traffic to the PSTN”).

The same conclusion follows for long distance services. The Commission has held repeatedly that the existence of multiple facilities-based long distance networks with substantial excess capacity ensures competitive market outcomes.¹³³ The Commission so held in 1995 when it declared AT&T nondominant, notwithstanding AT&T's over 50% share and the existence of only three substantial facilities-based competitors.¹³⁴ Today, of course, the market is much more fragmented with the emergence of many new nationwide networks and the presence of others who obtain wholesale services at competitive rates and use them to offer long distance to retail subscribers. As SBC is almost exclusively a *reseller* of interLATA long distance services, the merger will do nothing to concentrate or reduce capacity in this fiercely competitive wholesale business, which supports literally hundreds of retail competitors that, unlike AT&T, continue actively to compete for mass market long distance customers.¹³⁵ Nor will the merger have any effect on the increasing competitive pressures on wireline long distance providers from wireless calling plans and other non-wireline alternatives that already account for nearly as many long distance minutes as wireline plans.¹³⁶

¹³³ See *In re Unbundled Access to Network Elements*, Order on Remand, WC Dkt No. 04-313, CC Dkt No. 01-338, ¶ 36 n.107 (Feb. 4, 2005) (“*TR Remand Order*”) (citing holdings), available at 2005 WL 289015.

¹³⁴ See *AT&T Non-Dominance Order*, 11 FCC Rcd. at 3294-95, 3303-05 ¶¶ 40, 58-62.

¹³⁵ See Carlton & Sider Decl. ¶ 100.

¹³⁶ *In re Applications of Nextel Communications, Inc. and Sprint Corporation*, Application for Transfer of Control, WT Dkt 05-63, at 31 (Feb. 8, 2005) available at <http://www.fcc.gov/transaction/sprint-nextel.html>. See, e.g., *Ninth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 19 FCC Rcd. 20597, 20649 ¶ 126 (2004). (“Competitive forces combined with increased capacity have induced companies to offer calling plans with large buckets of relatively inexpensive minutes, free enhanced services such as voicemail and caller ID, and wireless data and mobile Internet offerings”). See also Polumbo Decl. ¶ 10.

In short, there is no plausible claim that the proposed combination of SBC and AT&T will reduce mass market competition or harm consumers or the public interest, regardless of whether the Commission’s analysis of the transaction focuses directly on AT&T’s pre-merger decision to cease marketing consumer services or on broader competitive assessments under traditional or newly reconfigured market definitions.

A. The Merger Cannot Lessen Competition in *Any* Relevant Market, Because AT&T Made a Unilateral Pre-Merger Decision To Cease Actively Competing for Mass Market Customers.

It is well settled that “precise definition[s] of the relevant market[s]” and detailed analysis of the participants in those markets “is not necessary where the Commission can accurately assess the competitive impact of the merger without such a detailed analysis.”¹³⁷ That is particularly true where, as here, a merger party’s “present market share [is] an inaccurate reflection of its future competitive strength,”¹³⁸ and a traditional analysis of market definitions and static market shares aimed at identifying potential anticompetitive effects of market “concentration” therefore simply cannot measure the true impact of the merger on competition.¹³⁹

¹³⁷ *In re Time Warner and America Online*, Memorandum Opinion and Order, 16 FCC Rcd. 6547, 6613 ¶ 152 (2001) (“Time/Warner/AOL”). See also *In re Alascom Inc., AT&T Corp. and Pacific Telecom, Inc.*, Order and Authorization, 11 FCC Rcd. 732, 735 ¶ 3 (1995); *SBC/Ameritech*, 14 FCC Rcd. at 14757 ¶ 93.

¹³⁸ *FTC v. Nat’l Tea Co.*, 603 F.2d 694, 700 (8th Cir. 1979).

¹³⁹ See S. Philip Areeda & Herbert Hovenkamp, ANTITRUST LAW ¶ 531a (2d ed. 2002) (“Finding the relevant market and its structure is not a goal in itself, but a surrogate for market power.”). Indeed, as leading antitrust scholars have observed, it has been “many years since anyone knowledgeable about antitrust policy thought that concentration by itself imported a diminution in competition.” *Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309, 315 (7th Cir. 1994) (Posner C.J.); accord *United States v. Syufy Enters.*, 903 F.2d 659, 665-66 (9th Cir. 1990) (Kozinski, J.) (“In evaluating monopoly power, it is not market share that counts, but the ability to maintain market share.”); *Ball Mem’l Hosp.*,

Those principles are dispositive here. Prior to, and for clearly articulated reasons unrelated to, this merger, AT&T unilaterally ceased any efforts to market services actively to the mass market.¹⁴⁰ As described below and in the declaration of John Polumbo, AT&T has undertaken significant steps to implement this decision, such that it is clear that AT&T has stopped actively competing for mass market customers.¹⁴¹ In the absence of the proposed merger, AT&T would not actively be engaged in head-to-head, price-constraining competition with SBC and other active mass market competitors. AT&T's decision to stop competing for mass market customers is a direct result of significant technological, market, and regulatory changes. As a result, AT&T will no longer be an active competitor in that business.¹⁴² And, as the Commission and the antitrust courts have universally recognized, where a market participant is no longer an active participant in ongoing price competition and remains in the relevant markets only by virtue of its declining legacy customer base, its acquisition by one of the remaining active market participants does not lessen competition or otherwise harm the public interest.¹⁴³

Footnote continued from previous page

Inc. v. Mut. Mem'l Hosp. Ins., Inc., 784 F.2d 1325, 1336 (7th Cir. 1986) (Easterbrook, J.). (“Market share is just a way of estimating market power, which is the ultimate consideration Market share reflects current sales, but today’s sales do not always indicate power over sales and price tomorrow.”) (internal citation omitted); Accordingly, where, as here, “there are better ways to estimate market power, the [Commission] should use them.” *Ball Mem'l Hosp.*, 784 F.2d at 1336. *See also United States v. Gen. Dynamics Corp.*, 415 U.S. 486, 503-04 (1974).

¹⁴⁰ Polumbo Decl. ¶¶ 2, 9; Horton Decl. ¶¶ 2,7.

¹⁴¹ Polumbo Decl. ¶¶ 2, 15, 17-18, 20-31.

¹⁴² Polumbo Decl. ¶¶ 2, 9; Horton Decl. ¶¶ 2,7.

¹⁴³ *See, e.g., In re AT&T Corp., British Telecomm., PLC, VLT Co., LLC, Violet License Co. LLC, and TNV [Bahamas] Limited Applications*, 14 FCC Rcd. 19140, 19160 ¶ 45 (1999) (where parties “do not provide ‘head to head competition,’ their combination will

The relevant facts have been widely reported. Over the past few years, AT&T has seen the future prospects for the two halves of its business moving in starkly different directions. Its consumer long distance operations (serving residential and small business customers) have been under severe attack from all quarters. Many powerful competitors, including VoIP providers, cable companies, wireless carriers and RBOCs with new section 271 authority, have been vigorously competing for long distance minutes.¹⁴⁴ Wireline competition, as well as increased use of the Internet and email in lieu of long distance calling, have rapidly eroded AT&T's retail minutes of use, revenues per customer and margins, and AT&T has been losing millions of mass market customers every quarter.¹⁴⁵ By contrast, AT&T has maintained its significant strengths, including its state-of-the-art networks, technological leadership, and global reach, in serving enterprise, government and wholesale long distance customers.¹⁴⁶ Given these radically different prospects, AT&T determined that it would remain active in the retail mass market only if it could at least provide packages of basic local and long distance mass market services.¹⁴⁷

Footnote continued from previous page
not have a significant anticompetitive effect, because it “would not result in the loss of a significant competitor”) (“*AT&T/BT Joint Venture Order*”); *United States v. Gen. Dynamics Corp.*, 415 U.S. 486, 503-04 (1974) (finding merger of two large coal producers that would have markedly increased concentration could not “substantially lessen competition” where the acquired company could only be expected to be a “weak[] . . . competitor” going forward).

¹⁴⁴ Polumbo Decl. ¶¶ 4, 10; Horton Decl. ¶ 5.

¹⁴⁵ Polumbo Decl. ¶¶ 4-5; Horton Decl. ¶ 5.

¹⁴⁶ Horton Decl. ¶ 8.

¹⁴⁷ Polumbo Decl. ¶ 6.

In March 2004, however, the D.C. Circuit severely criticized and vacated the Commission rule that allowed the continued availability of UNE-P.¹⁴⁸ When the United States and the Commission decided not to seek review of that decision in the United States Supreme Court, it was clear to AT&T that UNE-P was dead.¹⁴⁹ It was also clear that UNE-P would be phased out more quickly than AT&T had previously assumed.¹⁵⁰

Accordingly, AT&T made a carefully considered unilateral decision to cease actively marketing traditional local and long distance services to residential and small business customers. The company decided to allow its mass market customer base to migrate to other active market participants through churn, and it redirected its capital resources and focus almost entirely to its “enterprise” business.¹⁵¹ Indeed, AT&T has repeatedly increased a number of the prices charged to its current base of mass market customers.¹⁵²

In furtherance of its decision, AT&T immediately began to take steps to reduce and eventually eliminate an active price constraining role in the provision of services to residential and small business customers. First, AT&T immediately ceased almost all marketing of its traditional mass market services. It stopped advertising, shut down its

¹⁴⁸ *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

¹⁴⁹ Polumbo Decl. ¶ 7; Horton Decl. ¶ 7.

¹⁵⁰ Polumbo Decl. ¶ 7. In this regard, the *Horizontal Merger Guidelines* expressly recognize that legacy market shares cannot be used in industries undergoing substantial technological change and where existing participants may not have the assets to compete going forward. See *Horizontal Merger Guidelines* § 1.521 (“[R]ecent or ongoing changes in the market may indicate that current market shares of a particular firm either understate or overstate the firm’s future competitive significance.”).

¹⁵¹ Polumbo Decl. ¶ 9.

¹⁵² *Id.* ¶¶ 31-34.

telemarketing activities, and drastically reduced its direct mail activities, limiting those mailings largely to notices required by law. AT&T simply made the unilateral and economically-based decision to stop trying to compete for new mass market customers and refocused its significantly downsized consumer operations to provide customer care and support service to its remaining customers during the period before they migrated to other providers.¹⁵³

At the same time, AT&T began to take steps to shore up the profitability of its consumer business during this transition period. As UNE prices continued to increase¹⁵⁴ and higher volume customers more quickly migrated to other providers, AT&T began to raise its mass market prices selectively, to inform customers that it will be terminating costly airline mileage and other “affinity” programs,¹⁵⁵ and to cease efforts to match competitive offerings and price reductions of the many remaining active mass market participants.¹⁵⁶ Although AT&T’s prices prior to the 2004 decision were often below those of other competitors, AT&T no longer seeks to ensure that that is true. In September, October, and November of 2004, AT&T raised many of its retail rates for local service in almost every state in the country.¹⁵⁷ And over the last few months,

¹⁵³ *Id.* ¶¶ 14, 17-18.

¹⁵⁴ Even before issuance of the *TR Remand Order*, several states in SBC’s region, including California, Michigan, and Wisconsin, raised the wholesale lease price for UNE-P significantly. Carlton & Sider Decl. ¶ 49; *SBC Wins One Rate Increase in Three States*, TELECOMMUNICATIONS REPORTS (Nov. 1, 2004) available at 2004 WL 69683681.

¹⁵⁵ See AT&T Notification: As of January 31, 2005 the AT&T/SkyMiles Program will be discontinued, available at <http://www.consumer.att.com/deltanotification/>.

¹⁵⁶ See Polumbo Decl. ¶ 31; see also Carlton & Sider Decl. ¶ 12.

¹⁵⁷ Polumbo Decl. ¶ 32.

AT&T raised the monthly recurring charge on many of its interstate pricing plans.¹⁵⁸

Professor Carlton and Dr. Sider point out that, given its large base and continued focus on mass market customers, SBC would not have similar incentives to raise prices.¹⁵⁹

Indeed, AT&T has already taken so many actions to dismantle its mass market operations, including headcount reductions and the retirement of numerous support systems and infrastructure, that its decision no longer to compete actively for mass market customers is effectively irreversible. As noted above, after deciding to cease active marketing, AT&T scaled back its operations to include only those functions necessary to maintain high quality customer support, albeit on a rapidly diminishing scale, and related functions to its dwindling base of existing customers. AT&T thus undertook a substantial headcount reduction in its consumer operations, particularly in the areas of marketing and sales.¹⁶⁰

AT&T has also retired much of the infrastructure that supported these activities. AT&T has eliminated all outbound telemarketing (“OTM”) consumer sales and ordering capabilities – including sales script support and ordering platforms, customer call list management applications, Integrated Voice Response (“IVR”) applications, outbound dialing applications, and outbound sales tracking and reporting applications. In addition, all hardware (servers, PCs, dialers, IVR, *etc.*), network resources (800 numbers, T1s, switches, *etc.*), and licenses associated with these applications were eliminated. Today, AT&T’s mass market division does not have the technical infrastructure to support a

¹⁵⁸ *Id.* ¶ 33.

¹⁵⁹ Carlton & Sider Decl. ¶ 54.

¹⁶⁰ Polumbo Decl. ¶¶ 14-15, 19-30.

major outbound telemarketing sales campaign.¹⁶¹ And AT&T is in the process of retiring the now unused technical infrastructure that allowed AT&T's mass market division to produce automated marketing campaigns.

AT&T has likewise reduced its customer service support infrastructure, as its call volumes decrease. AT&T's IVR infrastructure for customer service has been cut significantly.¹⁶² AT&T has eliminated many PCs, servers, network resources, and 800 numbers that supported customer service representatives, as those organizations have been downsized.¹⁶³ Thus, even if AT&T wanted to change direction and become an active mass market participant – and it will not because the marketplace and regulatory changes that led to AT&T's decision will not change – it could not market and acquire new mass market customers unless it made a substantial investment to build a new information technology infrastructure.¹⁶⁴

These actions have had the predictable effect as customers continue to switch to active mass market participants.¹⁶⁵ For example, when AT&T decided to cease actively competing for mass market customers in June 2004, AT&T had about 4.7 million local residential customers. Half a million of those customers have already migrated to other providers in just six months, and additional reductions are likely.¹⁶⁶

¹⁶¹ *Id.* ¶ 24.

¹⁶² *Id.* ¶ 28.

¹⁶³ *Id.* ¶ 29.

¹⁶⁴ *Id.* ¶ 30.

¹⁶⁵ *Id.* ¶ 35.

¹⁶⁶ *Id.* ¶ 36.

The story is even more dramatic for AT&T's stand-alone long-distance mass market customer base. As recently as the first quarter of 2003, AT&T had 38.4 million stand-alone long-distance customers. By the end of 2003, that number had fallen to 30.3 million, and by the end of 2004 it had declined again to about 20 million – a loss of almost *half* of the customer base in just two years.¹⁶⁷ Analysts universally expect such sharp declines to continue even in the absence of further rate increases and increasing competitive activity from active market participants.¹⁶⁸

Given these facts, there is no way in which the proposed merger can be said to “lessen” competition in any relevant consumer market. AT&T does not compete with SBC (or anyone else) for mass market customers. Indeed, the only AT&T mass market service that continues to be marketed in any way to new customers in SBC's service areas is the AT&T CallVantage VoIP service that AT&T launched in early 2004.¹⁶⁹ But the AT&T CallVantage service is marketed largely through “brick and mortar” retail outlets.¹⁷⁰ In addition, it is just one of numerous mass market VoIP offerings with similar capabilities.¹⁷¹

¹⁶⁷ *Id.* ¶ 37.

¹⁶⁸ Carlton & Sider Decl. ¶ 47.

¹⁶⁹ *Id.* ¶¶ 42, 55; Polumbo Decl. ¶ 13.

¹⁷⁰ Polumbo Decl. ¶ 13.

¹⁷¹ *See, e.g., Bell Atlantic-NYNEX Merger Order*, 12 FCC Rcd. at 20022 ¶ 65. (“If one of the merging parties has the same capabilities and incentives as a large number of other competitors, then the loss of that one participant may be unlikely to remove such individual discipline from the market”); Press Release, Vonage, Vonage Crosses 400,000 Line Mark (Jan. 5, 2005) *available at* http://www.vonage.com/media/pdf/pf_01_05_05.pdf. Other VoIP providers that remain heavily focused on mass market consumer services have significant numbers of customers. *See id.* (stating that Vonage now has more than 400,000 VoIP customers). There are “more than 400 smaller VoIP outfits chasing Vonage.” Press Release, Vonage, Om Malik, Vonage's Smooth Operator (Feb. 8, 2005) *available at* http://www.vonage.com/corporate/press_news.php?PR=2005_02_08_0.

In sum, as a result of its decision to stop actively marketing services to mass market customers, AT&T will no longer be a significant competitor in the mass market¹⁷² and therefore is not taking any action that should have an impact on the future pricing decisions of SBC or any other active mass market participants. That marketplace reality forecloses any concern that SBC's acquisition of AT&T's remaining wireline mass market business will have any significant anticompetitive effects.¹⁷³

B. A More Granular Analysis Confirms That the Proposed Merger Cannot Lessen Mass Market Competition.

Even if the Commission were to undertake a more granular competition analysis, it is clear that the merger could not lessen competition in any conceivable relevant market, including the “local exchange and exchange access services” and “domestic long distance services” markets that the Commission has analyzed in prior mergers.¹⁷⁴

¹⁷² Carlton & Sider Decl. ¶ 52.

¹⁷³ See, e.g., *Domestic 214 Streamlining Order*, 17 FCC Rcd. 5517 ¶ 26 n.55 (2002) (where merger can result in market performance no worse than [if] the merger [is] blocked,” it cannot be said to lessen competition in any relevant market). *National Tea Co.*, 603 F.2d 694 (8th Cir. 1979), is particularly instructive. As the court of appeals explained in upholding a district court's refusal to enjoin the acquisition of a competitor that was “probabl[y]” going to exit, the acquired party “had experienced such serious marketing problems . . . that it was leaving the area, [that] its present market share was an inaccurate reflection of its future competitive strength.” *Id.* at 698, 700. And because “the acquired company was an insignificant factor as a competitor” the merger could “not have an anticompetitive impact on the market.” *Id.*; see also *Lektro-Vend Corp. v. Vendo Co.*, 660 F.2d 255, 275-76 (7th Cir. 1982) (rejecting challenge to a merger, that the reasoning acquired company's “deteriorating market position prior to the acquisition” demonstrated that “its potential effectively to compete in the future was weak[]” and thus the merger would not have “anticompetitive effects”); *United States v. Int'l Harvester Co.*, 564 F.2d 769, 773-74 (7th Cir. 1977) (finding that where the acquired company was a weak competitor, the acquisition would result in “no substantial lessening of competition”).

¹⁷⁴ See, e.g., *SBC/Ameritech*, 14 FCC Rcd. at 14746 ¶ 68; *In re Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 18025, 18040

1. Local Exchange and Exchange Access Services Provided to Mass Market Customers.

The Commission has already determined that SBC, the incumbent provider of local exchange and exchange access services in its service areas, has irreversibly opened its local markets to competition in compliance with section 271 of the 1996 Act.¹⁷⁵ SBC

Footnote continued from previous page

¶ 24 (1998) (“*MCI/WorldCom*”); *In re Applications of Teleport Communications Group Inc., and AT&T Corp.*, Memorandum Opinion and Order, 13 FCC Rcd. 15236, 15247 ¶ 20 (1998).

¹⁷⁵ See *In re SBC Communications Inc., Southwestern Bell Telephone Co., and Southwestern Bell Communications Servs., Inc.* Memorandum Opinion and Order, 16 FCC Rcd. 20719, 20720, 20725, 20789 ¶¶ 1, 13-14, 140 (2001) (concluding that SBC had “taken the statutorily-required steps . . . to open its local exchange markets in Arkansas and Missouri to competition”); *In re Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc.*, Memorandum Opinion and Order, 17 FCC Rcd. 25650, 25651-52, 25748 ¶¶ 1, 3, 181 (2002) (commending SBC’s “extensive efforts” to “open its local exchange markets to competition”); *In re Joint Application by SBC Communications Inc., Illinois Bell Telephone Co., Indiana Bell Telephone Co. Inc., the Ohio Bell Telephone Co., Wisconsin Bell, Inc., and Southwestern Bell Communications Servs., Inc.*, Memorandum Opinion and Order, 18 FCC Rcd. 21543, 21544-45 ¶ 1 (2003) (concluding that Ameritech had “taken the statutorily required steps to open its local exchange and exchange access markets in these states to competition”); *In re Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance*, Memorandum Opinion and Order, 16 FCC Rcd. 6237, 6239-41, 6384 ¶¶ 1, 6, 286 (2001) (“SWBT has taken the statutorily required steps to open its local exchange markets to competition in each of these states” and SWBT has “facilitate[d] the development” of local competition.); *In re Application by SBC Communications Inc., Michigan Bell Telephone Co., and Southwestern Bell Communications Servs., Inc.*, Memorandum Opinion and Order, 18 FCC Rcd. 19024, 19025-26, 19127 ¶¶ 1, 3, 190 (2003) (concluding that SBC has “taken the statutorily required steps to open its local exchange markets in Michigan to competition” and “commend[ing]” SBC “for the significant progress it has made in opening its local exchange market”); *In re Application by SBC Communications Inc., Nevada Bell Telephone Co., and Southwestern Bell Communications Servs., Inc.*, Memorandum Opinion and Order, 18 FCC Rcd. 7196, 7197, 7234 ¶¶ 1, 77 (2003) (“*Nevada 271 Order*”) (concluding that SBC had “taken the statutorily required steps to open its local exchange markets in Nevada to competition”); *In re Application by SBC Communications Inc., Southwestern Bell Telephone Co. and Southwestern Bell communications Servs., Inc d/b/a/ Southwestern Bell Long Distance*, Memorandum Opinion and Order, 15 FCC Rcd. 18354, 18356-57, 18365-66, 18368 ¶¶ 1, 21, 437 (2000) (concluding that SWBT had “taken the statutorily required steps to open its local exchange and exchange access markets to competition”).

today competes with cable companies and others that use their own local facilities. It competes with VoIP providers that ride on cable or ILEC broadband services. It competes with wireless carriers that provide alternatives to SBC's second lines, take an increasingly large share of minutes of use, and have customers who are increasingly "cutting the wireline cord" altogether. And it competes with CLECs that have negotiated commercial arrangements to use SBC's facilities, or provide service through their own switches by leasing SBC loops. Of course, SBC's basic retail local exchange service prices are also regulated by state public utility commissions.¹⁷⁶ The merger will have no impact on any of these competitive and regulatory constraints on local service pricing.

In all events, the Commission's *TR Remand Order*, which prohibits competitive carriers from adding new UNE-P customers and establishes a 12 month transition period for existing UNE-P customers, forecloses any possible argument that AT&T can be considered a significant local competitor to SBC. AT&T serves mass market local customers in SBC states almost entirely through UNE-P, and although AT&T has, where possible, negotiated commercial agreements to avoid customer disruptions associated with a flashcut termination of UNE-P arrangements,¹⁷⁷ AT&T could not be expected to constrain the prices of SBC or other active competitors with its irreversible decision not to compete actively in the mass market segment following the termination of UNE-P.¹⁷⁸

¹⁷⁶ See *Third Number Portability Order*, 13 FCC Rcd. 11701 ¶ 49 (1998) ("state regulation constrains the ability of incumbent LECs to raise their end-user rates").

¹⁷⁷ Polumbo Decl. ¶ 11.

¹⁷⁸ Carlton & Sider Decl. ¶ 52-53.

Under the Commission's precedents and sound competition analysis, this is the end of the inquiry. Where, as here, one of the merging parties is "not a significant competitor" in the market or does "not possess any special retail assets or capabilities that would make it more likely than other carriers to become a major participant in the mass market," the merger "is not likely to affect adversely competition in this consumer market."¹⁷⁹

Moreover, even as non-merger-related events have put an end to AT&T's competition for residential and small business customers, many others are entering and expanding their competitive activities. Cable companies are using their ubiquitous networks to offer mass market customers local telephone services in markets throughout SBC's 13 states.¹⁸⁰ The largest cable companies, including Comcast and Cox, have been offering telephone services for some time. Comcast alone, which offers service in Chicago, San Francisco and other SBC markets, offers telephone services to 9.8 million homes¹⁸¹ and has 1.2 million customers.¹⁸² It can no longer be doubted that cable telephony is a sustainable business or that cable operators are formidable competitors.

All of the major cable operators, which together pass approximately 85 percent of U.S. households, have now begun aggressively moving to offer VoIP on a nationwide

¹⁷⁹ *MCI/WorldCom*, 13 FCC Rcd. at 18099 ¶ 128-9.

¹⁸⁰ Carlton & Sider Decl. ¶¶ 26-29.

¹⁸¹ Press Release, Comcast, Comcast Report Second Quarter 2004 Results, at 10 (July 28, 2004). Cox telephony is available to another 5.5 million homes and has 1.1 million subscribers. See News Release, Cox Communications, Cox Communications Announces Second Quarter and Year-to-Date Financial Results for 2004 (July 29, 2004) available at http://media.corporate-ir.net/media_files/irol/76/76341/presentations/2Q04a.pdf.

¹⁸² Comcast: Factsheet available at <http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-factsheet>.

basis.¹⁸³ Cox, Time Warner, and Cablevision already offer VoIP throughout their service areas; Cox has 350,000 VoIP subscribers,¹⁸⁴ and Time Warner has 220,000 VoIP subscribers,¹⁸⁵ and Cablevision has 190,000 VoIP subscribers.¹⁸⁶ Other major cable operators offer VoIP in at least some of their markets and have announced plans to expand their VoIP services and to offer VoIP throughout their territories by the end of 2006. Comcast, for example, will offer VoIP in 20 markets by the end of 2005 and throughout its territory by 2006.¹⁸⁷

Literally scores of other VoIP providers have recently entered the market as well, including Vonage, 8x8, Level 3, Z-Tel (now Trinsic), Covad and many others.¹⁸⁸

¹⁸³ See, e.g., Peter Grant, *Here Comes Cable . . . And It Wants A Big Piece of the Residential Phone Market*, WALL ST. J., Sept. 13, 2004, at R4 (“A battle royal between cable and telephone companies for the residential phone markets is about to sweep the country.”); *Telecom Death Match*, Barron’s, June 21, 2004, at 25 (“The cable and telecom markets, once clearly defined and with high barriers to entry, have started to merge into one giant commoditized market.”).

¹⁸⁴ Digital Telephone, Frequently Asked Questions, *available at* www.cox.com/Telephone/FAQs.asp.

¹⁸⁵ Press Release, Time Warner, Time Warner Webcast Slide Presentation for Fourth Quarter 2004, at 12 (Feb. 4, 2005) *available at* <http://ir.TimeWarner.com/downloads/4Q04slides.pdf>. Time Warner’s initial VoIP trial in Portland, Maine captured 10% of voice customers; Donny Jackson, *Time Warner Execs Outline Competitive Landscape*, TELEPHONY ONLINE (June 23, 2004), *available at* http://telephonyonline.com/ar/telecom_time_warner-exec/index.htm.

¹⁸⁶ Press Release, Cablevision, Cablevision Systems Corporation Reports Third Quarter Results (Nov. 8, 2004) *available at* http://www.cablevision.com/index.jhtml?pageType=financial_news.

¹⁸⁷ *Comcast To Challenge Phone Companies with National Rollout*, 24 Comm. Daily 103, May 27, 2004 *available at* 2004 WL 60706138. See also *Cable MSOs Pick UP VoIP Pace, Shrug Off Vonage*, 24 Comm. Daily 100, May 24, 2004 *available at* 2004 WL 60706097. (Time Warner plans to roll out VoIP to all of its divisions by the end of 2004; other cable operators also plan speedy rollout). See also John Curran, *Study Predicts VoIP Sector Will Grow 100-Fold by 2008*, TR DAILY, Aug. 30, 2004.

¹⁸⁸ Carlton & Sider Decl. ¶ 28.

Vonage, already has more than 400,000 VoIP lines and is growing rapidly.¹⁸⁹ ISP giant AOL, which has 29 million subscribers,¹⁹⁰ has announced plans to enter the VoIP business.¹⁹¹ These and other non-facilities-based VoIP providers can enter with relatively modest investment.¹⁹² Analysts uniformly predict that the growth of VoIP “poses a significant competitive challenge” to incumbent telephone companies.¹⁹³ Bernstein Research has predicted that cable telephony will jump from 2.8 million subscribers in 2003 to 19.5 million subscribers by 2010, representing approximately 16% of U.S. households.¹⁹⁴ It further stated that there are low financial barriers to entry in the VoIP market for cable companies due to less costly and relatively location insensitive equipment,¹⁹⁵ and estimated that using VoIP services results in a \$200 reduction in costs per subscriber over circuit-switched cable telephony.¹⁹⁶

¹⁸⁹ Press Release, Vonage, Vonage Added Over 100,000 Subscribers in the Fourth Quarter of 2004 Alone (Jan. 5, 2005) *available at* http://www.vonage.com/media/pdf/pr_01_05_05.pdf. *See also* Carlton & Sider Decl. ¶ 55.

¹⁹⁰ SEC Form 10-Q, Time Warner Inc. at 2 (Sept. 30, 2004).

¹⁹¹ Jim Hu & Ben Charny, *AOL Testing Net Phone Service*, CNET News.Com (Aug. 30, 2004) *available at* http://news.com.com/AOL+testing+Net+phone+service/2100-7352_3-5330183.html.

¹⁹² *See, e.g.,* Ken Brown & Almar Latour, *Heavy Toll: Phone Industry Faces Upheaval As Ways Of Calling Change Fast*, WALL ST. J., Aug. 25, 2004, at A1; Shawn Young, *A Price War Hits Internet Calling*, WALL ST. J., Aug. 26, 2004, at D1; Utendahl, *Vonage-Telecom Services: VoIP, Co. Update, VoIP Pioneer Paints Upbeat Picture of the Future*, at 7 (Nov. 4, 2003); *Everything over IP*, Merrill Lynch, at 16 *available at* www.vonage.com/media/pdf/res_03_12_04.pdf. Overall, analysts estimate the cost per subscriber at \$568 for circuit switched telephony, but \$152-375 for premises powered VoIP. Press Release, Comcast, Comcast Report Second Quarter 2004 Results, at 10 (July 28, 2004).

¹⁹³ Wireline, 24 Comm. Daily 71 (Apr. 13, 2004) *available at* 2004 WL 60705671 (quoting Standard & Poor's).

¹⁹⁴ Bernstein Research, “VoIP Will Reshape Competitive Landscape in 2005,” at 3, (Dec. 17, 2004).

¹⁹⁵ *Id.* at 2.

¹⁹⁶ *Id.*

Wireless calling plans are also a growing threat to wireline local providers. Although “cord cutting” has, to date, been limited, there is no question that the migration of local calls from wireline to wireless is significant.¹⁹⁷ In addition, some customers are using wireless in lieu of second telephone lines.¹⁹⁸ While predictions of the numbers of customers that will cut the wireline cord over the coming years vary, there is a consensus that wireless substitution is likely to accelerate with the Commission’s implementation of wireless local number portability and because younger consumers are most likely to abandon their wireline telephones.¹⁹⁹

Beyond that, SBC will continue to compete with a number of competitive wireline carriers that, for example, connect leased local loops to their own switching networks.²⁰⁰

In sum, because it is not actively competing in the mass market,²⁰¹ AT&T will no longer be a significant price-constraining local competitor for residential and small

¹⁹⁷ Carlton & Sider Decl. ¶ 22.

¹⁹⁸ See *Ninth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 19 FCC Rcd. 20597 (2004) (“*Ninth CMRS Report*”) (collecting some estimates); *Nevada 271 Order*, 18 FCC Rcd. at 7207 ¶ 20 (finding some consumers were using wireless service “in lieu of [local] wireline service”).

¹⁹⁹ Some analysts predict that by 2008 as many as 30% of wireless subscribers may choose to “cut the cord” and give up their landline telephones. *Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution*, In Stat MDR, (Feb. 2004). It was recently reported that wireless revenue was up approximately 13% percent this year, and about 5% of phone users have disconnected their landlines. Jesse Drucker, Almar Latour & Dennis K. Berman, *College Students Disconnect*, WALL ST. J., Dec. 16, 2004, at A1.

²⁰⁰ See *TR Order*, 2005 WL 289015 ¶ 208 (“GCI, Knology, FDN Communications, Cavalier Telephone, McLeodUSA, and others compete using UNE-L strategies”). See also *TR Order*, 2005 WL 289015 ¶ 211 (finding that SBC specifically has instituted a batch hot cut process and other measures designed to facilitate large orders to serve the mass market); see also *id.* ¶ 212 n. 571 (SBC offers extended business hours for hot cuts).

²⁰¹ Polumbo Decl. ¶¶ 2, 9.

business customers, and AT&T's combination with SBC will not have any adverse impact on the competitive abilities of the other active providers that will continue to compete with SBC for mass market customers.

2. Long Distance Services Provided to Mass Market Customers.

The Commission has repeatedly held that traditional long distance services are subject to intense competition – a finding that the Commission reaffirmed just this month.²⁰² That is because numerous carriers have deployed “ubiquitous” long haul fiber networks.²⁰³ That was the basis on which the Commission first found that the long distance market was structurally competitive in its 1995 order declaring AT&T nondominant.²⁰⁴ Since 1995, there has been a massive increase both in the deployment of long haul fiber and, due to technology advances, in the traffic-handling capacity of deployed fiber.²⁰⁵ In addition to the national networks in existence in 1995 (those of AT&T, MCI and Sprint), Qwest, Level 3, Global Crossing/Frontier and WilTel, among others, have built substantial fiber networks. The provision of traditional long distance services is thus substantially less concentrated than in 1995 – and analysts predict that

²⁰² *TR Order*, 2005 WL 289015 ¶ 36 n.107 (summarizing holdings).

²⁰³ *Verizon Virginia Arb. Order* ¶ 91.

²⁰⁴ *In re Motion of AT&T To Be Declared Non-Dominant for Int'l Serv.*, Order, 11 FCC Rcd. 17963, 17984-86 ¶¶ 57-62 (“AT&T Int'l Non-Dominance Order”).

²⁰⁵ SBC 272 Sunset Comments, Carlton-Sider-Shampine Dec. ¶ 38 & Figure 7; Bernstein Research, *U.S. Telecom: Wholesale Segment Too Large To Sweep Under Rug, But Expected Decline At 2.5% CAGR Through '09*, at 6 (Jan. 6, 2005).

this trend will accelerate with the incumbent wholesale carriers, AT&T, MCI, and Sprint, steadily losing share to more recent entrants.²⁰⁶

Because there are multiple competitors with substantial excess capacity, RBOCs, cable companies, wireless, and other providers of retail long distance services²⁰⁷ are able to obtain wholesale long distance transport on extremely competitive terms and conditions. Thus while wholesale minutes have been increasing, prices (and revenues) are decreasing.²⁰⁸ By some estimates, unit prices for many wholesale services have fallen by as much as 20 to 40% per year.²⁰⁹

The Commission approved the merger of MCI and WorldCom – despite the fact that it would reduce the number of substantial wholesale long haul suppliers – based upon its conclusion that retail competition would ultimately be unaffected because of the other available wholesale alternatives.²¹⁰ This finding establishes *a fortiori* that the AT&T-SBC merger will have no anticompetitive effects, because this merger will not result in *any* significant increase in the concentration of the long-haul facilities used to provide mass market long distance services for the simple reason that SBC is a reseller of mass market long distance services.²¹¹ Thus, unlike MCI and WorldCom, AT&T and SBC do

²⁰⁶ *Id.* at 7.

²⁰⁷ See Press Release, FCC, FCC Releases Statistics of Long Distance Telecommunications Industry Report (May 15, 2003).

²⁰⁸ Bernstein Research Call, *U.S. Telecom: Wholesale Segment Too Large To Sweep Under Rug, But Expected Decline At 2.5% CAGR Through '09*, at 4-6 (Jan. 6, 2005).

²⁰⁹ *Id.* at 8 (“With an excess of supply and minimal product differentiation, the wholesale market suffers from intense price pressure: unit prices for wholesale services decline faster than for similar retail services”).

²¹⁰ *MCI/WorldCom*, 13 FCC Rcd. at 18065 ¶ 68.

²¹¹ See *id.* at 18056, 18065 ¶¶ 51, 68 (“In light of the significant new transmission capacity that we believe will become available by the end of 1999, we conclude that

not engage in any significant head-to-head competition for the provision of long haul wholesale services,²¹² and their combination thus will not result in the loss of any significant competitor.²¹³

Moreover, huge volumes of minutes have moved to wireless carriers that offer their customers unlimited calling and “bucket” plans in which a fixed amount of long

Footnote continued from previous page

existing market participants as well as potential market entrants will likely be capable of using the newly available capacity to constrain any attempt at market power”; “Even if MCI WorldCom becomes less aggressive in serving resellers after the merger, we do not believe that retail consumers will be harmed because: (1) resellers will be able to obtain wholesale long distance services from other suppliers; and (2) MCI WorldCom is likely to become less aggressive in serving resellers only if it chooses to focus directly on retail customers, and to do so, it will have to offer retail consumers more attractive service and rates to compete with resellers”); *see also In re Regulatory Treatment of LEC Provision of Interexchange Services*, 12 FCC Rcd. 15756, 15775-76 ¶ 28, 15811-12 ¶ 97 (1997); *AT&T Int’l Non-Dominance Order*, 11 FCC Rcd. 17963 (1996).

²¹² AT&T also provides (and continues to market) long distance services through prepaid cards. There are numerous prepaid card providers, however, and IDT is the largest such provider. Barriers to entry in the prepaid card business are very low, and card providers can take advantage of the intensely competitive market for wholesale service described above. Moreover, prepaid cards serve only a confined segment of the market: principally, consumers who cannot otherwise afford traditional long distance or wireless service or do not have a home phone, who travel frequently, or who have very targeted calling needs (e.g., calls to particular foreign countries). Reductions in the price of prepaid calling cards do not affect the rates for traditional long distance service; prepaid cards thus function more as a complement to traditional long distance services, rather than a substitute. For all of these reasons, the combination of SBC and AT&T will not adversely affect competition in any long distance market.

²¹³ To be sure, AT&T and others have expressed concerns that, absent appropriate regulation, control over local facilities used to provide exchange access services may give SBC and other incumbent local exchange carriers a cost advantage over other retail mass market long distance providers. But those are industry-wide issues that predate and having nothing to do with the merger, and they are appropriately being addressed on an industry-wide basis in the Commission’s ongoing proceedings regarding intercarrier compensation and the appropriate regulatory treatment of ILEC long distance operations. *See Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92. The dispositive fact in this merger proceeding, in contrast, is that the combination of AT&T (which is no longer an active retail mass market long distance competitor) and SBC (which is not a significant wholesale mass market long distance competitor) will not lessen competition in any respect.

distance minutes are provided at a fixed monthly cost.²¹⁴ Consumers are increasingly viewing wireless long distance service as a substitute for wireline long distance service.²¹⁵ Not only does wireless service provide the same basic functionality as wireline long distance service with the added convenience of mobility, but many analysts now believe that wireless long distance calls are on average less costly than wireline calls.²¹⁶ Indeed, many “consumers now view wireless long distance as free and are therefore more likely to use their wireless phones to make long distance calls,”²¹⁷ and the Yankee Group estimates that in U.S. households “more than 36% of local calls and 60% of long-distance calls have been replaced by wireless.”²¹⁸

Similarly, the billions of e-mail and instant messaging communications sent each day are lowering traditional voice long distance traffic.²¹⁹ A 2002 consumer survey revealed that 92% of dial-up Internet subscribers had replaced some long distance usage

²¹⁴ Carlton & Sider Decl. ¶ 22.

²¹⁵ *Cingular/AWS*, 19 FCC Rcd. at 21558 ¶ 74 n.268; *Ninth CMRS Report*, 19 FCC Rcd. at 20684 ¶ 213.

²¹⁶ *Ninth CMRS Report*, 19 FCC Rcd. at 20684-85 ¶ 214.

²¹⁷ Raymond James, “Assessing the Potential for Wireless Substitution,” at 5 (Nov. 18, 2003); *see also* Walter S. Mossberg, *Slip the Surly Bonds of Your Landline*, WALL ST. J., Dec. 3, 2004, *available at* <http://webreprints.djreprints.com/992580994339.html> (“thanks to unlimited night and weekend minutes . . . cell phone plans are the method of choice when it comes to long-distance calling from home.”).

²¹⁸ Yankee Group, “The Success of Wireline/Wireless Strategies Hinges on Delivering Consumer Value,” at 7 (Oct. 2004); *see also* In-Stat/MDR, “Into Thin Air: Residential Wireline Erosion from Wireless and Other Access Alternatives,” at 16, 20 (June 2004) (“use of wireless phones has dramatically impacted wireline long distance usage” and “consumers that use wireless phones have significantly decreased their wireline phone usage for both local and long distance services”).

²¹⁹ The Forrester Report, *Sizing U.S. Consumer Telecom* (2002). *See also* Carlton & Sider Decl. ¶ 25.

with e-mail.²²⁰ The same survey estimates that e-mail, instant messaging and VoIP have resulted in a 47% reduction in long distance usage by Internet subscribers.²²¹

For all of these reasons, the merger cannot lessen competition in any market for mass market services.

IX. THE MERGER WILL NOT ADVERSELY AFFECT COMPETITION IN THE PROVISION OF SERVICES TO BUSINESSES

In vast expanses of the business marketplace – including in the provision of nationwide and global services that constitute AT&T’s primary business focus – the proposed transaction will have no significant adverse effect on competition, because SBC does not and is not likely in the foreseeable future to compete effectively with either AT&T or the wealth of other firms that serve large business customers on a national and global basis. Even where AT&T and SBC do compete for business telecommunications services, numerous factors ensure that the proposed transaction will have no adverse impact on competition:

- SBC and AT&T are only two of many firms with the ability to meet the requirements of business customers of all stripes.
- The sophistication of customers, the purchasing practices they employ, and the heterogeneity of the services they purchase, ensures vigorous competition among bidders.²²²
- The high fixed and relatively low marginal costs of operating telecommunications networks, as well as the existence of substantial

²²⁰ Press Release, J.D. Power and Assoc., J.D. Power and Associate Reports: EathLink Ranks Highest in Customer Satisfaction Among Dial-Up Internet Service Providers (Aug. 20, 2002), *J.D. Power and Associates, 2002 Syndicated Residential and Internet Customers Satisfaction Study* (Aug. 2002).

²²¹ *Id.*

²²² See Carlton & Sider Decl. ¶¶ 92-93.

overcapacity on those networks, ensure that the numerous firms vying for business will continue to compete vigorously.²²³

- Because AT&T's and SBC's strengths in the business marketplace are largely complementary, they are not each other's best or closest substitutes. In contrast to SBC's largely in-region focus on relatively simple packages of services, AT&T's focus is on serving customers with the largest and most complex national and global network and managed services needs. Indeed, this complementarity means that the transaction will provide significant benefits to business customers.²²⁴

Business customers have a diverse range of telecommunications needs. Some buy complex packages of voice, data, and managed services; others buy individualized services. Some use complex, electronic bidding or auction systems for awarding telecom contracts; others use traditional requests for proposals or even more informal competitive bid processes. Some seek to purchase telecom services on a far-flung national or international basis; others buy on a local or regional basis. Some purchase primarily on the basis of price; others place a premium on network reliability, security, or other qualitative needs.²²⁵

Whatever approach a business takes, it is met by a diverse array of firms competing to provide telecommunications services. These competitors include not only the traditional set of transport-oriented carriers (IXCs, RBOCs, and CLECs), but also newer entrants with alternative networks originally conceived to carry Internet traffic and cable-based video services; system integrators combining the ability to provide managed services with expertise in putting together networks optimized to meet customer needs; and telephone and other communications equipment vendors and resellers offering

²²³ See *id.* ¶¶ 22, 27, 76.

²²⁴ See *id.* ¶ 6.

²²⁵ Kahan Decl. ¶¶ 22, 26; See Carlton & Sider Decl. ¶¶ 90-91.

products that in many cases are displacing traditional equipment and services.²²⁶ Thus, business customers not only have a variety of competitive choices for any particular type of service, they increasingly have choices among *categories* of services that allow them to address their underlying business needs in a variety of different ways. In this regard, because many voice and data services are sold to all classes of customers, competition in one segment will benefit customers in all segments.

These marketplace conditions confirm the Commission's consistent approach of considering together the competitive effects of a merger on all but the smallest businesses, as well as the Commission's repeated determination that the business services marketplace is intensely competitive and affords business customers a wide variety of competitive choices. Indeed, the Commission has approved prior mergers of established head-to-head business services competitors when the business services market was much more concentrated than it is today.²²⁷ The same conclusion is warranted here.

A. Businesses of All Sizes Have a Large Number of Choices for Telecom Services.

1. The Commission Has Appropriately Analyzed Medium and Large Business Customers Together.

The Commission has noted that the competitive conditions confronted by medium and large businesses are the same in fundamental respects, and that separate analyses of those competitive conditions would yield no different result. Thus, the Commission has "typically identified" service to "medium and large-sized business customers" together as

²²⁶ Carlton & Sider Decl. ¶¶ 96-106.

²²⁷ *MCI/Worldcom*, 13 FCC Rcd. at 18047 ¶ 36 (1998); *AT&T/BT Joint Venture*, 14 FCC Rcd. at 19161 ¶ 47.

a relevant product market, with small businesses considered as part of the separate “mass market.”²²⁸

The Commission has also repeatedly held that business customers have numerous choices among suppliers of communications services. For example, in approving the merger of MCI and WorldCom – two companies that competed head-to-head across a wide range of business customers – the Commission found that there were numerous competitors;²²⁹ that “barriers” to providing retail long distance services were “low” in light of the glut of long haul capacity;²³⁰ and that anticompetitive conduct against large businesses was particularly unlikely because “business customers generally are sophisticated and knowledgeable consumers of long distance services and often obtain competitive prices through requests for proposals from carriers.”²³¹ Similarly, in reviewing the Bell Atlantic-GTE merger, the Commission recognized that “a large number of firms” with “similar capabilities” serve business customers and emphasized that, in light of the “sophisticat[ion]” of business customers, “broad-based name

²²⁸ *In re Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements and 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules*, Further Notice of Proposed Rulemaking 18 FCC Rcd. 10914 (2003); see also, e.g., *In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 19020 (2003), *rev’d in part on other grounds*, *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*Triennial Review Order*”) (“The enterprise market is a business customer market of typically medium to large businesses with a high demand for a variety of sophisticated telecommunications services.”); *Ameritech/SBC*, 14 FCC Rcd. at 14746 ¶ 68. *MCI/WorldCom*, 13 FCC Rcd. at 18040 ¶ 24; (“For purposes of analyzing the competitive effects of this merger on these services we identify” the relevant market as “medium-sized and large business customers (larger business market)”); *SBC/Ameritech*, 14 FCC Rcd. at 14746 ¶ 68. *MCI/WorldCom*, 13 FCC Rcd. at 18040 ¶ 24 (identifying “medium-sized and large business customers (larger business market)”).

²²⁹ *MCI/WorldCom* 13 FCC Rcd. at 18045 ¶¶ 34, 40-42, 65.

²³⁰ *Id.* at 18047-48 ¶ 36; see also *id.* at 18064 ¶ 65.

²³¹ *Id.* at 18064 ¶ 65.

recognition and mass advertising” was not required to compete successfully in the market.²³² Most recently, the Commission concluded that “SBC and BellSouth face competition in the mass market from other intermodal providers such as cable operators and VoIP providers, as well as intramodal competitors (e.g., carriers purchasing unbundled loop access)” and that “facilities-based competition is greater for enterprise services than for mass market services.”²³³

Current market conditions support and reinforce the Commission’s findings. More competitors than ever before provide voice and data communications services to business customers in the United States. Regardless of the profile of a business customer – whether it is predominantly regional or national, whether it seeks local voice or long-distance data, or whether it wants simple packages of services or complex arrays of managed services – myriad providers are prepared to make competitive offers. As one industry analyst recently described:

The enterprise market is becoming increasingly competitive with RBOCs, IXCs, CLECs and other carriers targeting customers. . . . This has set the stage for competition with the likes of AT&T, MCI, Sprint, CLECs and global carriers, which is further

²³² *In re GTE Corp. and Bell Atlantic Corp.*, 15 FCC Rcd. 14032, 14097 ¶ 121 (2000) (“*Bell Atlantic/GTE*”).

²³³ See also *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, 17011-15 (2003) (describing history of competition for larger businesses and detailing competitors), *rev’d in part on other grounds*, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); *Bell Atlantic/GTE*, 15 FCC at 14096 (“incumbent LECs face increasing competition from numerous new facilities-based carriers in serving the larger business market”; “there are a number of significant competitors equally competitive with Bell Atlantic and GTE in these larger business markets”); *SBC/Ameritech*, 14 FCC Rcd. at 14755-56 ¶¶ 89-90 (noting actual and potential competition for larger businesses).

exacerbated by falling long haul prices due, in part, to the competition for and the glut of long haul capacity.²³⁴

Combined, the various categories of competitors for medium and large business telecommunications services – IXC’s, U.S.-based network providers, foreign-based entrants, CLECs, cable companies, other ILECs, systems integrators, and equipment vendors and their value-added resellers – ensure that all customers will continue to have a wide range of choices if the proposed transaction is consummated. This intense competition is a function not only of the *number* of competitors; it is also a result of the *diversity* of competitors and their approaches. As is true with SBC and AT&T, not all competitors offer all services to all customers in all locations, but there is virtually *no* customer without a wide variety of choices, and this merger will not change that reality.²³⁵

2. Heterogeneous Groups of Competitors Compete Aggressively To Fill Every Business Customer Telecommunications Need.

We discuss below the many large groupings of competitors in the provision of telecommunications services to business customers. Appendix B provides a more detailed description of leading competitors in each group.

At the outset, it is important to recognize that a firm need not have strength in every area or be able to self-provide every input of each of the services purchased by medium and large businesses to be relevant to the Commission’s competition analysis. In particular, many competitors play significant competitive roles without being fully facilities-based. That is because there are multiple competing networks with substantial

²³⁴ Probe Group, “Control of the Enterprise Market,” at 4 (June 2004).

²³⁵ See Carlton & Sider Decl. ¶¶ 96-106.

excess capacity, each competing for traffic and, as a result, a host of competing network owners offer important business service inputs – including voice, frame relay, ATM, and IP transport capabilities – at wholesale.²³⁶ Indeed, the Commission has consistently concluded that, because of this vibrant wholesale market, barriers to entry into retail business markets are “low.”²³⁷ As detailed below, each of the various types of business competitors brings somewhat different strengths to the competitive marketplace. Collectively, this diverse supplier landscape ensures that multiple providers are capable of competing intensely for every customer’s business.

a. Interexchange Carriers.

MCI,²³⁸ **Sprint**,²³⁹ and **Qwest**²⁴⁰ offer nationwide and global networks that allow them to compete to provide voice and data services for businesses throughout the nation

²³⁶ See, e.g., *MCI/WorldCom*, 13 FCC Rcd. at 18068-69 ¶ 73; Qwest Wholesale, available at <http://www.qwest.com/wholesale/pcat/internet.html#local>; Global Crossing Carrier, available at http://www.globalcrossing.com/xml/carrier/car_data.xml.

²³⁷ *MCI/WorldCom*, 13 FCC Rcd. at 14047-48 ¶ 36; see also *AT&T/BT Joint Venture Order*, 14 FCC Rcd. at 19165 ¶ 51 (rejecting claims that barriers to entry into the market for global seamless services are “high” because of ability of carriers to obtain necessary inputs from competitive wholesale suppliers).

²³⁸ In recent months, MCI has announced several major customer agreements, including one to provide “wide range of Internet related services, including managed hosting, Internet access, security, Private IP, video and Net Conferencing solutions” to the 600 plus members of the Securities Industry Association, see Press Release, MCI, SIA Selects MCI For Internet Services (Jan. 25, 2005) available at <http://global.mci.com/about/news/news2.xml?newsid=13331&mode=long&lang=en&width=530&root=/about/&langlinks=off>, as well as an agreement to provide Internet, voice, and data services to Saks. See Press Release, MCI, Saks Wraps Up Deal With MCI (Nov. 8, 2004) available at <http://global.mci.com/about/news/news2.xml?newsid=12330>.

²³⁹ Sprint’s recent major customer wins include Convergys, Boyd Gaming, and Ziff-Davis. See Press Release, Sprint, Sprint Delivers Global Data and Domestic Wireless Services to Convergys (Feb. 17, 2005) available at http://www2.sprint.com/mr/news_dtl.do?id=5600; Press Release, Sprint, Sprint Boyd Gaming Corporation Expands Sprint Service for One-Stop Shopping (Dec. 2, 2004) available at http://www2.sprint.com/mr/news_dtl.do?id=5000; Press Release, Sprint, Ziff Davis Selects Sprint as Primary Wireless and Wireline Services Provider (Nov. 9, 2004) available at http://www2.sprint.com/mr/news_dtl.do?id=2214.

and beyond. IXCs offer businesses the full complement of voice and data services, and their history and existing relationships also provide them with particularly broad experience meeting the most complex, advanced and diverse needs of the largest businesses.

b. Data/IP Network Providers.

The increasing significance of data transport in the business marketplace, particularly combined with the convergence of IP data and voice technologies, has created competitive opportunities for the numerous firms that have developed national and regional data networks over the past several years. As medium and large businesses increasingly utilize IP solutions for voice,²⁴¹ data,²⁴² and converged²⁴³ services, competition is no longer limited to traditional telephone companies; new entrants with

Footnote continued from previous page

²⁴⁰ Qwest recently announced a contract to provide nationwide frame relay service to Land O'Lakes, *see* Press Release, Qwest, Qwest Land O'Lakes Signs New Agreement with Qwest for Network Services (Jan. 12, 2005), *available at* http://www.qwest.com/about/media/pressroom/1,1281,1644_archive,00.html as well as the national roll-out of a VoIP service to businesses. *See* Press Release, Qwest, Qwest Launches Expanded Nationwide VoIP Service for Businesses (Dec. 8, 2004) *available at* http://www.qwest.com/about/media/pressroom/1,1281,1627_archive,00.html.

²⁴¹ Yankee Group, "Business VoIP to Accelerate in 2005," (Dec. 2004) ("Of the roughly 113 million business handsets in the United States, only about 10% are IP handsets, or lines. However, in 2005, Yankee Group expects 50% of all business lines shipped will be IP lines.").

²⁴² Forrester Research, "IP VPNs: Build Or Buy?" (Jan. 27, 2005) ("IP VPNs have taken hold. They provide a cost-effective alternative to traditional remote access and site-to-site technologies. The primary technologies — IP security (IPsec), secure socket layer (SSL), and multiprotocol label switching (MPLS) — are replacing legacy networks like dial-up and Frame Relay (see Figure 1). For example, our recent research indicates that 56% of North American enterprises plan to replace Frame Relay with some amount of IP VPN in 2005.").

²⁴³ Yankee Group, "Educated SMBs Have Aggressive Plans to Upgrade to Converged Phone and Data Systems," at 2 (Jan. 2004) ("The market opportunity for convergent telephony solutions has never been greater and we predict a significant SMB adoption of converged solutions over the next 2 years." "At least 55 percent of all surveyed businesses with plans to upgrade intend to consider a converged solution.").

national and regional fiber optic networks are now looking to serve telecommunications customers over their systems. This is particularly true given that such providers' networks (like those of the traditional IXCs) have substantial unused capacity available for retail (or wholesale) use. Between 1996 and 2001, the number of fiber-kilometers of optical fiber deployed in national networks increased six-fold, and the Commission has noted large increases the deployment of fiber in metropolitan areas.²⁴⁴ For both long haul and metro area fiber networks, the increase in fiber deployed substantially understates the increase in potential network capacity due to improvements in electronics that increase the bandwidth that can be carried on a given strand of fiber.²⁴⁵

Competitors with significant network assets include **Savvis Communications**, a leader in managed services and IP VPNs;²⁴⁶ **Broadwing**, which currently uses a national fiber network to offer data and voice services, and plans to use the assets of recently-acquired Focal Communications Corp. to offer expanded services;²⁴⁷ **Global Crossing**,

²⁴⁴ *Triennial Review Order*, 18 FCC Rcd. at 17211-12 ¶ 378; Carlton & Sider Decl. ¶ 69.

²⁴⁵ *United States v. WorldCom, Inc. and Sprint, Corp.*, Compl. ¶¶ 40, 44 (June 26, 2000) (“DOJ WorldCom-Sprint Complaint”), *available at* <http://www.usdoj.gov/atr/cases/f5000/5051.pdf>; *United States v. WorldCom, Inc. and Intermedia Communications, Inc.*, Compl., ¶¶ 34, 38 (Nov. 17, 2000) (“DOJ WorldCom-Intermedia Complaint”), *available at* <http://www.usdoj.gov/atr/cases/f7000/7043.pdf>.

²⁴⁶ IDC recently reported Savvis as the second largest IP VPN provider in the United States, edging past MCI and behind only AT&T. *See* IDC, “SAVVIS Now Trails Only IBM in Hosting and AT&T in IP VPN Market Share” (July 27, 2004). Among the customers served are retailers such as the Virgin Megastores, *see* “Virgin Entertainment Group Links 27 Corporate and Megastore Locations In U.S. With SAVVIS Managed Network” (July 28, 2004), as well as nationwide firms in manufacturing and distribution, *see* “Industrial Electric Wire & Cable Selects SAVVIS To Improve Network Performance” (May 25, 2004).

²⁴⁷ New Paradigm Research Group, “CLEC Report 2005: Broadwing Communications,” at 2 (Broadwing boasts both an advanced nationwide network and, since its acquisition of Focal Communications, widespread CLEC capabilities, and has announced winning several major customers, including Air Tran Airways); “Broadwing Corporation Reports

whose network offerings include not only IP-based VPN but also ATM, Frame Relay, and Private Line services;²⁴⁸ and **Level 3**.²⁴⁹

c. Foreign-based Carriers.

As the globalization of business continues, international firms are using their overseas strengths as a basis to expand their business providing voice and data services to medium and large business customers in the United States, particularly when those customers have international needs. **Equant** and **British Telecom** are two prime

Footnote continued from previous page

Financial Results for the Fourth Quarter and Year End 2004” (Feb. 16, 2005) (Broadwing announced win with W.W. Granger).

²⁴⁸ Bernstein Research, “U.S. Telecom: Wholesale Segment Is Declining, But Still Significant,” at 2 (Jan. 21, 2005) (“The established long-haul carriers – AT&T, MCI and Sprint – compete not only with each other, but also with relative upstarts such as Level3, Global Crossing, 360networks, Wiltel, and a host of others. The long-distance market is burdened with a capacity glut from the overinvestment of the late 1990s, leading to persistent pricing pressure.”); 2 Enterprise Data Services and Markets no. 6, “Enterprise VoIP – Managed/Hosted PBXs in the U.S.,” at 6 (Dec. 2004) (“Global Crossing moved into the enterprise IP telephony space after having supported packetized voice traffic over its MPLS IP backbone for a number of years.”).

²⁴⁹ Level 3 “offers a wide range of communications services over its 22,500-mile broadband fiber optic network including Internet Protocol (IP) services, broadband transport and infrastructure services, collocation services, and patented Softswitch managed modem and voice services.” Needham Equity Research, “Level 3 Communications, Inc.,” at 6 (Oct. 28, 2004). Level 3’s advanced network is frequently used by systems integrators and resellers to provide service. For example, in August 2004, Level 3 announced it had won a major contract to provide outsourced IP-VPN services to Sears, through systems integrator CSC. *See* Network World Fusion, Level 3 Snares Major IP VPN Deal (Aug. 16, 2004). Other recently announced major Level 3 customer wins include providing deltathree with wholesale VoIP service for businesses and consumers nationwide, *see* Press Release, Level 3, deltathree Selects Level 3 to Support Ongoing Growth of its Consumer and Business VoIP Offerings (Jan. 26, 2005) *available at* <http://www.level3.com/press/5681.html>, a high-speed network connecting nine Florida universities, *see* Press Release, Level 3, Level 3 Services Helping Florida Universities Create Statewide High-Performance Research and Education Network (Oct. 13, 2004) *available at* <http://www.level3.com/press/5423.html>, and IP-VPN service for Northrop Grumman as part of a \$337 million defense contract; *see* Press Release, Level 3, Level 3 to Supply Data Networking Services to Northrop Grumman (Oct. 12, 2004) *available at* <http://www.level3.com/press/5413.html>.

examples. Equant, now part of the France Telecom Group, is a leading telecom provider in Europe, and has made penetration of the North American business marketplace a priority.²⁵⁰ British Telecom is also a global leader, and recently purchased Infonet, which has a significant U.S. presence.²⁵¹ Other foreign-based firms with increasing presence in the United States include Deutsche Telekom (under the name **T Systems** and T-Mobile),²⁵² Japan-based **NTT Communications** (which acquired Verio),²⁵³ and **Telefonica**.²⁵⁴

²⁵⁰ See Press Release, Equant, Equant and Hummingbird Sign Three-Year IP VPN and Services Deal (Feb. 3, 2005) available at http://www.equant.com/content/xml/pr_hummingbird_03_02_05.xml (announcing IP VPN contract that connects “20 Hummingbird offices based in Canada, the U.S., Europe, Japan, South Korea, Singapore and Australia” and which “demonstrates Equant’s strategy to develop global, customized and integrated communications services, building on its high-end IP VPN strengths with a particular focus on growing its customer base in North America.”); Q3 2004 Equant NV Earnings Conference Call (Oct. 28, 2004) (announcing new North American contract that “includes not only network services, but quite a lot of project management, network architecture consulting, posting and managing firewalls. . . . which represent very well the move this company is making towards more of the services that is placing the customer solution within the frame of an integrity center service, answering completely to the customer needs and not only providing telecommunication facts”).

²⁵¹ Strategic Partners, “BT Acquires Infonet: Analyzing the Implications for MNCs, Service Providers, and SIs,” at 5 (Nov. 2004) (“BT’s acquisition of Infonet is a sound strategic move that accelerates BT’s efforts to establish itself as a leading global service provider. The acquisition of Infonet gives BT access to a large installed base of MNCs (approximately 1,800 MNC customers), particularly in key markets like the U.S. and Europe. In fact, Infonet’s U.S. operations are one of its fastest growing segments and represent approximately 20% of the company’s total revenue. Many of BT’s targeted accounts have a presence in the U.S.; however, the company’s existing network can only serve a portion of those customers’ needs. Combining Infonet’s network with its own will allow BT to address more of their target customers’ requirements. With global operations that stretch into 180 countries, Infonet will also provide BT Global Services the scale needed to compete on a global basis as well as compete against well-entrenched regional providers like AT&T in North America, France Telecom/Equant and Deutsche Telekom/T-Systems in Europe and SingTel and NTT in Asia.”).

²⁵² See, e.g., Press Release, T-Systems, T-Systems Expands Reach of MPLS-Based nNetwork (Mar. 4, 2004) available at <http://www.t-systems.com/coremedia/generator/www.t-systems.com/en/Home/Press/templateId=renderNormal/iPageContentID=7714/.HomePos=1/id=15862.html> (“T-Systems and Level 3 have signed an agreement under which Level 3 supplies MPLS-based data services to T-Systems throughout the U.S. This allows T-Systems to significantly expand the reach of its existing U.S. network and enhance the services it provides to large enterprises with North American operations.

d. Competitive Local Exchange Carriers.

A variety of national and regional CLECs also compete in the provision of voice and data services for businesses, particularly for smaller and medium-sized businesses. The Commission has found that CLEC businesses have shown remarkable growth in collocation arrangements, minutes of traffic, number of access lines, coverage of BOC access lines, number of local circuit switches, and revenue from local services.²⁵⁵ CLECs report that about 51% of their customer access lines serve medium and large business

Footnote continued from previous page

The new Strategic Network Infrastructure Partnership offers corporate customers a dense backbone network with more than 100 Points of Presence (PoPs) in the U.S. Corporate customers profit from lower local loop costs and faster implementation times. The agreement enables T-Systems to deliver a range of data services to customers across the entire Level 3 fiber-optic network, which includes multi-conduit metropolitan networks in 27 American markets and PoPs in 68 cities. For T-Systems enterprise customers, the agreement provides a number of distinct advantages The new MPLS data service will allow corporate customers to use a complete solution for a variety of applications, including corporate wide area networking, voice applications, disaster recovery networks, data overflow networks, video distribution networks and IP back-bones. The service is ideal for building multi-location, point-to-point networks that are scalable, secure, reliable and highly economic. . . . All services are backed up by aggressive cross-service SLAs (service level agreements).”)

²⁵³ NTT operates a leading worldwide network, and recently “beat out other global companies including AT&T, BT Global Services, Infonet and MCI to earn the coveted top spot in the prominent category of “Best Global Carrier” at the World Communications Awards. “NTT Com Named ‘Best Global Carrier’ at World Communications Awards 2004” (Oct. 13, 2004). NTT offers advanced data services in the United States. See Global IP Network Transit, *available at* http://www.nttverio.com/en_US/products/products.cfm?product=ns_gin.

²⁵⁴ See, e.g., Press Release, Telefónica USA, Unisys Selects Telefonica USA for Latin America Network (Sept. 14, 2004) *available at* http://www.us.telefonica.com/press/press_04.htm (“Telefónica USA, a subsidiary of the Telefónica, S.A. Group, a leading provider of global communications services for the North American and Caribbean regions, announced today that Unisys, a worldwide information technology services and solutions company, has selected the company for the connection of its new Latin America telecommunications network. As part of the agreement, Telefónica will provide telecommunications connectivity to Unisys between facilities in Pennsylvania and Minnesota and eight locations throughout Latin America as part of the overall Unisys-designed global network. The US-based facilities will be interconnected with locations in Argentina, Brazil, Chile, Mexico, Colombia, Venezuela, Peru and Costa Rica.”).

²⁵⁵ *Triennial Review Order*, 18 FCC Rcd. at 17009 ¶ 39.

customers.²⁵⁶ Indeed, numerous CLECs – including multiple CLECs in nearly all metropolitan areas in states served by SBC – have deployed local voice and data facilities throughout the nation.²⁵⁷

Examples of the CLECs operating in SBC’s region – in competition with both SBC and AT&T in the business marketplace – demonstrate the diversity and significance of CLEC offerings. **XO Communications** provides voice and data services to businesses of all sizes, and operates in metro areas nationwide, with substantial coverage in SBC’s regional footprint.²⁵⁸ XO’s recent acquisition of Allegiance Telecom expands its local coverage to more than 900 POPs.²⁵⁹ Similarly, **Time Warner Telecom** also offers advanced voice and data services to larger and smaller businesses alike, using a network reaching 22 states and 44 metropolitan areas across the country, including coverage of most large metropolitan areas in SBC’s region.²⁶⁰ **McLeodUSA Incorporated** operates

²⁵⁶ *Triennial Review Order*, 18 FCC Rcd. at 17012 ¶ 45.

²⁵⁷ Carlton & Sider Decl. ¶ 65.

²⁵⁸ See, e.g., Press Release, XO Communications Signs Networking Contract with Abercrombie & Fitch (Dec. 13, 2004) available at <http://www.xo.com/news/209.html> (“XO Communications will upgrade Abercrombie & Fitch’s communications network at its corporate locations to an OC-48 infrastructure to accommodate the company’s increased data, voice and Internet communications requirements following several years of solid growth.”).

²⁵⁹ Yankee Group, “SMB Bundles Promise Simplicity, Create Complexity,” at 3 (Sept. 2004) (“XO Communications, long the industry trendsetter for the SMB bundle, continues to rely on its multitiered strategy of services to SMBs, larger enterprises and carriers. Although XO was slightly more focused on larger enterprises and carriers, its acquisition of Allegiance Telecom’s assets puts it squarely in the SMB world.”).

²⁶⁰ Time Warner Telecom provides data and voice services via a fiber network reaching more than 5,000 building, and serves over 10,000 medium and large business customers. See Press Release, Time Warner Telecom, Time Warner Telecom Announces Strong Fourth Quarter 2004 Results (Feb. 1, 2005) available at http://www.twtelecom.com/Documents/Announcements/News/2005/TWTC_Q4_04_Press_Release.pdf. Recent major customer wins include the University of New Mexico, see Press Release, Time Warner Telecom, Time Warner Telecom Connects UNM to New Mexico Gigapop (Oct. 28, 2004) available at <http://www.twtelecom.com/Documents/Announcements/News/>

an advanced fiber optic network and offers local services in 25 states, most in SBC's region, as well as long-distance services nationwide.²⁶¹ **Covad** offers smaller and medium-sized businesses DSL nationwide, and is now aggressively marketing a voice-over-IP solution.²⁶² **Birch Telecom** offers voice and data services targeted at smaller businesses in numerous parts of SBC's region.²⁶³

Footnote continued from previous page

2004/News2004_UNM.pdf, Carreker Corp.; *see* Press Release, Time Warner, Time Warner Telecom Metro Ethernet Solution Replaces Costly T1/DS3 Infrastructure at Carreker Corporation (Sept. 20, 2004) *available at* http://www.twtelecom.com/Documents/Announcements/News/2004/News2004_Carreker.pdf; *see also* New Paradigm Research Group, "CLEC Report 2005: Time Warner Telecom Inc.," at 5.

²⁶¹ McLeodUSA offers voice and data services to businesses of all sizes in 25 states, typically focusing on smaller cities, with 38 ATM switches, 39 voice switches, 696 collocations, and 435 DSLAMs, as well as newly expanded VoIP service. *See* Press Release, McLeodUSA, McLeodUSA Expands Voice Over Internet Protocol (VoIP) Integrated Access Services to 37 Markets (Feb. 10, 2005) *available at* <http://www.mcleodusa.com/ResourceRetrieval?fileId=370>. Recent major customer announcements include local and long distance phone service to almost 2000 Regis Hair Salon locations, *see* Press Release, McLeodUSA, McLeodUSA Reports Third Quarter 2004 Results (Nov. 9, 2004) *available at* <http://www.mcleodusa.com/ResourceRetrieval?fileId=348>, as well as a contract with the State of Iowa worth more than \$5 million annually, *see* Press Release, McLeodUSA, McLeodUSA Extends Contract with State of Iowa for Operation and Maintenance of the Iowa Communications Network (ICN) (Jan. 3, 2005) *available at* <http://www.mcleodusa.com/ResourceRetrieval?fileId=356>.

²⁶² Covad offers DSL and T1 service around the country, with customers using over 500,000 DSL lines. *See* Press Release, Covad, Covad Communications Group to Announce Fourth Quarter Financial Results (Feb. 1, 2005) *available at* http://www.covad.com/companyinfo/pressroom/pr_2005/020105_news.shtml. Covad is also using its DSL network to provide an aggressively marketed VoIP solution to small and medium-sized businesses. *See* IRG Research, Long-Term Play on VoIP Growth; Initiate on Covad with a Buy (Dec. 2, 2004) ("Poised for dramatic growth with introduction of VoIP"; "We expect Covad's VoIP efforts to hit full stride in mid-2005 and consequently expect a strong ramp in VoIP revenues.").

²⁶³ *See, e.g.*, New Paradigm Research Group, "CLEC Report 2005" (Birch offers voice and data services, and plans to roll out VoIP service in 2005, and serves more than 100,000 small and mid-sized business customers in 12 states, with a heavy focus on SBC states of Texas, Missouri, and Kansas, and reports that it is adding over 5,000 customers each month).

e. Cable Providers.

The same technological developments that have fostered the emergence of network providers as viable competitors have also given cable providers the opportunity to compete against traditional telecommunications companies for some business customers, particularly (as with CLECs) at the local and regional level. Cable companies are seeking to use their extensive fiber optic networks to provide new services such as VoIP and traditional data and Internet transport.²⁶⁴ As the Yankee Group has explained:

Like consumer and small business VoIP services, network-based services enable cable companies to avoid installing and managing IP PBXs, which increase field service requirements and expensive pre-sales engineering and design.

A provider can provision and manage network-based services from centralized hosting centers. This type of architecture can aid the development of mobile workers' and teleworkers' use of VoIP solutions by granting cable modem users access to their company's business VoIP solutions. Cable companies that offer teleworker services will have a scale and cost advantage given their penetration of the consumer broadband market.

Furthermore, cable companies can focus on regional and local networking needs of businesses because of their metro footprint. This enables businesses with multiple locations in a metro region to reduce the number of PSTN connections and reduce local and regional calling costs by centralizing VoIP call processing and enabling on-net calling.²⁶⁵

Thus, **Time Warner Cable**,²⁶⁶ **Comcast**,²⁶⁷ **Cox**²⁶⁸ and others have been able to move from being theoretical alternatives to traditional telecommunications companies to

²⁶⁴ In addition, VSAT providers, including Hughes Network Services and Gilat subsidiary SpaceNet, offer data connectivity in virtually every location around the country. Businesses across the spectrum from large to medium-sized spectrum use satellite connectivity to supplement or in lieu of last-mile service from wireline providers.

²⁶⁵ Yankee Group, "Cable MSOs Look to Penetrate the Business Market" (Dec. 17, 2004).

²⁶⁶ Time Warner Cable provides service to businesses under the name Road Runner Business Class, and "provides service to approximately 500 enterprise customers including Toshiba International, L.L. Bean and University of New England." See Press Release, Time Warner Cable, Road Runner Business Class Further Penetrating Growing

serious competitors, particularly with respect to medium-sized businesses located along their fiber corridors.²⁶⁹

f. Other ILECs.

Verizon (as well as Qwest, discussed above) has entered the marketplace for provision of telecommunications services to businesses.²⁷⁰ Verizon operates as an ILEC not only in the former Bell Atlantic and NYNEX states, but also in smaller areas across

Footnote continued from previous page

Business Market with Customized Offerings (July 8, 2004) available at <http://www.TimeWarnercable.com/InvestorRelations/PressReleases/TWCPressReleaseDetail.ashx?PRID=139&MarketID=0>. Time Warner Cable recently won the contract to provide the network for data and voice (including VoIP) service to the 53 school, 72 square mile Shawnee Mission School District in Kansas. See Press Release, Time Warner Cable, Road Runner Business Class Begins Building Fiber Network for Nation's Largest School Project (Aug. 10, 2004) available at <http://www.TimeWarnercable.com/InvestorRelations/PressReleases/TWCPressReleaseDetail.ashx?PRID=194&MarketID=0>.

²⁶⁷ Comcast focuses on small and medium-sized customers, offering business voice and data connectivity from SoHo cable modems to DS-3 capacity. See New Paradigm Research Group, "CLEC Report 2005: Comcast Business Communications," at 3. Comcast delivers service in 41 states, including presence in 22 of the top 25 MSAs, and has over 90,000 miles of fiber-optic cable nationwide. See Comcast: Our Network: Leading-Edge Network From A Trusted Provider, available at <http://www.comcastcommercial.com/index.php?option=content&task=view&id=4&Itemid=34>.

²⁶⁸ Frost & Sullivan, "Cable Telephony Services Markets" at 1-29 (2004) ("Cox Business Solutions, while a separate unit from Cox residential cable services, nonetheless does offer local and long distance voice, toll-free services, data services (including Internet access) to small and mid-sized businesses using both Cox's existing infrastructure as well as other platforms. Cox Communications boasts over 100,000 business subscribers or business locations served by the company's cable telephony product.").

²⁶⁹ Frost & Sullivan, "Cable Telephony Services Markets" at 1-29 (2004) ("From an MSO's perspective, its network not only passes residential subscribers but also a significant number of businesses. Therefore, a natural inclination on the part of some MSOs is to try to maximize asset utilization by reaching-out to business customers. In this regard, MSOs such as Cox, Time Warner and certain overbuilders are pro-actively targeting small and medium-sized businesses within their footprints with a variety of voice and data services packages.").

²⁷⁰ BellSouth also serves business customers, but at present does so nearly exclusively within its own region.

the country where GTE operated. Some of these areas are in or adjacent to major metropolitan areas (such as Dallas and Los Angeles) near SBC territory. These former GTE operations, therefore, give Verizon a significant base on which it has built, and is likely to continue to build. Verizon and Qwest, among others, have recently launched VoIP coverage in both in-region and out-of region territories.²⁷¹

g. System Integrators.

Given the variety of ways that businesses can meet their telecommunications needs, system integrators (or managed services providers) have become increasingly important competitors for business telecommunications products and services. System integrators have considerable experience in designing, building, and managing business clients' proprietary voice and data networks and are highly experienced and sophisticated in aggregating transport networks through bulk contracts with carriers. As the network and telecommunication needs of businesses are becoming more complex and specialized, and as IP-based networks rely on distributed processing and intelligence, system integrators are often considered the prime contenders. The Yankee Group recently reported:

SI's are increasingly circumventing traditional providers of voice and data services and strengthening relationships with enterprise decision-makers. SI's use their powerful enterprise relationships to

²⁷¹ Orion Securities, "VoIP: The End of Telecom As You Know It," at 2 (June 29, 2004) ("VoIP will revolutionize the telecom industry. . . . We expect to see many new competitors emerge and steal market share through a combination of service bundling, price competition, and innovative services. . . . In the business market, we expect to see a free-for-all, as all existing ILECs and CLECs (incumbent and competitive local exchange carriers) use IP services to extend their network reach, and in addition start-up service companies emerge.").

push carriers downstream, relegating them to a role of commoditized transport provider.²⁷²

System integrators are increasingly offering services to smaller businesses as well.²⁷³

Thus, the systems integrators compete not by using their own network assets, but by using their unique and valuable experience and skills to make the most efficient uses out of the network assets of others, and by adding value with applications that run with and on the networks. In some instances, system integrators partner with network providers to jointly meet customer needs. In other instances, a system integrator becomes a customer of network services (often in commoditized pieces from various providers)²⁷⁴ and then manages the complex interrelationships among the networks and, in some

²⁷² Yankee Group, “Network Service Providers Alter Their Business Models To Capture a Greater Share of Increasing Enterprise Budgets” (Jan. 2005). *See also* Probe Group, “Control of the Enterprise Market,” at 25 (June 2004) (“In addition to the traditional telecom carriers, the large systems integrators have also focused on the enterprise market.”); Global Crossing, 2003 Form 10-K, at 2 (“[W]e expect global enterprises to continue to outsource their networking needs as companies require the use of networks to interact internally as well as with partners, customers and vendors, driving the demand for IP-virtual private networks (‘VPNs’) and managed services.”); Infonet, Form 10-K, March 31, 2003, at 3-4 (“We believe that enterprises are focusing their resources on their core competencies and increasingly outsourcing their networking needs. We believe that the ongoing expansion of multinational businesses and new developments in technology have made it difficult for in-house solutions to keep pace with corporate needs. Therefore, enterprises have turned to third parties who can provide managed data communications services on more efficient basis. Given the costs and difficulties involved in implementing international network solutions, we expect that multinational enterprises will increasingly outsource their cross-border data communications needs.”); Equant 2003 20-F, at 29 (“We face competition from both established global service providers and increasingly from competitors outside the traditional telecommunications realm. The competitive landscape is becoming increasingly complex as boundaries between IT and telecoms worlds disappear. IT players are willing to expand expertise towards networking while network providers are expanding their portfolio towards integration services.”).

²⁷³ *See* Yankee Group, “Level 3 Reaches SMBs Through a Systems Integrator Channel Partner,” at 1 (Sept. 14, 2004) (“Close collaboration allows systems integrator channel partners and vendors to gain access to SMBs.”).

²⁷⁴ *See* Gartner, Inc., “Fixed Public Network Services, United States, 2001-2017,” at 10 (June 17, 2003) (“As traditional carriers are relegated to more subordinate roles to SIs and outsourcers, their services will become commoditized.”).

circumstances, assumes the risk that the combined networks will not meet customer service level agreement requirements.²⁷⁵

Leading system integrators include **EDS**,²⁷⁶ **IBM**,²⁷⁷ **Science Applications International Corporation** (“SAIC”),²⁷⁸ **Accenture**,²⁷⁹ and **Computer Sciences**

²⁷⁵ Stratecast Partners, “Assessment of Verizon ESG,” at 19-20 (June 2004) (“Increased competition from systems integrators – In addition to their outsourcing capabilities, systems integrators bring important consulting capabilities that address a variety of enterprise application concerns, including the secure and reliable transport of those applications over the wide area.”).

²⁷⁶ EDS is a pioneer in the nascent VoIP market. *See, e.g.*, Probe Group, “Enterprise VoIP – Managed/Hosted PBXs in the U.S.,” at 3 (December 2004) (“Large enterprises have been playing around with VoIP and IP Telephony for several years now.... But thus far the largest announced project was won by a system integrator, not a carrier. Next year, Electronic Data Systems (EDS) will provide the network integration and support for a Bank of America project that involves replacing 362 PBXs (180,000 phones) in more than 5,000 U.S. branches with Cisco Call Managers.”). EDS has further bolstered its cost competitiveness in VoIP by signing a November 3, 2004 contract with 3Com for switches, routers, and VoIP products. *See* Press Release, EDS, 3COM And EDS Launch New Relationship; EDS To Include 3COM Products Into Its Solutions (Nov. 25, 2003) *available at* http://www.eds.com/news/news.aspx?news_id=1789.

²⁷⁷ IBM is strategically redirecting its research efforts towards systems integration applications and processes, and analysts predict that “[t]hese new processes are expected to enhance IBM’s competitive advantage in services engagements and enable the company to address the \$500 billion [Business Process Transformational Services] market.” UBS Investment Research, “IBM: A Mid Quarter Look at Global Services,” at 2 (June 18, 2004). IBM’s most recent enterprise wins include a \$157 million contract with Fireman’s Fund Insurance Co. (*see* BusinessWire, “IBM to Build on Demand Infrastructure for Fireman’s Fund” Jan. 12, 2005, *available at* <http://www.forbes.com/businesswire/feeds/businesswire/2005/01/12/businesswire20050112005315r1.html>), and a \$65 million contract with New York City’s Metropolitan Transportation Authority (*see* BusinessWire, “IBM to Manage Data Center for New York City’s Metropolitan Transportation Authority,” Feb. 8, 2005, *available at* <http://forbes.com/businesswire/feeds/businesswire/2005/02/08/businesswire20050208005372r1.html>).

²⁷⁸ SAIC is ranked highly in both commercial and government arenas: 4 of Top 10 U.S. Systems Integrators-Revenue by Gartner Group / Dataquest (June 23, 2004); 3 of Top 25 Systems Integrators by Federal Computer Week (Sept. 15, 2004); 7 of Top 200 Federal Contractors by Government Executive (Sept. 15, 2004). *See* SAIC, Industry Rankings, *available at* <http://www.saic.com/news/rankings.html>; SAIC, Federal Contract Vehicles, *available at* <http://www.saic.com/contractcenter/>; Press Release, SAIC, SAIC Wins Enterprise Information Technology Acquisition Contract (July 13, 2004) *available at* <http://www.saic.com/news/2004/jul/13.html> (U.S. Air Force Material Command Electronic Systems Center Materiel Systems Group (MSG) awarded SAIC the Enterprise Information Technology Acquisition contract, to provide enterprise information technology (IT) services to the MSG and Standard Systems Group (SSG)).

Corporation (“CSC”).²⁸⁰ Both SBC and AT&T regularly see these system integrators competing for telecommunications business. Overall, system integrators have proven their ability to provide tailored voice and data services of choice in an efficient and cost-effective basis, and recent trends indicate that enterprise customers seeking all services in one contract are often choosing the system integrators’ expertise in software and services over the carriers’ ownership of networks.²⁸¹

h. Equipment Vendors and Value-Added Resellers.

Equipment manufacturers are increasingly competing for business telecommunications systems and services, both directly and through resellers. IP and IP-enabled PBX phone systems have been rapidly displacing traditional systems in large and smaller businesses alike.²⁸² The advent and explosion of IP-based data services and VoIP

Footnote continued from previous page

²⁷⁹ Bear Stearns, “Accenture,” at 3 (Jan. 7, 2005) (“Accenture is widely recognized as a leader in consulting/systems integration and an emerging player in the business process outsourcing (BPO) services market. The company services approximately 2,650 clients worldwide including 92 of the Fortune 100 and over half of the Fortune 500. Building on the company’s history of organic growth, its breadth and depth of services coupled with its geographic reach and premiere brand are key differentiators among its peers, which has fueled enviable performance even through these recently past difficult times.”).

²⁸⁰ CSC recently signed a five-year global IT management services agreement with Sun Microsystems valued at \$360 million, in which CSC will manage Sun’s full portfolio of internal business systems applications in the U.S., Europe and Asia Pacific. *See* Press Release, CSC, CSC Signs \$360 Million Managed Applications Services Agreement with Sun Microsystems (Feb. 2, 2005) *available at* <http://www.csc.com/newsandevents/news/3421.shtml>.

²⁸¹ Yankee Group, “Communications Survey Confirms IXCs Lost Enterprise Market Share in 2003” (Mar. 19, 2004). Yankee Group 2003 Enterprise Communications Survey reported that price, SLA, and all services in one contract were the top three reasons enterprise customers renegotiate a long-distance telephone or network services contract.

²⁸² *Triennial Review Order*, 18 FCC Rcd. at 17014 ¶ 47; (“Some analysts have estimated that close to half of U.S. businesses have implemented private business exchanges (PBXs) capable of providing IP telephony and place calls among corporate locations over an IP network: the IP PBX market is projected to be \$3.9 billion (20 percent of the PBX market) by 2005, and 25 percent of call center contacts currently use IP technology.”); Probe Group, “Enterprise VoIP – Managed/Hosted PBXs in the U.S.,” at 4 (Dec. 2004)

have created a vast competitive opportunity for firms such as **Avaya**,²⁸³ **Cisco**,²⁸⁴ **Lucent**,²⁸⁵ **Nortel**,²⁸⁶ and **Siemens**,²⁸⁷ among others.²⁸⁸ A significant portion of SBC's sales to medium and large businesses is attributable to equipment resale, and SBC often competes directly with equipment manufacturers (or any of a legion of value-added

Footnote continued from previous page

("[N]ow that VoIP technology is moving into the mainstream, the IP PBX players are attempting to find additional ways to appeal to smaller businesses who don't necessarily have the manpower and expertise to install and manage their own IP PBX.").

²⁸³ See, e.g., Yankee Group, "The Promising Outlook for Managing Enterprise VoIP, Part 2" at 4 (May 25, 2004) ("Avaya Global Services has built many of its own network and equipment management tools.... The company's strength is its number two position [behind Cisco] (first in IP among legacy TDM vendors). Avaya has an advantage when enterprises are migrating from TDM to IP-enabled PBX systems.").

²⁸⁴ See, e.g., *id.* at 5 ("Cisco dominates the [IP telephony] market because enterprises have chosen to deploy and manage VoIP networks internally. Enterprises testing VoIP are doing so within the enterprise data network department – the domain of Cisco. This has given Cisco a tremendous head start.").

²⁸⁵ Among other things, Lucent's 2004 acquisition of Telica, a leading provider of VoIP communications switching equipment, "materially helps Lucent be more competitive" in providing converged network solutions to the business market. See Lehman Brothers, "Lucent Technologies Company Update," at 1 (May 25, 2004).

²⁸⁶ See, e.g., Yankee Group, "Enterprises Should Keep Nortel on Their Network Infrastructure Vendor Short Lists" (Sept. 29, 2004) ("Nortel has a renewed commitment to enterprise networking, a slew of new products, channel leverage, a credible end-to-end solution and migration story of IPT, and improving finances.").

²⁸⁷ Siemens has recently aligned with Microsoft in a multi-year agreement to deliver enterprise-grade, presence-enhanced calling, video and Web conferencing, and collaboration solutions to business customers in the U.S. and abroad; a partnership which analysts have considered "a smart move that can help a very broad customer base transition smoothly to next generation Voice over IP solutions." Press Release, SIP Center, Siemens and Microsoft Announce Worldwide Alliance to Bring Real-Time Communication and Collaboration Solutions to Market (Jan. 11, 2005), available at <http://www.sipcenter.com/sip.nsf/newsview?open&type=News&docid=WEBB68JN3Y>.

²⁸⁸ See Yankee Group, "Service Providers Risk Losing SMB Customers by Not Selling IP Comm," at 3 (May 5, 2004) ("Service providers risk losing customers if carriers continue to move slowly on IP communications. With a growing number of SMBs adopting increasingly affordable SMB-targeted IP telephony solutions from vendors such as 3Com, Cisco, and Avaya, carriers are losing opportunities to up-sell value-added voice applications to SMBs."); Probe Group, "Enterprise VoIP – Managed/Hosted PBXs in the U.S.," at 3 (Dec. 2004) ("On the surface, the focus of VoIP in the U.S. and around the world has turned toward consumer markets. But that is not because VoIP activity on the business side is slowing down, only that it is becoming more mundane. The most amazing thing is the sheer number of providers who have popped up since last year.").

resellers of their equipment) for equipment-based RFPs or the equipment segment of the project. Many of these sales – and many other opportunities SBC has not won – involve replacing legacy Centrex Services with IP systems. More fundamentally, businesses are increasingly using IP-based equipment to leverage data networks as a substitute for traditional voice services.²⁸⁹ For example, IP-based telephony permits customers to reduce or eliminate the need for separate voice connectivity between two customer locations that are already connected by an IP data network.²⁹⁰ As a result, data network providers and CLECs are aggressively using IP-based systems for large and smaller businesses as a combined substitute for traditional voice services.²⁹¹

* * * * *

Given the number and diversity of competitors offering services and products to businesses, the high fixed cost and relatively low marginal cost of operating

²⁸⁹ Forrester Research, “IP Telephony Upgrades: Now Or Later?” at 2 (Nov. 19, 2004) (“Adoption of IP telephony (IPT) is not a matter of *if* companies will replace their legacy voice communications system, but *when* is the best time to do so. The right time to upgrade to IPT should be based not on technology alone, but also on a company’s business objectives. Convergence of voice and data lays the foundation for advanced communication functionality, simplified management, and potential cost savings.”).

²⁹⁰ Morgan Stanley, “Strong Showing for Bells in Annual Corporate Survey” at 26 (June 22, 2004) (“28% of respondents indicated that they were currently using VoIP; another 23% are likely to do so in the next 12 months. With respondents reporting 25% mean savings from VoIP and price being the key catalyst for businesses to switch local providers, we expect it to emerge as the greatest threat to the local Bell monopoly.”).

²⁹¹ Probe Group, “Enterprise VoIP – Managed/Hosted PBXs in the U.S.,” at 6 (Dec. 2004) (“A number of additional, fairly established companies have introduced VoIP products targeted to large enterprises and/or service providers wanting to use wholesale offerings to facilitate entry into VoIP business markets. Generally, these companies already have a fairly good position with large enterprises on the data side and are selling direct to them. But increasingly these same players are attempting to leverage their assets by developing products for smaller businesses that are being marketed through indirect channels, service providers and/or agents/resellers. Some of these carriers offer aggregation services while others offer an end-to-end hosted IP solution for private labeling”; referencing, among others: Broadwing, CommPartners, Covad, Global Crossing, IceNet/VoiceWorks, Level 3, Masergy, New Global Telecom/6DegreesIP/TelPacks, PointOne, Volo Communications, WilTel, and XO).

telecommunications networks and facilities, and the sophistication of customers and the purchasing practices they employ (as discussed in Section B below), the marketplace will continue to be vigorously competitive if the merger is approved.²⁹² Even where SBC and AT&T are among the wide range of competitors for any given customer's communications needs, the combination of the two companies raises no significant chance of anticompetitive effects.²⁹³

Much of the medium and large business telecommunications market consists of commoditized voice, data, and (increasingly) converged services offered by, among others, the full host of facilities-based providers, including IXCs, data network providers, CLECs, and (increasingly) cable providers. These services are also provided by a host of other firms that purchase commodity inputs and package and resell them at retail. As Professor Carlton and Dr. Sider note, reducing by one the number of firms offering such commodity services can have no negative effect on competition through either unilateral or coordinated effects, particularly given the cost structure of the businesses involved.²⁹⁴

For telecommunications needs outside the commoditized center of the market, the number and diversity of choices of ways to meet those needs ensure that competition will remain vigorous. A diverse array of competitors – IXCs, network providers, foreign carriers, system integrators, and equipment vendors – compete for the custom, advanced telecommunications services needs of business customers. Even if they did not, customers with more complex needs can and do segment them into individual parts when they perceive that doing so will maximize competition. Regardless of the approach taken

²⁹² See Carlton & Sider Decl. ¶ 6.

²⁹³ See *id.*