

agreements to redeploy them. Unified control will enable better planning in advance of catastrophes and faster deployment of personnel and equipment after disasters occur.<sup>114</sup>

For example, following Hurricane Katrina, SBC provided personnel and equipment to support BellSouth in restoring service to its customers. But because SBC and BellSouth were separate companies, deployment was delayed by several weeks. BellSouth needed to analyze the extent of the devastation it faced, what resources it had and what it needed from others. SBC had to determine whether it had an inventory of compatible equipment and parts and, if so, how much could be spared without risking its own network. SBC also needed to determine how many personnel could be loaned to BellSouth consistent with SBC's own network support obligations, and then comply with various labor agreements. As a single company, many of these processes could have been eliminated, the issue of equipment and electronics compatibility could have been irrelevant and a more efficient plan for a disaster recovery could have been made in advance.<sup>115</sup>

*Third*, the legacy AT&T (prior to its merger with SBC) had invested several hundred million dollars to develop genuinely unique disaster recovery assets primarily devoted to serving large government and enterprise customers, who demand service of extraordinary reliability and who require that AT&T be “proactive, predictive, and preventive.” For example, AT&T has developed a fleet of emergency communications vehicles with satellite uplink facilities. Those vehicles can be deployed immediately

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<sup>114</sup> See Smith Decl. ¶¶ 29-31; Rice Decl. ¶ 37.

<sup>115</sup> Smith Decl. ¶¶ 28, 33, 38; Rice Decl. ¶¶ 36-37.

after a disaster to establish command centers and communications capabilities. These vehicles can be (and have been) used by police, emergency personnel and other governmental officials to communicate and to allow private entities to communicate. Similarly, AT&T has 150 “mobile” central offices and 350 infrastructure trailers with generators and HVAC systems that can be deployed wherever and whenever necessary. AT&T is also in the process of developing mobile units with fixed wireless capabilities that can provide dedicated, high-capacity transmission to locations that do not have operating fiber service. These fleets will be immediately available under unified control after the merger.<sup>116</sup>

AT&T Labs also has developed proprietary software that substantially reduces the time needed to restore service to impacted areas. Most switches and network nodes are effectively computers that use complex software, which relies on databases containing routing tables, customer-specific provisioning information and other data.<sup>117</sup> This information is used, for example, to establish permanent virtual circuits (“PVCs”) to specific customer locations. AT&T’s unique software effectively makes a mirror-image copy of the relevant databases in a format that allows AT&T to reload the databases seamlessly when replacement equipment is installed. This software thus obviates the laborious task of manually rebuilding the relevant databases when a switch or other equipment is damaged by a disaster.<sup>118</sup>

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<sup>116</sup> Rice Decl. ¶¶ 39-40.

<sup>117</sup> *Id.* ¶ 10.

<sup>118</sup> *Id.* ¶ 41.

After Hurricane Katrina occurred, the legacy AT&T offered to provide BellSouth with critical equipment such as diesel fuel, power generators and HVAC systems. But like the legacy SBC, it took the legacy AT&T considerable time to contact the relevant BellSouth employees and ascertain the equipment BellSouth needed. In addition, AT&T's proprietary software was of no value to BellSouth because AT&T did not have access to BellSouth's customer databases and other information and could not image those databases in advance of Hurricane Katrina. The merger would eliminate all these impediments. AT&T estimates that, had these facilities been fully utilized under a central command structure – as they would be post-merger – service to locations damaged but not physically destroyed or rendered inaccessible by Hurricane Katrina could have been restored much more quickly.<sup>119</sup>

*Finally*, because the merger places Cingular under unified management, Cingular's facilities and capabilities will be readily available for deployment to supplement AT&T's and BellSouth's landline networks, and Cingular can use facilities in the landline network to restore wireless services. A disaster will often destroy individual central offices or nodes. Rerouting traffic over to other backbone facilities or through other switches or nodes allows the restoration of service pending the installation of replacement equipment at the affected site. Because AT&T's long distance network and Cingular's wireless network will be under common control with the combined company's local networks, the opportunities for seamlessly adopting these alternative arrangements will be significantly enhanced following the merger.<sup>120</sup>

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<sup>119</sup> *Id.* ¶ 42.

<sup>120</sup> *Id.* ¶ 43.

In sum, the merger will greatly enhance the ability of the combined company to plan for and respond to natural and man-made disasters. This is precisely the kind of benefit that the Commission has relied upon in determining that previous mergers furthered the public interest.<sup>121</sup>

D. The Merger Will Bring the Types of Vertical Integration Efficiencies Recognized by the Commission in the SBC/AT&T Merger Order

Last year, in approving the mergers of SBC and AT&T as well as Verizon and MCI, both the Department of Justice and the FCC recognized that the combination of a local network with an extensive, global long-distance network creates significant efficiencies.

We find that the merger will permit the integration of the complementary networks and assets of SBC and AT&T, giving each carrier facilities it previously lacked. We further find that this network integration will permit the merged entity to offer a wider range of services to its broad range of customers. Moreover, customers will benefit not only from new services, but also from the improvements in performance and reliability resulting from the network integration.<sup>122</sup>

This transaction will similarly combine complementary networks and generate the same types of efficiencies: new products, new services, higher quality and better reliability. AT&T has a global fiber optic long distance network and an extensive local fiber network in the states where SBC was the incumbent local carrier. BellSouth has,

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<sup>121</sup> See, e.g., *SBC/AT&T Merger Order* ¶¶ 183-204; *Verizon/MCI Merger Order* ¶¶ 193-214; *Sprint/Nextel Merger Order* ¶ 132 (relying on “improved service quality”).

<sup>122</sup> *SBC/AT&T Merger Order* ¶ 191; see generally *id.* ¶¶ 190-92; *Verizon/MCI Merger Order* ¶¶ 202-04; Press Release, Dep’t of Justice, Justice Department Requires Divestitures in Verizon’s Acquisition of MCI and SBC’s Acquisition of AT&T (Oct. 27, 2005), available at [http://www.usdoj.gov/opa/pr/2005/October/05\\_at\\_571.html](http://www.usdoj.gov/opa/pr/2005/October/05_at_571.html) (noting “exceptionally large merger-specific efficiencies”).

and is significantly expanding, an extensive local fiber network in the Southeast, but it lacks a national or global long distance network or local fiber network in the states where SBC operated.

1. The Efficiencies Claimed in the SBC/AT&T Transaction and Credited by the Commission Were Real and Are Being Recognized Faster Than Originally Forecast

Before turning to the efficiencies enabled by the merger of AT&T and BellSouth, it is important to recognize that developments since SBC closed its acquisition of AT&T demonstrate that the Commission was correct to credit the efficiencies claimed in the Public Interest Statement for that transaction. Indeed, AT&T is significantly ahead of schedule in recognizing the efficiencies it forecast in connection with the SBC/AT&T transaction and in bringing those benefits to the customers of SBC and AT&T. The following are among the many efficiencies that AT&T has already recognized as a result of the merger:<sup>123</sup>

- AT&T has already connected the legacy SBC backbone to the legacy AT&T non-U.S. backbones, and expects to complete connection of the U.S. backbones in April. This integration reduces the number of network “hops,” reducing latency and improving quality of service.
- Legacy SBC IP traffic that crosses the AT&T backbone will benefit from the world-class network security features built into that backbone.
- AT&T has accelerated the legacy AT&T plan for an all-optical, ultra long-haul network. Because of budget constraints, the legacy AT&T had not planned to implement this network upgrade until 2007-2008. The new AT&T, with SBC’s financial resources, has accelerated that investment into 2006, bringing improved quality and performance to users of the network.
- Later this year AT&T will begin to upgrade the legacy AT&T core, which used OC192 circuits operating at 10 Gbps, with an OC768 core operating at 40 Megabits Gbps. This upgrade will improve the capacity and

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<sup>123</sup> These efficiencies are described in greater detail in Rice Decl. ¶¶ 7-12.

performance of the core network to the benefit of both AT&T's customers and users of the many networks with which AT&T is peered.

- AT&T is making available to a broader set of business customers the legacy AT&T's "click-through" portal that allows business customers to provision and manage their telecommunication services in real time, resulting in faster service and reduced customers costs. In fact, AT&T already has completed the systems work necessary to make that portal available to a broader set of medium and large businesses.
- Other services formerly offered by legacy AT&T only to large enterprise customers, such as AT&T's fully managed data backup and restoration product and its Managed Services product, will be offered to small and medium sized customers of AT&T later this year.
- AT&T is ahead of schedule in migrating long-haul voice traffic from third party networks to the AT&T network. It expects to complete three-fourths of the migration by the end of the year, resulting in significantly lower costs for customers.

AT&T has also concluded that its forecast of financial efficiencies from the integration of SBC and AT&T was conservative, and now believes that the net present value of synergies will be 20% greater than forecast, in part because synergies are being achieved more quickly than forecast.<sup>124</sup> Those same types of efficiencies will result from vertical integration here and will benefit consumers in BellSouth's local service territory.<sup>125</sup>

2. The Transaction Combines Complementary Local and Long Distance Networks, Allowing Faster, Broader and More Economical Introduction of New Services and Features

Integration of AT&T's Multi-Protocol Label Switching ("MPLS") backbone and BellSouth's fiber-rich last mile network will not only benefit government customers, as

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<sup>124</sup> See *id.* ¶ 5; Kahan Decl. ¶¶ 40-42; see also AT&T Analyst Conference Presentation, at 51 (Jan. 31, 2006), available at [http://library.corporate-ir.net/library/11/113/113088/items/181348/analyst06\\_b.pdf](http://library.corporate-ir.net/library/11/113/113088/items/181348/analyst06_b.pdf) (noting that synergies are now estimated at \$18 billion vs. \$15 billion).

<sup>125</sup> Efficiencies from the integration of the IMS networks of Cingular, BellSouth and AT&T that facilitate improved wireless/wireline integration are discussed in Part V.A.3.a.

discussed above, but will also permit a broader and more rapid deployment of advanced services for all customers. AT&T has deployed, and is continuing to deploy, a substantial nationwide and worldwide MPLS network that facilitates the efficient transport and routing of traffic in numerous protocols (*e.g.*, IP, ATM, Frame Relay, Ethernet), all over the same backbone. Indeed, AT&T's MPLS network serves customers in 127 countries and – according to an independent analysis – offers best-in-class operational support systems, e-servicing options and security features.<sup>126</sup> AT&T, however, lacks broadly deployed last mile facilities of its own to reach customers in BellSouth's region.

By contrast, BellSouth has deployed, and is continuing to deploy, fiber optic facilities deeper into its last mile networks to enable the efficient delivery of advanced services in a variety of protocols, including IP-based voice and ultra-high-speed data services, as well as video services (should it ultimately decide to offer them). BellSouth, however, lacks the extensive nationwide MPLS network necessary to serve efficiently customers that need service both inside and outside BellSouth's region.

The combined firm would bring together these two complementary assets -- AT&T's MPLS backbone network and BellSouth's fiber-rich last mile network -- to create a seamless, high-quality and cost-effective end-to-end network for next-generation applications, and would do so more broadly and rapidly than would occur absent the merger. A similar process is already underway for the former SBC's operations after that company's merger with AT&T, and a significant number of customers already are

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<sup>126</sup> See Press Release, AT&T, AT&T Leads in North American MPLS Services – Independent Research Firm Also Acknowledges OSS and Security as Being Best-in-Class (March 2, 2006), *available at* <http://biz.yahoo.com/bw/060302/20060302005544.html?.v=1> (citing Forrester Wave Vendor Summary).

reaping the benefits of those synergies.<sup>127</sup> Moreover, the elimination of redundant expenditures on separate networks will free resources for the merged firm to invest in a broader and deeper nationwide MPLS network and more extensive fiber-based last mile facilities. Consequently, as was the case in the SBC/AT&T merger, “this network integration will permit the merged entity to offer a wider range of services to its broad range of customers.”<sup>128</sup>

3. Network Integration Will Improve Network Efficiency and Thereby Improve Reliability and Quality of Service

Not only will the combination of AT&T’s backbone network and BellSouth’s last mile network (as well as the integration of Cingular’s wireless network) allow the merged firm to offer more services to more customers, but it also will enable the merged firm to do so with greater reliability and higher quality of service. Absent the transaction and the resulting network integration, traffic flowing between the AT&T, BellSouth and Cingular IP networks must be exchanged through a number of handoffs, or “peering” points.<sup>129</sup> Each such handoff involves some degree of processing overhead, which introduces delay (“latency”) and a risk of packet loss (*i.e.*, lower reliability). Even where networks are engineered to high standards, traffic that crosses multiple individual networks experiences the sum of each of the individual networks’ delays. These arrangements can also subject inter-network traffic to convoluted, inefficient routes between the various networks. But these problems would be avoided on a more unified

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<sup>127</sup> See Rice Decl. ¶¶ 4, 5; *SBC/AT&T Merger Order* ¶ 191 (“We find that the merger will permit the integration of the complementary networks and assets of SBC and AT&T, giving each carrier facilities it previously lacked.”).

<sup>128</sup> *SBC/AT&T Merger Order* ¶ 191; see also *id.* ¶ 74.

<sup>129</sup> Rice Decl. ¶¶ 46-49.

network where traffic flows from source to destination “on-net” and without inter-network handoffs. 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.<sup>130</sup>

The quality and reliability improvements brought about by network integration will flow through to customers as obvious and tangible benefits – just as the Commission concluded in the *SBC/AT&T Merger Order*.<sup>131</sup> IP-based services, such as voice over IP, video conferencing and collaboration and streaming video operate in real time and thus require minimal latency to ensure acceptable levels of service quality. Customers running a wide variety of mission-critical applications also require high reliability and security. Thus, decreased latency and improved reliability will not only allow the merged firm to provide customers with higher quality, more reliable service, but also to *guarantee* that higher quality of service (“QoS”) through stricter service level agreements (“SLAs”).<sup>132</sup>

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<sup>130</sup> See *id.* ¶¶ 47-49.

<sup>131</sup> *SBC/AT&T Merger Order* ¶ 191 (“[C]ustomers will benefit . . . from the improvements in performance and reliability resulting from the network integration.”); see also *Cingular/AT&T Wireless Merger Order* ¶ 210 (“On the basis of our assessment of the Applicants’ technical submissions, we agree that the combination of the Applicants’ spectrum and network assets is likely to enable the combined entity to achieve improvements in service quality, generally in the manner and for the reasons asserted by the Applicants.”).

<sup>132</sup> 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).

4. BellSouth's Customers Will Get Access to the Network Security Functionality That AT&T Has Added to Its Network Core

BellSouth's customers also will see enhanced network reliability as a result of the improved network security enabled by the transaction. In particular, they will benefit from AT&T's substantial investment in adding security functionality, including anti-spam, anti-virus, anti-spyware and anti-denial of service attack functionality to the network core.<sup>133</sup> But BellSouth's customers will not be the sole beneficiaries. Rather, by operating across a wider user base, the merged firm will be able to identify these security threats more quickly, thus bringing added benefits to customers that are already taking advantage of AT&T's network security services.<sup>134</sup>

E. The Merger Will Benefit Customers Through Increased Research, Development and Innovation

The proposed merger will benefit the public by enabling the merged company to invest more heavily in basic research and applied research and development ("R&D") and to disseminate the resulting innovations more quickly and effectively to the small business and mass market customers of AT&T, BellSouth and Cingular. These public benefits will be significant because the parties to the merger already underwrite some of the largest and most sophisticated research programs in the telecommunications industry. We discuss the specific benefits below.

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<sup>133</sup> Rice Decl. ¶ 8.

<sup>134</sup> *Id.*

1. The Scale Economies Created by the Merger Will Enable the Combined Company To Invest More in Research, Development and Innovation

One of the substantial public benefits from the AT&T/BellSouth merger will be the new investment in R&D justified by the greater scale of the merged company. Like the recent SBC/AT&T merger, the present merger will significantly enlarge the customer and network base of the combined firm. Because the returns on investment in telecommunications innovation have positive economies of scale, the merged firm will be able to justify R&D investments that would not have been profitable for either AT&T or BellSouth absent the merger, for the same reasons recently found by the Commission to hold for the SBC/AT&T merger.<sup>135</sup>

First, because the merger will expand the network and customer base of the combined firm, the firm will be able to recover the costs of basic research and applied R&D investments over a greater expected level of output, thereby reducing the expected costs per unit of output. A reduction in the unit costs of R&D will make additional R&D investment profitable, thereby providing incentives to invest in research initiatives that would be uneconomical for either company operating alone.<sup>136</sup>

Second, the greater scale of the combined company will allow it to achieve scale economies in the costs of procuring the devices, software and other equipment needed to deploy the innovative products and methods resulting from the R&D.<sup>137</sup> A combined AT&T and BellSouth will be able to “secure larger volume discounts from suppliers, and

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<sup>135</sup> *SBC/AT&T Merger Order* ¶¶ 193, 195.

<sup>136</sup> *See* Carlton/Sider Decl. ¶ 68.

<sup>137</sup> *See SBC/AT&T Merger Order* ¶ 193.

then pass those lower costs through to consumers in the form of lower-end user prices.”<sup>138</sup> Thus, all customers will directly benefit from more efficient deployment of new services and features that the combined company will develop.

The incentives to flow through these value-related benefits to the consumer will be particularly strong here, as in the SBC/AT&T merger, because the combined company will face “continued intense competition from other carriers [that] will provide sufficient incentives for the merged company to continue to invest in more applied research and product development.”<sup>139</sup> Competition from the many firms that now offer -- or threaten to offer -- packages of voice, data and video services will leave the combined company with “little choice but to continue investment and innovation” in all of these areas.<sup>140</sup> Thus, as with the SBC/AT&T merger, AT&T and BellSouth expect that the merged company will spend more on innovation and investment in network infrastructure than the total spent by the merger parties individually before the proposed merger.<sup>141</sup>

2. AT&T Innovations Will Be Delivered More Effectively to Customers of BellSouth and Cingular, and BellSouth Innovations More Effectively to the Customers of AT&T and Cingular

Beyond increasing the level of investment in basic research and applied R&D, the merger will also allow AT&T, BellSouth and Cingular to leverage their complementary assets to deploy more effectively the fruits of the innovations that result. In particular, the merger will enable AT&T to deliver innovative products and service developed by

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<sup>138</sup> *Id.*

<sup>139</sup> *Id.* ¶ 195.

<sup>140</sup> *Id.*

<sup>141</sup> *See id.*

AT&T Labs to BellSouth and Cingular's mass market and small business customers far more effectively than AT&T can do today.

The potential benefits are great because many significant innovations developed by AT&T Labs, primarily for AT&T's enterprise customer base, could be applied to consumer and business services offered by BellSouth and Cingular, just as SBC's customers have already begun to see the benefits of innovations developed by the legacy AT&T Labs. These innovations include:

- AT&T's innovations in developing IP services, which promise to accelerate the development, improve the quality and reduce the cost of services in such critical areas as VoIP and IP Video.<sup>142</sup>
- Text-to-speech engines, synthesized voice capabilities, automatic speech recognition and natural language speech recognition systems that have the potential to allow real-time translation of written text to spoken speech (and vice versa), simultaneous foreign language translation and highly proficient customer care and relationship management capabilities.<sup>143</sup>
- New tools that permit users to record and index a variety of audio and video inputs, search audio and video sources using automatic speech recognition technologies and video search engines, alert customers to specified types of newly received information and convert various types of broadcast information for use in many different types of consumer devices.<sup>144</sup> These tools also have many potential uses for the mass market and small business customers of BellSouth and Cingular.<sup>145</sup>
- Network-based solutions for security threats, including defenses against Distributed Denial of Service ("DDoS") activity, firewall optimization, defenses against attacks on VPNs and hosting customers, intranets and residential DSL customers.<sup>146</sup> This technology has been integrated into AT&T's core network and will benefit BellSouth customers after the two networks are integrated.

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<sup>142</sup> See Rice Decl. ¶ 30.

<sup>143</sup> See *id.* ¶¶ 29, 31.

<sup>144</sup> See *id.* ¶ 31.

<sup>145</sup> See *id.*

<sup>146</sup> See *id.* ¶ 8.

- AT&T’s optical mesh service (“OMS”), a method of optical networking that uses dynamically assigned circuits and bandwidth that can be reconfigured virtually instantaneously by the customer instead of traditional fixed point-to-point private lines that often take weeks or months to provision.<sup>147</sup>
- AT&T’s “point and click provisioning” systems, which use artificial intelligence overlays and speech recognition to condense and simplify the ordering and provisioning of network equipment and services. AT&T’s provisioning system enables customers to manage their communications needs on-line – from “quote to cash.”<sup>148</sup>

AT&T Labs has also developed tools and technologies used in managing the AT&T network and business that will enhance the efficient operation of the BellSouth and Cingular businesses. For example:

- Proprietary advanced software and technology used to manage telecommunications networks. These include tools for network design, optimization and management; tools to detect in real time network congestion that slows delivery of VoIP or video services; and tools that improve network reliability and performance through automated correlation and anomaly detection.<sup>149</sup>
- Proprietary technology developed by AT&T for managing very large databases (*i.e.*, hundreds of terabytes), which can be used by a telephone carrier to organize and analyze the enormous amounts of call detail and other records, allowing greatly improved network efficiency, increased billing accuracy and more effective detection and prevention of fraud. Cingular already uses a limited form of this technology pursuant to a contract AT&T had with AT&T Wireless Services Inc. (“AT&T Wireless”) to identify network “dead spots” by searching for records of calls that are dropped and re-dialed from nearby locations several seconds later. The proposed merger, however, will enable the merged company to

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<sup>147</sup> See *id.* ¶ 32. Another example is new “enhanced conferencing” technology that enables the user, among other things, to record conference calls in a format that allows parties to conduct subsequent searches for discussions on particular topics. The technology also allows the host of a conference call to split the call so that, for instance, a subcommittee can have a separate conference and then switch back to the entire committee to report back on the “sub”-conference.

<sup>148</sup> See Rice Decl. ¶ 11. AT&T recently won TMC Labs’ “Innovation Award” for the second consecutive year in recognition of AT&T’s “innovative approach to electronic customer service and support. By giving users a view into their own network, AT&T empowers customers with real-time, end-to-end visibility that helps businesses manage their network, cut costs and save time.” See AT&T, *available at* [http://www.att.com/globalnetworking/what\\_analysts\\_are\\_saying.html](http://www.att.com/globalnetworking/what_analysts_are_saying.html).

<sup>149</sup> See Rice Decl. ¶ 11.

apply the full-blown technology more efficiently to the legacy networks and customer bases of both Cingular and BellSouth.<sup>150</sup>

The merger will also create opportunities for AT&T to cross-market innovations developed by BellSouth. For example:

- BellSouth has been a leader in testing and improving pre-WiMAX “wireless DSL” solutions, and this knowledge and experience will carry forward to forthcoming WiMAX and related technologies that will fill in gaps in broadband coverage where wireline deployment is not cost-effective.<sup>151</sup>
- BellSouth is also a leader in the deployment of Ethernet over copper facilities, a technology that uses multiple twisted pairs of copper facilities to offer an Ethernet-like service.<sup>152</sup>

In sum, the merger of AT&T and BellSouth, like the merger of SBC and AT&T, promises substantial public interest benefits in the form of increased and accelerated innovation and deployment of IP, broadband and other services and features that build on that innovation.

F. The Merger Will Produce Substantial Cost Savings

The merger of AT&T and BellSouth will result in substantial savings in costs of operations. These cost savings are likely to be especially significant because the proposed transaction will result in the integration of three entities – AT&T, BellSouth and Cingular.<sup>153</sup> These cost savings will benefit customers by supporting the combined company’s increased research, development and innovation, thereby making the combined company a more effective competitor.

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<sup>150</sup> See *id.* ¶ 33.

<sup>151</sup> See Smith Decl. ¶ 16.

<sup>152</sup> Press Release, BellSouth, BellSouth Combines Next Gen Optical Services with Advanced Ethernet Capabilities: Integration of Metro Ethernet and Shared LAN Services with MSP SONET Provides Greater Protection for Mission Critical Data (Mar. 20, 2006), available at <http://sev.prnewswire.com/telecommunications/20060320/NYM13220032006-1.html>.

<sup>153</sup> See Kahan Decl. ¶ 44.

The anticipated cost savings are over and above the benefits expected from each company's ongoing productivity initiatives in the absence of a transaction. Improved efficiencies and cost savings will be derived from such areas as procurement savings and the elimination of overlapping staff and related administrative expenses. The projected savings are based on AT&T's prior merger experience. AT&T will adopt the same proven strategies that it used to achieve cost savings in its prior mergers, and it will apply the lessons learned from those prior integrations to achieve significant cost reductions.<sup>154</sup>

Although at this stage AT&T cannot calculate all of the synergies with specificity, AT&T estimates that the net present value of the merger specific synergies, after the costs to achieve them, will be approximately \$18 billion. These synergies are anticipated to commence shortly after closing and to provide cost savings at a run rate exceeding \$2 billion annually by 2008, rising to greater than \$3 billion annually by 2010. Overall, cost reductions are anticipated to make up over 90 percent of the total synergies. AT&T has a high degree of confidence that these synergies are attainable. AT&T has used the same methodology in projecting cost savings here that it used in prior acquisitions, and AT&T is ahead of its initial schedule for the integration of the legacy AT&T and SBC networks.<sup>155</sup>

In addition, as discussed above, AT&T anticipates significant efficiencies from the deployment of IPTV in the BellSouth region. These savings are not included in the projected synergies, but are additional benefits of the transaction.

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<sup>154</sup> See Carlton/Sider Decl. ¶ 66.

<sup>155</sup> See Kahan Decl. ¶ 42; Rice Decl. ¶¶ 4-5.

1. Procurement Savings

Large buyers of equipment are typically able to negotiate significant discounts from hardware and software vendors such as Nortel, Lucent, Siemens and Alcatel. By unifying procurement for their wireline and wireless operations, the merged company will expand the scale of its purchases and will gain increases in volume discounts from hardware and software suppliers.

2. Efficiencies from Elimination of Duplication

The Commission has recognized that the “elimination of duplicative or redundant administrative functions . . . are direct consequences” of mergers of this type and hence cognizable as merger-specific efficiencies.<sup>156</sup> The combined company will achieve significant savings from the consolidation of a variety of functions and the elimination of duplication. Although it is difficult to quantify these savings with precision at this stage, the following areas are of particular note:

- The combined company will be able to achieve significant marketing and advertising savings. The reduction from three brands to one will lead to significantly lower advertising costs over the long term, both from the consolidation of advertising purchases and from the greater advertising efficiency that will be gained from using one iconic brand for the broad array of the company’s products. Today, AT&T, BellSouth and Cingular spend approximately \$2.5 billion annually on advertising. AT&T preliminarily estimates annual run-rate savings of approximately \$400-\$500 million due to combining advertising from three brands to one.
- The combined company will achieve lower costs from the standardization and automation of IT systems and the elimination of duplicative IT projects, including operational and business support systems such as billing and order flow platforms. For example, costs will be reduced because consolidated billing will reduce the number of bills that must be prepared, printed and mailed.

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<sup>156</sup> *SBC/Ameritech Merger Order* ¶ 326; *see also In re Applications of SBC Commc’ns Inc. & BellSouth Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 25459, 25480 ¶ 47 (Sept. 29, 2000) (“[A]lloy will be able to generate efficiencies by consolidating national advertising media [and] reducing customer service and billing costs . . .”).

- The combined company will achieve real estate cost savings through consolidation and the elimination of duplication.
- The combined company will be able to eliminate duplicative staff and related administrative expenses.
- The combined company will achieve an estimated \$5 billion in synergies from integration and coordination of AT&T's, BellSouth's and Cingular's operations.<sup>157</sup>

3. Substantial Savings in Both the Fixed and Variable Costs of Operating the Merged Network

The combined company will achieve significant cost savings in a variety of areas. For example, there is sufficient capacity available on AT&T's network to accommodate the addition of BellSouth's long distance and data traffic. That consolidation of traffic will lead to reduced transport costs for that traffic. In addition, cost savings will be achieved through reduced network center costs, reduced network planning and engineering costs and reduced overhead. Reductions in procurement, network and IT expenses are preliminarily estimated to result in cost-savings in the range of \$700-\$800 million by 2009. By streamlining network operations among the three companies, AT&T estimates that it will be able to achieve reductions in capital expenditures in the range of \$400-\$500 million by 2009.<sup>158</sup>

VI. THE MERGER WILL NOT HARM COMPETITION

The merger of AT&T and BellSouth will create the many public interest benefits detailed above without any loss of competition. There will be virtually no increase in horizontal concentration in any relevant market, and neither competition nor consumers will be harmed in any way.

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<sup>157</sup> See Kahan Decl. ¶¶ 43-45.

<sup>158</sup> See *id.* ¶ 45.

A. The Merger Will Not Harm Wholesale Special Access Competition

The competitive overlap in special access services between AT&T and BellSouth is an order of magnitude smaller than it was between SBC and AT&T (or Verizon and MCI). As detailed below and in the Carlton/Sider Declaration, AT&T has local fiber networks in only 11 metropolitan areas in BellSouth's territory and local fiber connections to fewer than 330 total buildings in those MSAs, more than 100 of which house BellSouth wire centers, an IXC POP, or AT&T local nodes or signal regeneration facilities. Application of the analysis used in the prior mergers to eliminate buildings where there are no competitive concerns (such as buildings already served by other CLECs) reduces the number of metropolitan areas potentially at issue to two (Atlanta and Miami/Fort Lauderdale) and the number of buildings to less than 50.<sup>159</sup> Under these circumstances, no remedy is merited.

Nor is there any issue regarding Type II special access services. The Commission thoroughly reviewed detailed records in the SBC/AT&T and Verizon/MCI merger proceedings with respect to these and other special access allegations and properly rejected each of them based on findings that apply with equal force here.<sup>160</sup> Many other CLECs in the BellSouth region have active local fiber networks in the same areas as AT&T, have collocations in the same BellSouth wire centers as AT&T, and have an equal (or greater) ability than AT&T to connect their robust local fiber networks to individual buildings with Type II special access circuits or UNEs. Indeed, *individual* CLECs have more extensive local networks, more building connections and much greater

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<sup>159</sup> See Carlton/Sider Decl. ¶ 109 & n.126.

<sup>160</sup> See *SBC/AT&T Merger Order* ¶ 33.

wholesale special access sales than AT&T; collectively, their operations in the BellSouth region dwarf AT&T's.

AT&T's limited special access presence in the BellSouth region is starkly confirmed by the fact that AT&T's *annual* wholesale local private line sales (both Type I and Type II) in the BellSouth region are less than the *monthly* sales of those services in the SBC region that the Commission analyzed in approving the SBC/AT&T merger. AT&T alone purchases nearly ten times more wholesale private line service from other facilities-based CLECs that actively compete with BellSouth than AT&T sells in the entire region, and AT&T provides less than one percent of the billions of dollars of total wholesale special access services sold annually in BellSouth's region. AT&T's focus in the BellSouth region remains on serving its retail commercial customers, and the incidental (and rapidly declining) wholesale local services that AT&T provides today in dense urban areas could readily be replaced by the many other facilities-based CLECs that actively compete for that business. As the Commission has consistently recognized, "the loss of a competitor with such a small market share is *de minimis* and would not likely cause significant, merger-related anticompetitive effects."<sup>161</sup>

1. Any Building-Specific "Type I" Wholesale Special Access Effects Are *De Minimis*

This merger presents very different "building-specific" facts than the SBC/AT&T and Verizon/MCI mergers. As noted, AT&T has local fiber networks in only 11 metropolitan areas in the BellSouth region and has local fiber connections to fewer than 330 buildings in total, more than 100 of which are connections to BellSouth wire centers,

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<sup>161</sup> *Cingular/AT&T Wireless Merger Order* ¶ 107.

AT&T and other IXC's long distance POPs, or AT&T local nodes or signal regeneration facilities.<sup>162</sup> In each of the prior mergers, by contrast, the Department and the Commission identified more than 300 "problem" buildings after assessing thousands of local fiber-connected buildings.

In nine of its 11 BellSouth MSAs, AT&T's presence is *de minimis* by DOJ's prior standard. AT&T has local fiber connections to *ten or fewer* buildings that are not already served by other CLECs in Birmingham, Charlotte, Chattanooga, Greensboro, Jacksonville, Knoxville, Nashville, Orlando and Raleigh-Durham.<sup>163</sup> Numerous other facilities-based CLECs are active in these areas.

That leaves only Atlanta and Miami/Fort Lauderdale, both of which are hotbeds of CLEC activity, with numerous fiber-based CLECs in each.<sup>164</sup> AT&T has fewer than 215 local fiber connected buildings in these two metropolitan areas.<sup>165</sup>

As the Commission and the Department properly recognized in the SBC/AT&T and Verizon/MCI mergers, there are no competitive issues raised by AT&T's local fiber

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<sup>162</sup> See Carlton/Sider Decl. ¶ 109 & n.126. AT&T serves a few dozen additional buildings with broadband fixed wireless technology that other CLECs have an equal ability to deploy to the same buildings using licensed or unlicensed spectrum. And AT&T has constructed direct "rifle shot" fiber extensions of its *long distance* network to a few dozen very high demand buildings in BellSouth areas in which AT&T owns *no* local metro fiber. See *id.* n.119.

<sup>163</sup> See Carlton/Sider Decl. n.127.

<sup>164</sup> According to data available to Applicants, in Atlanta there are at least 20 additional fiber-based CLECs (Abovenet, AGL Networks, Cogent, Dalton Utilities, Elantic, Focal Communications/Broadwing, GDOT ATMS, Global Crossing, ICG, Lightcore, Level 3, Looking Glass Networks, OnFiber, Southern Telecom, Telcove, Time Warner, Verizon, XO, Xspedius and 360 Networks); in Miami/Fort Lauderdale there are at least fifteen other substantial fiber-based CLECs (Abovenet, Elantic, FDN, FPL Fiber Net, Level 3, MicroTel, Neopolitan Fiber, OnFiber, Port Everglades Port Authority, Qwest, Sprint, Telcove, Verizon, XO and Xspedius).

<sup>165</sup> See Carlton/Sider Decl. ¶ 111.

presence in buildings that are already served by other CLECs or, by virtue of their large customer demand and proximity to other CLECs' metro fiber networks, readily could be served by other CLECs.<sup>166</sup> Even based upon Applicants' incomplete CLEC data, CLECs already have local fiber connections to at least 130 of the AT&T fiber lit buildings in these two metropolitan areas, and at least another 25 could easily be competitively supplied under the proximity/OCn-level demand criteria that the Department accepted in the prior mergers.<sup>167</sup> At least five of the remaining buildings are competitively insignificant under other criteria accepted by the Department in the prior mergers.<sup>168</sup>

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<sup>166</sup> See, e.g., Plaintiff United States' Response to Public Comments, *United States v. SBC Commc'ns Inc.*, C.A. No. 1:05CV02102 (EGS), at 20-23, 25 (D.D.C. Mar. 21, 2006) ("United States' Response to Public Comments").

<sup>167</sup> See *id.* at 22 (discussing "buildings where circumstances suggested that there was no competitive" harm); see also Carlton/Sider Decl. ¶ 111. The Commission already has found that there is "substantial deployment of competitive fiber loops at OCn capacity" and "competitive carriers confirm that they are often able to economically deploy these facilities to the large enterprise customers that use them." *In re Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd. 2533, 2634 ¶ 183 (Feb. 4, 2005) ("*Triennial Review Remand Order*"). Additionally, "there does not appear to be any evidence of demand for incumbent LEC OCn level unbundled loops." *In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, 17168 ¶ 315 (Aug. 21, 2003) ("*Triennial Review Order*"). Based on these findings, the Commission concluded that "entry into [the] market" for OCn-level dedicated access facilities and services is "economic" for multiple suppliers and that carriers are not "impaired" without unbundled access to incumbent OCn facilities. *Triennial Review Remand Order* ¶¶ 10, 26, 149; *Triennial Review Order* ¶ 315.

<sup>168</sup> See Carlton/Sider Decl. ¶ 111. For example, there is no competitive concern with respect to fiber deployed to now-vacant buildings that have no current customers and may never have customers for any carrier. Similarly, where the only tenant in a building is BellSouth, AT&T or one of its affiliates, there is no basis for concern because there is today no competition between AT&T and BellSouth to supply these buildings and, post merger, AT&T/BellSouth will continue to obtain service through self-supply.

Application of these generic criteria of clear competitive insignificance leaves 25 or fewer buildings each in Atlanta and Miami/Fort Lauderdale.<sup>169</sup>

Atlanta and Miami/Fort Lauderdale, moreover, are areas with particularly extensive and active CLEC presence, and facilities-based CLECs in these two markets continue to thrive and expand. As just one example, Time Warner Telecom announced in January a 130-mile expansion of its Atlanta metro fiber network to the greater Atlanta areas of Alpharetta, Smyrna, Norcross, Perimeter and Roswell that “enables [Time Warner Telecom] to offer converged communications solutions to more than 6,000 additional businesses located in the Atlanta area.”<sup>170</sup> In this environment in two of the largest and most competitive metropolitan areas in the nation, it makes no sense to impose a costly structural remedy to address theoretical wholesale special access harms involving only about 25 buildings in each of those areas.<sup>171</sup> This is particularly true given that AT&T does not even have any wholesale special access customers in these particular Atlanta and Miami/Fort Lauderdale buildings today.

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<sup>169</sup> See Carlton/Sider Decl. ¶ 110.

<sup>170</sup> Press Release, Time Warner Telecom, Time Warner Telecom Extends Atlanta Fiber Network (Jan. 20, 2006), *available at* [http://www.twtelecom.com/Documents/Announcements/News/2006/Atlanta\\_Extension\\_Final\\_1\\_06.pdf](http://www.twtelecom.com/Documents/Announcements/News/2006/Atlanta_Extension_Final_1_06.pdf).

<sup>171</sup> These same facts likewise foreclose any claim that the loss of AT&T as an independent competitor would allow AT&T to make “MSA-wide” special access price increases in the BellSouth region. As the Commission explained in the *SBC/AT&T Merger Order*, to the extent it could ever make sense, such a claim of MSA-wide price increases could be plausible *only* if there is a sufficient “number of buildings” such that the incumbent’s gain in those buildings from price increases offset the loss of business to competitors in other buildings caused by the price increases. *SBC/AT&T Merger Order* ¶ 48 n.135. Here, while BellSouth provides special access to many thousands of buildings, AT&T has fiber laterals to only a few hundred and, as explained above, virtually all of those are plainly subject to actual or potential competition. Accordingly, any attempt by a combined AT&T/BellSouth to raise MSA-wide prices to take advantage of any purported lack of competition in a handful of buildings in an MSA, would risk losing business in thousands of other buildings within the MSA.

2. The Merger Will Have No Unilateral Horizontal Effects on Type II or Out-of-Region Special Access Competition, Will Not Increase the Likelihood of Coordinated Interaction and Will Have No Anticompetitive Vertical Effects

The Commission previously found that the combination of AT&T and a regional ILEC will not affect Type II special access because carriers can use collocations to combine their own local backbone transport with special access “tails” purchased from the ILEC.<sup>172</sup> That is equally true here.<sup>173</sup> Many other carriers have extensive local networks in the same areas as AT&T in each of these metropolitan areas.<sup>174</sup>

Other competing carriers are collocated in virtually all of the BellSouth wire centers where AT&T is collocated.<sup>175</sup> Thus, here, as in the prior mergers, the proposed merger can have no unilateral horizontal effects in the provision of wholesale local transport services: many other carriers “can use their existing collocation facilities in the

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<sup>172</sup> *SBC/AT&T Merger Order* ¶ 41.

<sup>173</sup> *See* Carlton/Sider Decl. ¶¶ 113-18. These data are incomplete, because GeoTel, the source of the data, does not capture all of the local fiber of all competing carriers. There are literally dozens of active facilities-based CLECs in the BellSouth region. AT&T alone has agreements to purchase Type I special access services from over 30 of these CLECs, including AllTel, American Fiber Systems of Georgia, Ben Lomand Communications, Centennial, Covad, Cox, CTC Exchange, Dalton Utilities, Dukenet Communications, FTC Diversified Svcs., Gainesville Regional Utilities, Global Crossing, Globecast, North America, Gru-comm, HTC Communications, Iris Networks (TN Independent Telcom), Level 3, Lightcore, Looking Glass, New Edge Networks, New South, OnFiber, Smart City Solutions, Sprint, Telepak Networks, Telcove, Time Warner, US LEC, Verizon, XO and Xspedius. Other facilities-based CLECs that do not currently supply AT&T in these areas include, among others, 360 Networks, AGL Networks, Cogent, Comcast, Elantic, FPL FiberNet, ITC Deltacom, Knology, Neopolitan Fiber, Microtel, Qwest, Ring Gold, Southern Telecom and Winstar.

<sup>174</sup> *See SBC/AT&T Merger Order* ¶ 45 (“other carriers besides AT&T have fiber networks in these geographic areas”); *see also* United States’ Response to Public Comments at 18 (“In general, there is no [] bottleneck for transport . . . .”) (“United States’ Response to Public Comments.”).

<sup>175</sup> *See* Carlton/Sider Decl. ¶ 117.

relevant wire center (or contract with a competitor that has such collocation facilities) and can purchase special access loops or UNEs to provide Type II services.”<sup>176</sup>

Nor can there be any claim that the merger will remove an independent competitor with some unique advantage in purchasing special access tails from BellSouth.<sup>177</sup> As the Commission recognized in the *SBC/AT&T Merger Order*, “regardless of whether competitors are able to negotiate significant discounts [comparable to AT&T’s discounts], where competitive duplication of the last-mile facility is not economic, competing carriers will be able to rely on high-capacity loop and transport UNEs priced at Total Element Long Run Incremental Cost (TELRIC) where they are available.”<sup>178</sup> In any event, AT&T and other CLECs have access to the same tariffed BellSouth special access discount plans.<sup>179</sup> In short, the merger can have no

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<sup>176</sup> *SBC/AT&T Merger Order* ¶ 41; *see also id.* ¶ 33 (“[W]e conclude that the ability of remaining carriers in the market to offer competitive special access services through a combination of their own transport facilities and an incumbent LEC’s special access or high-capacity unbundled loops, or a competing carrier’s loop facilities, alleviates concerns about the loss of AT&T as a provider of Type II special access services to particular buildings.”).

<sup>177</sup> *Id.* ¶ 43.

<sup>178</sup> *Id.*

<sup>179</sup> *See* Bickerstaff Decl. ¶¶ 11-12 (stating that BellSouth’s “base” and “overlay” special access discount plans are generally available); Carlton/Sider Decl. ¶¶ 119-120; *see also SBC/AT&T Merger Order* ¶ 43 (“[T]here [wa]s no evidence that AT&T has access to a discount plan that is not available to other providers.”). As Mr. Bickerstaff explains, any special access customer can purchase DS1 or lower capacity circuits under BellSouth’s ACP tariff, which provides discounts to any carrier willing to commit to purchasing as little as one DS1 circuit from BellSouth for a particular term. Bickerstaff Decl. ¶ 11. Likewise, any carrier can purchase DS3 or greater capacity circuits under BellSouth’s TPP plan, which provides circuit-specific discounts based solely on the term of the purchases -- all carriers that commit to the same term therefore receive identical discounts. In addition to these “base” tariffs, the TAP is an “overlay” tariff that offers discounts based on the customer’s total spending commitment levels for all qualifying wholesale products. TAP is available to any customer that commits to \$3 million or more in spending on BellSouth special access products for at least three years, and more than a dozen carriers utilize this discount arrangement. In areas where BellSouth has been granted pricing flexibility, it also offers customers the option of negotiating more

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conceivable impact on the provision of Type II wholesale special access services in the BellSouth region<sup>180</sup> – which is starkly confirmed by the fact that AT&T today provides less than \$200,000/month of Type II wholesale local private line sales in the entire BellSouth region.<sup>181</sup>

Under *these* circumstances, there is no significant competitive issue and thus no basis for any remedy. As the Commission has explained, it will not impose conditions merely to address merger issues that will have only a *de minimis* impact on competition.

B. The Merger Will Not Adversely Affect Competition in the Provision of Retail Services to Businesses

In the *SBC/AT&T Merger Order*, the Commission concluded that the merger of SBC and AT&T would not result in anticompetitive effects in the market for medium and large enterprise customers. Although the Commission found that the merger would

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individualized contract tariffs (than are available to any other similarly situated customers on a nondiscriminatory basis).

<sup>180</sup> Similarly, there is no basis for concern here about anticompetitive coordinated effects, “mutual forbearance” or anticompetitive vertical effects under the same analysis the Commission applied in its prior orders. See *SBC/AT&T Merger Order* ¶ 52 (“[I]t [is] unlikely that the merger will lead to tacit collusion or other coordinated effects in the relevant special access markets in SBC’s region.”); *Verizon/MCI Merger Order* ¶ 52; *SBC/AT&T Merger Order* ¶ 54 (noting that SBC spent “billions of dollars to buy AT&T’s nationwide network and global enterprise and business reach, including facilities in Verizon’s region” and that “[i]n light of this investment, it is reasonable to expect [the merged entity] to have strong incentives to utilize fully its assets in the Verizon territory”); *Verizon/MCI Merger Order* ¶ 54 (same with respect to Verizon’s incentives); *SBC/AT&T Merger Order* ¶ 54 (“[E]ven if [AT&T] forbears from offering competing special access services in Verizon’s region, competitive alternatives will remain for those locations where AT&T offered competing special access services.”); *id.* ¶ 55 (“SBC and other incumbent LECs . . . already are vertically integrated participants in both input and downstream markets [and such issues are] more appropriately addressed in [the Commission’s] existing rulemaking proceedings on special access performance metrics and special access pricing.”) (citations omitted).

<sup>181</sup> This level of sales is far below legacy AT&T’s wholesale Type II sales in the SBC region, which the DOJ concluded were “relatively small and of limited competitive significance.” United States’ Response to Public Comments, at 46 n.80.

increase concentration in this segment, it found that there would be no competitive harm because “myriad providers are prepared to make competitive offers” to business customers and such customers are likely to take full advantage of the choices available to them.<sup>182</sup> Specifically, the Commission found that “[f]oreign-based companies, competitive LECs, cable companies, systems integrators, and equipment vendors and value-added resellers” were all competing for enterprise customers, and that cable, VoIP and wireless providers, in particular, were dramatically expanding their presence in the market.<sup>183</sup> At the same time, the Commission recognized, medium and large business customers tend to be highly sophisticated purchasers of communications services and, as such, are “likely to make informed choices based on expert advice about service offerings and price.”<sup>184</sup> For these reasons, the Commission found competition for business customers is “robust”<sup>185</sup> and likely to remain so.<sup>186</sup>

The same conclusions are compelled here. The competition between BellSouth and AT&T in BellSouth's region is no more significant than was the competition between pre-merger SBC and AT&T in SBC's region; in fact, BellSouth is even more limited as a competitor for large, national enterprises because of its lack of out-of-region assets and strategic focus.<sup>187</sup> In the BellSouth region, no less than in the SBC region, a broad range

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<sup>182</sup> *SBC/AT&T Merger Order* ¶ 73.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* ¶ 75.

<sup>185</sup> *Id.* ¶ 73 n.223.

<sup>186</sup> This conclusion was supported not only by the record evidence, but by fifteen years of precedent in which the Commission has consistently recognized that competition in the enterprise market was particularly intense. *Id.* ¶ 75.

<sup>187</sup> See Boniface Decl. ¶¶ 5-8, 11-15.

of providers, both traditional and non-traditional, compete aggressively for enterprise customers.<sup>188</sup> And in the BellSouth region, no less than in the SBC region, IP-based applications and services are revolutionizing the provision of services, lowering entry barriers and creating opportunities for a host of new competitors, including, but not limited to, cable and VoIP providers, which are emerging as stiff challengers to incumbent providers.<sup>189</sup> Wireless carriers as well are capturing larger shares of the retail business segment. And, of course, in the BellSouth region, no less than the SBC region, business customers take full advantage of the numerous choices available to them, making informed decisions based on expert advice in order to obtain the best service at the best price.

1. AT&T and BellSouth Focus on Different Customer and Service Segments

While BellSouth and AT&T each faces a wide range of competitors selling to business customers, the competitive overlap between them is even narrower than in the case of SBC and AT&T. AT&T concentrates on serving the full range of complex telecommunications needs of the largest retail business customers, both nationally and globally, while BellSouth focuses predominantly on meeting the local and regional voice and data needs of businesses, most of them significantly smaller than AT&T's target customer, whose operations are concentrated within its nine-state region.<sup>190</sup> BellSouth is

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<sup>188</sup> See *id.* ¶¶ 23-27 (detailing the competition faced by BellSouth in its region for business customers).

<sup>189</sup> See *id.* ¶¶ 10, 27 (stating that BellSouth receives competition from cable and VoIP providers).

<sup>190</sup> *Id.* ¶¶ 6, 11, 14-15; Carlton/Sider Decl. ¶¶ 87-90.

even less well equipped than the former SBC was to serve the primary requirements of large business customers with widely dispersed operations, and AT&T has stopped marketing to smaller retail business customers outside of the former SBC's 13-state region.<sup>191</sup>

BellSouth is even less able to compete against AT&T for the needs of retail business customers than SBC was when the Commission approved its acquisition of AT&T. Prior to the AT&T transaction, SBC had attempted to expand its reach outside of its ILEC territory (though with only limited success).<sup>192</sup> SBC had acquired or built assets, facilities and sales offices outside of its 13-state region.

BellSouth, in contrast, has concluded that its relatively small geographic territory and other limitations dictate a strategy of focusing on customer requirements within its nine-state region.<sup>193</sup> BellSouth owns no assets, facilities or sales offices outside its nine-state region that would enable it to compete effectively for the primary requirements of large business customers with substantial out-of-region operations, and has no corporate strategy of changing this situation.<sup>194</sup> The result is that BellSouth's ability to compete with AT&T is severely restricted – such that BellSouth “is not a viable competitor for contracts to serve as the primary carrier for such customers.”<sup>195</sup>

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<sup>191</sup> Boniface Decl. ¶¶ 8, 12-15; Carlton/Sider Decl. ¶¶ 98-102.

<sup>192</sup> SBC/AT&T Declaration of James S. Kahn (“SBC/AT&T Kahn Decl.”) ¶ 23; Carlton/Sider Decl. ¶¶ 92-95.

<sup>193</sup> Boniface Decl. ¶¶ 5, 11, 15.

<sup>194</sup> *See id.* ¶¶ 5, 7, 8, 11-15.

<sup>195</sup> *Id.* ¶ 12.

BellSouth is wholly reliant on wholesale relationships or leased access facilities to supplement its in-region network when competing for enterprise business, using services provided by other carriers for incremental out-of-region opportunities (such as serving a few out-of-region branches of a regional bank with operations concentrated in the BellSouth territory).<sup>196</sup> BellSouth initially pursued out-of-region opportunities through a teaming arrangement with Qwest, but that relationship was deemed a failure and abandoned in 2002, and has been replaced by a basic wholesale arrangement.<sup>197</sup>

In October 2005, BellSouth entered into a similar inter-networking agreement with Sprint that allows BellSouth to offer certain IP data services to the out-of-region locations of its customers using Sprint's MPLS network.<sup>198</sup> The purpose of this agreement was to stem BellSouth's loss of in-region medium-sized business customers whose out-of-region telecommunication needs constitute only a relatively small percentage of their overall spending.<sup>199</sup> Wholesaling arrangements of this type do not provide seamless connectivity and thus do not offer an effective means of competing for the mission-critical data applications of national customers. These customers typically turn to AT&T and numerous other competitors.<sup>200</sup> Thus, BellSouth's complete reliance on wholesale providers outside its nine-state region, coupled with its relatively small

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<sup>196</sup> See *id.* ¶¶ 7, 15, 23.

<sup>197</sup> *Id.* ¶ 19.

<sup>198</sup> See *id.* ¶ 20.

<sup>199</sup> See *id.* ¶ 20.

<sup>200</sup> *Id.* ¶¶ 7, 14, 21-22; see also *SBC/AT&T Merger Order* ¶ 74 (“[T]he merger could bring even more competition for these customers because the merged company will offer a true end-to-end solution to businesses, which in turn will likely improve quality and could create cost savings.”).

territory, which limits the number of customers for whom “follow the customer” arrangements might be attractive, makes BellSouth a relatively insignificant provider of telecommunications services outside of its region.<sup>201</sup>

AT&T’s and BellSouth’s internal categorizations of business opportunities further demonstrate their different focus in the business marketplace. BellSouth has traditionally divided customers in its large business segment into three categories: general business (less than 300 lines, but total spending of at least \$65,000 per year), major (300-700 lines) and enterprise (700 or more lines).<sup>202</sup> Average annual customer spending with BellSouth in the general business category is approximately \$100,000, in the major category approximately \$400,000 and in the enterprise category approximately \$2 million.<sup>203</sup> AT&T’s largest business customer segmentation – “Signature” – includes companies expected to spend tens of millions of dollars or more annually; BellSouth has nothing approaching such high-end segmentation.

As suggested by this categorization, AT&T is focused on the requirements of customers with the most geographically dispersed, complicated needs, whereas BellSouth is focused: on (1) customers with locations predominantly in its region and (2) voice and data requirements of other large business customers with operations in its region.<sup>204</sup> Even when AT&T and BellSouth serve the same customers, they tend to provide a different suite of products, with AT&T focusing on a complex nationwide and

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<sup>201</sup> Boniface Decl. ¶¶ 7-8, 12-15, 21-22.

<sup>202</sup> *See id.* ¶ 16.

<sup>203</sup> *See id.*

<sup>204</sup> *See id.* ¶¶ 5, 8, 15.

international data services, while BellSouth focuses instead on regional voice and data services.<sup>205</sup> BellSouth's limitations in terms of product offerings will become more severe as more customers adopt advanced IP-based voice and data solutions that BellSouth is challenged to deliver.<sup>206</sup>

2. Retail Business Customers Are Sophisticated and Take Full Advantage of their Competitive Choices

Through the use of strategic sourcing and competitive bidding, sophisticated retail business customers are able to take full advantage of the numerous options available to them. The Commission recognized that medium and large business customers are "highly sophisticated" and are able to "negotiate for significant discounts."<sup>207</sup> In light of the limited overlaps between BellSouth and AT&T and the numerous competitive alternatives recognized by the Commission and described herein, the proposed transaction will cause no harm in the retail business sector.

3. Diverse Groups of Competitors Compete in BellSouth's Territory To Fill Business Customers' Telecommunications Needs

In the BellSouth region, no less than in the SBC region, "myriad providers" are prepared to make competitive offers for retail business services. Indeed, the trend toward greater competitiveness identified by the Commission has continued over the last six months. Each category of competitor has become stronger in providing services for all

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<sup>205</sup> See *id.* ¶¶ 5-6, 14-15.

<sup>206</sup> See *id.* ¶ 13.

<sup>207</sup> *SBC/AT&T Merger Order* ¶¶ 74-75.

types of business customers. This activity extends throughout BellSouth's nine-state region and across the country.<sup>208</sup>

Driving this intense competition is the movement toward network convergence by many business customers.<sup>209</sup> Bundling IT infrastructure with communications is bringing additional players to the space.<sup>210</sup> In this new world, it is the traditional telephone companies that must work harder to remain competitive.<sup>211</sup>

The many categories of companies competing aggressively to provide telecommunications services to business customers are discussed in greater detail below and in Appendix B.<sup>212</sup>

a. Competitive Local Exchange Carriers

A host of national and regional CLECs is successfully competing for business customers in BellSouth's region.<sup>213</sup> They include **Time Warner Telecom**,<sup>214</sup> **NuVox**

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<sup>208</sup> See *VoIP Services: Annual Market Size and Forecasts*, Infonetics Research, at 12 (Oct. 25, 2005) (stating that “[c]ompetition is becoming more fierce between North American ILECs, IXCs, and MSOs; this is creating a need for service differentiation so service providers can stem losses and gain market share” with competitive new offerings); see also *U.S. Landline 2005-2009 Forecast and Analysis*, IDC, at 3 (Dec. 2005) (stating that “competition will intensify in the business markets, and businesses will implement broadband and VoIP services”).

<sup>209</sup> Carolyn Duffy Marsan, *Banner Year Expected for Convergence*, Network World, Jan. 16, 2006, available at <http://www.networkworld.com/news/2006/011606-predictions.html> (quoting Equant Americas President that “IP convergence is happening in all companies, large and small, global and domestic. They’re all looking to IP to add value to their business”). Toshiba, Samsung, IBM, HP and Microsoft are all offering converged solutions. *2005 SMB State of the Market*, Yankee Group, at 5 (Nov. 2005) (“*2005 SMB State of the Market*”).

<sup>210</sup> *2005 SMB State of the Market* at 5 (highlighting application vendors, like Sage, who can bundle premises-based application suites bundled with IT infrastructure and communications).

<sup>211</sup> *Id.* at 6 (“Traditional phone companies, including the RBOCs, are grappling with legacy network and service issues.”).

<sup>212</sup> Appendix B provides a more detailed description of the leading competitors in each category.

**Communications** (“NuVox”), **Covad Communications Group** (“Covad”), **EarthLink Inc.** (“EarthLink”), **Cbeyond Communications** (“Cbeyond”), **ITC^DeltaCom, Inc.** (“ITC^DeltaCom”), **US LEC Corp.** (“US LEC”), **Looking Glass Networks, Granite Telecommunications, TelCove, Inc.** (“TelCove”), **CenturyTel, Inc., Solarcom LLC, iPass, Inc** (“iPass”), **Netifice Communications** (“Netiface”), **MegaPath Networks** (“MegaPath”) and **Pac-West Telecom, Inc.** (“Pac-West”).

Time Warner Telecom has been especially active in BellSouth’s region in recent months.<sup>215</sup> In January 2006, the company announced “a 130-mile extension of its fiber network to the greater Atlanta cities of Alpharetta, Smyrna, Norcross, Perimeter, and Roswell,” which will enable it to “offer converged communications solutions to more than 6,000 additional businesses located in the Atlanta area.”<sup>216</sup> As one Time Warner Telecom executive explained: “Our expanded network can bring the highest quality, business-class voice and data services available to more than 350 commercial buildings in greater Atlanta. At the same time we can offer connectivity via our multipoint wide area networking solution to large cities in southeast and across the country.”<sup>217</sup> The

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<sup>213</sup> Boniface Decl. ¶ 29; *see generally* App. B at B-15 to B-30.

<sup>214</sup> *See* Ari M. Moses, *Industry Report: Communications Services & Technology*, Kaufman Brothers Equity Research, at 3 (Mar. 7, 2006) (stating that “[Time Warner Telecom] has begun to re-emerge as a leading competitive provider, leveraging its extensive fiber footprint and penetration to deliver value-added and differentiated services to enterprise customers nationwide”).

<sup>215</sup> *See* App. B at B-17 to B-18 n.73.

<sup>216</sup> *Id.* at B-17 n.68.

<sup>217</sup> *Id.*

expansion in and around Atlanta represents just one of Time Warner Telecom's recent extensions of its next generation network into major metropolitan areas.<sup>218</sup>

In addition, providers are expanding their service offerings in BellSouth's region in an effort to meet the demands of medium and large business customers.<sup>219</sup> In January 2006, ITC^DeltaCom, began offering a MPLS service throughout the southeastern United States, highlighting its commitment to provide "state of the art technology solutions to the medium sized and enterprise business market."<sup>220</sup> Since last summer, TelCove has launched VoIP service and 10-Gigabit Ethernet service for business customers located in all 70 of its markets in the eastern half of the United States (including 34 in the BellSouth region),<sup>221</sup> and Charlotte-based US LEC has introduced MPLS VPN WAN, enhanced its VoIP service, extended its IP-based services footprint in the BellSouth region and launched an Ethernet Loop transport service.<sup>222</sup> Similarly, in May 2005, NuVox introduced a VoIP offering, which provides business customers with a "flexible, high bandwidth data and voice solution, packed with a suite of bundled services over NuVox's private IP network," to markets in south Florida, North Carolina, Tennessee, Kentucky, South Carolina and Georgia.<sup>223</sup>

Moreover, CLECs have taken affirmative steps specifically to attract small and medium business customers in BellSouth's region. At the beginning of the year, Covad

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<sup>218</sup> See App. B at B-18 n.73.

<sup>219</sup> Boniface Decl. ¶ 29.

<sup>220</sup> App. B at B-16 n.63.

<sup>221</sup> See *id.* at B-21 n.83.

<sup>222</sup> See *id.* at B-19 to B-20 n.78.

<sup>223</sup> See *id.* at B-21 to B-22 nn.85-86.

introduced Covad VoIP PBXi Plus, a broadband and voice package specifically “geared for small businesses and distributed enterprises with existing PBX equipment or key telephone systems . . . .”<sup>224</sup> At around the same time, Cbeyond, an Atlanta-based managed services and VoIP provider, launched BeyondMobile, “a complete bundle of communications services targeted specifically to small businesses.”<sup>225</sup> And in October 2005, Pac-West, a provider of traditional and next-generation voice services in the western United States, announced its plan to offer its full suite of VoIP services to 36 metropolitan areas covering nearly 50% of the United States population, including MSAs in Florida, Georgia and Tennessee.<sup>226</sup>

Other CLECs are enhancing their offerings to both SMBs and enterprise customers by joining forces.<sup>227</sup> At the end of last year, the Atlanta-based ISP EarthLink announced plans to acquire VPN provider New Edge Networks to “enable EarthLink to easily and quickly expand its business in the fast growing small and medium business market,” in part by adding “EarthLink’s Web hosting and security products to its successful VPN sales.”<sup>228</sup>

Similarly, in February 2006, iPass announced completion of its acquisition of GoRemote Internet Communications, a leading provider of secure managed virtual business network services, to “extend iPass’ reach across all major segments of the global

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<sup>224</sup> *Id.* at B-26 n.107.

<sup>225</sup> *Id.* at B-19 n.77.

<sup>226</sup> *See id.* B at B-30 n.131.

<sup>227</sup> *See* Carol Wilson, *Competitive VPN Players Benefit From Consolidation*, Telephony Online, Feb. 24, 2006, available at [http://telephonyonline.com/broadband/news/VPN\\_EarthLink\\_Netifice\\_022406/index.html](http://telephonyonline.com/broadband/news/VPN_EarthLink_Netifice_022406/index.html).

<sup>228</sup> *See* App. B at B-59 n.278.

enterprise market for secure Internet connections for traveling and remote employees.”<sup>229</sup>

Also last month, Netifice announced a merger with MegaPath, which the Yankee Group stated “promises to provide users with one of the industry’s most robust suites of managed IP services . . . .”<sup>230</sup> These companies were already successful in attracting business customers, and plainly are becoming even more competitive.<sup>231</sup>

b. National Interexchange Carriers

Since the SBC/AT&T merger, nationwide providers such as **Verizon-MCI**,<sup>232</sup> **Sprint-Nextel**<sup>233</sup> and **Qwest**<sup>234</sup> have continued to enhance their national and global networks to fulfill the diverse needs of business customers. For example, Verizon Business has surpassed 20,000 miles of Ultra Long Haul (“ULH”) deployment on its network to give Verizon Business “the largest ULH network footprint for government and large business customers in the United States.”<sup>235</sup> In addition to increasing their coverage territories, these three nationwide providers continue to broaden their product portfolios, targeting both large and small businesses with improved voice and data

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<sup>229</sup> *Id.* at B-30 n.129.

<sup>230</sup> *Id.* at B-30 n.130.

<sup>231</sup> *See id.*

<sup>232</sup> *See generally id.* at B-1 to B-4.

<sup>233</sup> *See generally id.* at B-4 to B-7.

<sup>234</sup> *See generally id.* at B-7 to B-9.

<sup>235</sup> App. B at B-2 n.4. ULH is capable of supporting OC-768 core capacity with transmission speeds up to 40 Gbps. Verizon’s current ULH system supports 40 Gbps wavelengths which are capable of delivering both 10 Gbps and 40 Gbps signals and provide optimal support for IP, MPLS, SONET and SDH services.

services, including new VoIP offerings.<sup>236</sup> The competitiveness of these providers is evidenced by their recent wins of major Retail Business Services contracts.<sup>237</sup>

c. Data/IP Network Providers

As the demand for sophisticated data services, particularly those combining IP data and voice services continues to increase, so has the competitiveness of network providers. These carriers offer nationwide networks that can be used to offer a broad array of next-generation services. For example, in March 2006, **Global Crossing** “announced that the number of customers utilizing two or more converged IP services on its global fiber-optic network more than tripled in 2005, highlighting the company’s success in attracting enterprises and carriers to its high-performance, robust suite of IP solutions, . . . [and] that its Internet Protocol Virtual Private Network (IP VPN) traffic grew 300 percent in 2005.”<sup>238</sup> Global Crossing also has recently announced a win for a Retail Business Services contract with Atlanta-based Delta Airlines.<sup>239</sup>

In December 2005, **Level 3 Communications, Inc.**<sup>240</sup> completed its acquisition of WilTel to create a “premier wholesale” provider with far broader capabilities:

broadening our network capabilities will facilitate increased network reach by adding 3000 additional route miles, access to 50 new markets and improved responsiveness on high demand routes.<sup>241</sup>

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<sup>236</sup> See *id.* at B-3 n.5, B-6 n.15, B-8 to B-9 nn.23-29.

<sup>237</sup> See *id.* at B-1 n.1, B-3 n.6, B-5 n.14, B-9 n.29.

<sup>238</sup> *Id.* at B-11 n.37.

<sup>239</sup> See *id.* at B-12 n.43.

<sup>240</sup> See *id.* at B-12 to B-13.

<sup>241</sup> App. B at B-12 n.45.

Then, in January 2006, Level 3 moved to “expand [its] footprint in the southeastern region of the United States” by agreeing to acquire Progress Telecom LLC, a company whose network spans 9,000 miles, includes 29 metro networks – 26 of which are in the BellSouth states<sup>242</sup> – and connects to international cable landings in South Florida and 31 mobile switching centers.<sup>243</sup>

In February 2006, **XO** began offering an improved VoIP services bundle to small and medium business, which is available in over 49 metropolitan areas across the country, including Atlanta, Fort Lauderdale, Miami, Memphis, Nashville, St. Petersburg Tampa and West Palm Beach.<sup>244</sup> In addition, in March, XO expanded its Ethernet services in 60 MSAs, enabling businesses at copper-fed locations to connect multiple locations or receive high-speed (10 Mbps, 100 Mbps and 1 Gbps), IP-ready network access for the first time.<sup>245</sup>

The intensity of competition from these providers is reflected in their continued success in winning major telecommunication contracts. For example, in February 2006, **Broadwing** announced that it will provide Lufthansa services “in 40 locations throughout the United States . . . [as well] as a comprehensive national solution [for] billing and service coordination.”<sup>246</sup> **SAVVIS** announced in January 2006 that “Hard Rock International . . . has selected SAVVIS to provide a turnkey, wide area network services

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<sup>242</sup> See Progress Telecom, Network Map, available at <http://progresstelecom.com/images/maps/NetworkMap.pdf>.

<sup>243</sup> App. B at B-12 n.46.

<sup>244</sup> See *id.* at B-15 to B-16 n.60.

<sup>245</sup> See *id.* at B-15 n.58.

<sup>246</sup> *Id.* at B-9 to B-10 n.32.

solution linking their 67 wholly-owned locations worldwide.”<sup>247</sup> Also in January, XO Communications “secured a three-year agreement to provide voice and data services to the Texas Rangers and Dallas Stars.”<sup>248</sup>

d. International Carriers

International carriers also are expanding their offerings and upgrading their data networks to provide voice and data services to medium and large business customers in the United States. **British Telecom**, **NTT Communications** and the **France Telecom Group** have led this charge.

British Telecom, along with its subsidiary, Infonet, continued its success over the last few months, including winning a major contract with a company headquartered in Atlanta.<sup>249</sup> British Telecom also announced in February 2006 its intention to replace its current legacy TDM network with a MPLS-based network across more than 30 countries worldwide, which would “dramatically increase the scale and capacity of BT’s global voice capability and facilitate the deployment of advanced services for customers.”<sup>250</sup> In January, BT Infonet was named Frost & Sullivan’s Business Services Communications Company of the Year.<sup>251</sup>

Japan-based **NTT Communications** and **Telefonica** announced in January an agreement to interconnect data networks to provide a “seamless international network”

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<sup>247</sup> *Id.* at B-14 n.56.

<sup>248</sup> *Id.* B-15 to B-16 n.60.

<sup>249</sup> *See* App. B at B-63 n.297.

<sup>250</sup> *Id.* at B-63 n.296.

<sup>251</sup> *See id.* at B-63 n.295.

including the United States.<sup>252</sup> Moreover, NTT has made numerous announcements over the past few months about its competitive intentions and new product sets in the United States,<sup>253</sup> including reorganizing its global operations in order to more effectively compete in the U.S.,<sup>254</sup> and launching its Global IP Network business and Enterprise Hosting business under NTT America.<sup>255</sup>

**Equant**, which is part of the France Telecom Group and a leading telecom provider in Europe, continues to compete successfully for Retail Business Services customers in the United States<sup>256</sup> and is positioned in Gartner's "Magic Quadrant" for network providers in 2005.<sup>257</sup> Equant advertises a "market-leading" IP VPN solution, recently delivering an IP VPN solution to connect the 264 retail stores of the U.S.-based Stride Rite Corporation in August 2005.<sup>258</sup> Further, France Telecom/Equant has been vocal about its push to gain more network deals in the United States, with its executive vice president stating that the U.S. market is "very important," and that its global reach allows it to differentiate itself from AT&T and other network carriers."<sup>259</sup>

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<sup>252</sup> *See id.* at B-67 n.314.

<sup>253</sup> *See id.* at B-68 to B-69 nn.316-19.

<sup>254</sup> *See App. B* at B-68 nn.315-17.

<sup>255</sup> *See id.*

<sup>256</sup> *See id.* at B-62 n.291.

<sup>257</sup> *See id.* at B-61 n.288.

<sup>258</sup> *See id.* at B-61 to B-62 n.291.

<sup>259</sup> *See id.* at B-61 n.290. This competitive push is becoming increasingly successful, as demonstrated by Equant's March 2006 announcement that it will be transforming the Universal Music Group's network which will include a MPLS IP VPN across 48 countries, into a fully managed IP solution. *Id.* at B-62 n.292.

In addition, **Deutsche Telekom** (under the name T Systems and T-Mobile),<sup>260</sup> **Vanco Plc** (an United Kingdom-based Virtual Network Operator),<sup>261</sup> and **Dimension Data Plc** (a South African-based IT services and solution provider)<sup>262</sup> all have been increasing their U.S. presence and are further increasing the competition for Retail Business Services customers.

e. Systems Integrators

Systems integrators – the large IT services firms with in-depth application and managed service expertise – likewise are expanding rapidly. Their ranks include **EDS**, **IBM Global Services**, **Accenture**, **Science Applications International Corporation** (“SAIC”) and **Computer Sciences Corporation** (“CSC”).<sup>263</sup> As one observer put it in January 2006, “[t]he managed services trend is currently sweeping through every sector of the telecom industry.”<sup>264</sup> For example, in February 2006, IBM completed its acquisition of Micromuse Inc. to help IBM’s customers to “manage increasingly complex IT systems that support the proliferation of voice, data and video traffic due to the growing adoption of voice over IP (VoIP)-based audio and video services delivered over

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<sup>260</sup> See generally *id.* at B-64 to B-65.

<sup>261</sup> Press Release, Vanco Group Ltd., Servisair/GlobeGround Selects ARINC/Vanco Network Solutions (Dec. 14, 2005), available at <http://www.vanco.com/ContentManager/Document.asp?GroupId=2&TypeId=309&Id=2613>.

<sup>262</sup> Press Release, Dimension Data, Dimension Data Doubles its Size in Raleigh (Dec. 20, 2005), available at <http://www.dimensiondata.com/NR/rdonlyres/D8912F7B-FE89-4D3E-9DB0-F198FD130F3A/3759/DimensionDataDoublesitsSizeinRaleighCreatesaNewDiv.pdf>.

<sup>263</sup> See generally App. B at B-42 to B-46.

<sup>264</sup> Dan O’Shea, *The Next New Economy Is Someone Else’s Responsibility*, Telephony Online, Jan. 23, 2006, available at [http://telephonyonline.com/broadband/marketing/telecom\\_next\\_new\\_economy/index.html](http://telephonyonline.com/broadband/marketing/telecom_next_new_economy/index.html).

the Internet.”<sup>265</sup> Systems integrators also are bidding for, and winning, an increasing number of government and business accounts.<sup>266</sup>

Systems integrators also are increasingly leveraging their expertise in IT infrastructure and systems integration to gain success in the provision of mobile-communications service and support for their enterprise customers.<sup>267</sup> A growing number of Retail Business Services customers are choosing systems integrators over traditional wireless telecom companies, as evidenced by a February 2006 Infotech survey: “In consistently favoring the SI or VAR for mobile-communications service and support, our respondents seem to find greatest value in those channels that are knowledgeable across the IT/telecom spectrum . . . . This points to a key realization – that the most successful enterprise mobile solutions are those that are expertly integrated into both current IT infrastructures and each customer’s unique communications culture.”<sup>268</sup>

f. Equipment Vendors and Value-Added Resellers

In the months since the AT&T/SBC merger, equipment manufacturers have continued to pursue the demand for business telecommunications systems and services,

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<sup>265</sup> Press Release, IBM, IBM to Acquire Micromuse Inc. (Dec. 21, 2005), *available at* <http://www-03.ibm.com/press/us/en/pressrelease/19066.wss>.

<sup>266</sup> For example, in November 2005 EDS entered into a global information technology enterprise outsourcing agreement with Royal Ahold, the world’s fourth-largest grocery retailer with “more than 4,000 supermarkets and retail outlets in Europe and the United States.” App. B at B-43 n.201.

<sup>267</sup> Press Release, Infotech, Systems Integrators the Preferred Providers of Enterprise-Mobility Support (Feb. 23, 2006), *available at* <http://www.pbimedia-infotech.com/press022306.html> (“When it comes to supporting mobile-communications solutions, U.S. enterprises prefer working with systems integrators (SIs) rather than their mobile network service providers.”).

<sup>268</sup> *Id.*

both directly and through resellers, with increased vigor. IP and IP-enabled PBX telephone systems have been rapidly displacing traditional systems in large and smaller businesses alike, and this trend will continue to intensify.<sup>269</sup> For example:

- According to IDC, “managed services opportunities are growing and **Lucent** has been able to capitalize on the opportunity.”<sup>270</sup>
- **Cisco** announced an “expan[sion of] its product lineup [for] small business with an offering that will feature hosted voice, video, data networking, and applications via Internet service providers.”<sup>271</sup>
- **Avaya** recently acquired Nimcat’s NimX software, which “will allow small organizations to set up advanced phone networks with a trunk interface connected directly to a PSTN line.”<sup>272</sup>
- The Yankee Group comments, “Premises-based solution vendors such as **Cisco, Nortel, Samsung** and **Toshiba** have been most successful in painting the future of VoIP as a premises-based-only world.”<sup>273</sup>

Other equipment vendors are poised to gain market share as well.<sup>274</sup>

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<sup>269</sup> *Predictions for the Telecoms Market 2006*, IDC, at 16 (Jan. 2006) (“Total enterprise IP PBX lines are expected to surpass 2 million in APEJ in 2006, representing a growth of 26%. Total IP phones will likewise enjoy a similar growth trend of 26.9% to reach 1.6 million in 2006.”); see also Frost and Sullivan, *North American Enterprise TDM-Based Wireline Voice Services Markets*, at 1-15 (2005) (“The decline in switched access lines is expected to gain pace over the next 24-36 months as a growing number of enterprise customers implement VoIP services including IP PBXs, IP Centrex, and hosted IP telephony services.”).

<sup>270</sup> *Lucent Update: IMS, Mobility, and Services*, IDC, at 1 (Mar. 2006) (“IP network convergence and IMS adoption in the service provider market will accelerate Lucent Worldwide Services’ (‘LWS’) professional services revenue growth well beyond 2005 levels. Strategically, LWS’ growth and investment in multivendor professional and managed services capabilities leverage Lucent’s strength in the network core and provide the opportunity for Lucent to transform the current trusted vendor relationship with service providers to one of trusted business partner and solutions provider.”).

<sup>271</sup> Dawn Kawamoto, *Cisco Continues Small Business Push*, CNET News.com, Nov. 14, 2005, available at [http://news.com.com/Cisco+continues+small+business+push/2100-1033\\_3-5950991.html](http://news.com.com/Cisco+continues+small+business+push/2100-1033_3-5950991.html).

<sup>272</sup> See generally App. B at B-48 to B-49 nn.225-30; see also *VoIP in the U.S. Small and Medium Business Market: Increasing Awareness Beyond Cost Savings*, IDC, at 4 (Dec. 2005).

<sup>273</sup> *2005 SMB State of the Market* at 6.

<sup>274</sup> See generally App. B at B-49 to B-54; see also *id.* at B-44 n.206.

g. Cable Providers

Cable providers continue to utilize their extensive fiber optic networks to provide new services such as VoIP and traditional data and Internet transport to retail business customers.<sup>275</sup> IDC has noted that:

Incumbents face increasing competition from cable MSOs in both the consumer and small and medium-sized business (SMB) segments. This will become even more prevalent over the forecast period.<sup>276</sup>

The Yankee Group estimates that cable providers sold \$1.2 billion dollars in phone, data and video services to companies in 2004, and expected revenue to reach \$2 billion dollars in 2005.<sup>277</sup> The head of the commercial services division at Time Warner Cable, Ken Fitzpatrick, notes that “[w]e’ve got everything we need to compete,”<sup>278</sup> and Cox Business Services touts a number of recent successes in the retail business sector.<sup>279</sup>

h. VoIP Providers

Finally, **Vonage** and **Skype** both have recently announced their intentions to target small businesses with new and low-cost services. Vonage offers a service that includes an unlimited calling plan, a dedicated fax line and other features that it targets at small businesses called its “Small Business Unlimited Plan.”<sup>280</sup> On March 9, 2006, Skype, now backed by the financial resources of eBay, Inc., unveiled “Skype for

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<sup>275</sup> See generally *id.* at B-35 to B-42.

<sup>276</sup> *U.S. Landline 2005-2009 Forecast and Analysis*, IDC, at 13 (Dec. 2005).

<sup>277</sup> Ken Belson, *Not Just TV: Cable Companies Compete for the Office Domain*, N.Y. Times, Aug. 3, 2005, at C1, available at 2005 WLNR 12179832 (citing Yankee Group report).

<sup>278</sup> See *id.*

<sup>279</sup> See App. B at B-38 n.172.

<sup>280</sup> See Vonage, Small Business Unlimited Plan, available at [http://www.vonage.com/products\\_premium\\_sb.php](http://www.vonage.com/products_premium_sb.php).

Business,” which “is aimed at small companies with fewer than 10 employees.”<sup>281</sup> IDC analyst Will Stofega notes that the opportunity to target small business customers “is huge,” and that “Skype is entering at the right time.”<sup>282</sup> These products are in addition to products such as Google Talk and AOL Instant Messenger, which will offer features specifically designed for small businesses later this year.<sup>283</sup>

C. The Merger Will Not Reduce Competition for Mass Market Customers

Mass market telecommunications competition is more vigorous and varied than ever before. Rapid advances in IP technology have permitted cable companies to offer voice services to all of their customers, and they are aggressively marketing attractive bundles of telephony, video and data services nationwide.<sup>284</sup> Cable operators have already won 5.5 million all-distance telephone customers and are expected to have 22 million telephone subscribers within four years. Wireless subscribers exceed the number of wireline subscribers; wireless carriers are now, by some measures, the *predominant* providers of long distance services; and mass market customers are increasingly “cutting the cord” altogether.<sup>285</sup> Traditional CLECs also compete in the BellSouth region and continue to engage in aggressive telemarketing efforts. As a result, BellSouth lost nearly

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<sup>281</sup> App. B at B-57 n.266.

<sup>282</sup> *Id.*

<sup>283</sup> *See id.* at B-56, B-58.

<sup>284</sup> *See* Marguerite Reardon, *Cable Goes for the Quadruple Play*, CNET News.com, Nov. 7, 2005, *available at* [http://news.com.com/Cable+goes+for+the+quadruple+play/2100-1034\\_3-5933340.html](http://news.com.com/Cable+goes+for+the+quadruple+play/2100-1034_3-5933340.html); Press Release, Telution Manages Cable VOIP (Apr. 12, 2004), *available at* [http://www.lightreading.com/document.asp?doc\\_id=50802](http://www.lightreading.com/document.asp?doc_id=50802).

<sup>285</sup> *See* Boniface Decl. ¶ 32 (stating that the growth of wireless has resulted in a decline in demand for traditional wireline local and long distance services).

five percent of its retail residential access lines in 2005 alone, and it faces active, robust competition from numerous significant providers.<sup>286</sup>

AT&T is not one of those active competitors.<sup>287</sup> Nearly two years ago, legacy AT&T Corp. made a unilateral business decision to cease active competition for traditional mass market services, to dismantle its mass market infrastructure and to raise prices to its existing switch-based customers to maximize revenues in a “harvest” strategy. AT&T Inc. has continued to pursue this harvest strategy out-of-region following the SBC/AT&T merger.<sup>288</sup> Thus, as the Commission found in the *SBC/AT&T Merger Order*, there is no mass market competition issue here for the simple reason that AT&T is no longer a significant, price constraining competitor.<sup>289</sup>

AT&T continues to market its AT&T CallVantage “over the top” VoIP service nationally, but only through limited Internet and indirect channels.<sup>290</sup> But that service likewise raises no competitive issue. AT&T has a truly *de minimis* VoIP customer base – less than one-tenth of Vonage’s. Indeed, AT&T has fewer than 14,000 AT&T CallVantage customers in the entirety of the nine states in which BellSouth operates and

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<sup>286</sup> Press Release, BellSouth, BellSouth Reports Fourth Quarter Earnings (Jan. 25, 2006), *available at* [http://bellsouth.mediaroom.com/index.php?s=press\\_releases&item=2800](http://bellsouth.mediaroom.com/index.php?s=press_releases&item=2800); *see also* Boniface Decl. ¶¶ 32-34.

<sup>287</sup> Boniface Decl. ¶ 35.

<sup>288</sup> *See* Kahan Decl. ¶ 47.

<sup>289</sup> *SBC/AT&T Merger Order* ¶¶ 81-107.

<sup>290</sup> *See* Kahan Decl. ¶ 51.

numerous other facilities-based and over-the-top VoIP providers are active in BellSouth's region today.<sup>291</sup>

1. AT&T Ceased Actively Competing for Traditional Mass Market Customers Nearly Two Years Ago

In the *SBC/AT&T Merger Order*,<sup>292</sup> the Commission found that that merger would not harm competition for mass market customers, because legacy AT&T had taken irreversible steps to cease actively competing for those customers. That same conclusion applies to the merger of AT&T and BellSouth.

As AT&T documented in the SBC/AT&T merger proceeding, the pre-merger AT&T Corp. made a unilateral decision in June 2004 to cease active marketing of switch-based mass market services and to increase prices in a “harvest” strategy to maximize the profitability of its customer base as it eroded away through churn. The Commission found that AT&T had already taken extensive steps even before the announcement of the SBC/AT&T merger to dismantle its mass market operations. It had stopped marketing its services, taken dramatic headcount reductions, retired substantial infrastructure used for marketing and customer care, and substantially increased rates for most of its mass market services.<sup>293</sup>

The Commission thus correctly concluded that AT&T was not a price-constraining force in the market: “SBC’s current and future pricing incentives are based

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<sup>291</sup> *SBC/AT&T Merger Order* ¶ 88 n.263. Not only is AT&T not an active competitor of BellSouth for mass market competitors in BellSouth’s regions, but BellSouth had no plans to compete for mass market customers in AT&T’s region. Boniface Decl. ¶ 35.

<sup>292</sup> *SBC/AT&T Merger Order* ¶ 103.

<sup>293</sup> *See id.*

more on likely competition from intermodal competitors and the remaining competitive LECs.”<sup>294</sup> The Commission dismissed merger opponents’ suggestion that “AT&T could readily and easily reverse its decision” as “speculative and unrealistic.”<sup>295</sup> Rather, it held that “[r]egardless of what role AT&T played in the past, we conclude that AT&T’s actions to cease marketing and gradually withdraw from the mass market mean it is no longer a significant provider (or potential provider) of local service, long distance service, or bundled local and long distance service to mass market consumers.”<sup>296</sup>

AT&T has continued this harvest strategy outside the SBC region since the *SBC/AT&T Merger Order*. AT&T engages in no active marketing of these services. The erosion of AT&T’s mass market customer base has thus continued apace since the issuance of the *SBC/AT&T Merger Order*. As of February 2006, AT&T had only about 285,000 all-distance customers in the BellSouth franchise territory. Further, as of February 2006, AT&T had fewer than 2 million stand-alone long distance customers in the BellSouth franchise territory.<sup>297</sup>

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<sup>294</sup> *Id.*

<sup>295</sup> *Id.*; *see also id.* (“[T]he record demonstrates that once AT&T determined that mass market services were no longer a viable business opportunity, it implemented steps to close down its mass market operations in an orderly fashion, and there is no indication that, absent the merger, AT&T would reverse the decision.”).

<sup>296</sup> *Id.* (“We base this conclusion on AT&T’s cessation of marketing . . . and consumer care for mass market services, and its decision to ‘harvest’ its mass market business by raising prices, resulting in a declining mass market customer base.”).

<sup>297</sup> *See* Kahan Decl. ¶ 48; *see also SBC/AT&T Merger Order* ¶ 91 (stand-alone long distance is “becoming a fringe market”). Legacy AT&T also no longer actively markets DSL service (which it provides only through arrangements with other DSL providers) or its dial-up WorldNet Internet access service, and its relatively small customer bases for those services continue to erode. *See id.* ¶ 103 n.317 (AT&T has “ceased to operate as a significant competitors for mass market broadband services”). AT&T continues to sell prepaid cards to WalMart and other customers that market those cards to end-users, but as the Commission found in the *SBC/AT&T Merger Order*, prepaid cards are of “diminishing importance” and AT&T’s offerings are of “limited significance.” *Id.* ¶ 103

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In short, as was the case in the SBC region prior to the AT&T/SBC merger, AT&T is not a price-constraining force for mass market services in the BellSouth region and, therefore, AT&T “has ceased being a significant participant in this market” in BellSouth’s region.<sup>298</sup> And, as in the SBC/AT&T proceeding, there is no need for the Commission to undertake a detailed analysis of market participants and market shares: AT&T’s “present market share [is] an inaccurate reflection of its future competitive strength,”<sup>299</sup> and a focus on market shares would “significantly overstate the likely competitive impact of the merger.”<sup>300</sup>

2. The Merger Will Have No Effect on the Competitive Capabilities of Numerous Other Local, Long Distance and Bundled Service Providers

Even beyond the dispositive fact that AT&T is no longer an active or significant out-of-region mass market competitor, its merger with BellSouth will have no impact

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n.314. Barriers to prepaid card entry are low given the highly competitive wholesale interexchange market and numerous other prepaid card providers (including the largest provider, IDT) remain active. *Id.* The new AT&T again examined its options for its out-of-region operations after the SBC/AT&T merger closed and, like the pre-merger AT&T, has continued to pursue the harvesting strategy. AT&T investigated a number of other strategies, such as a temporary, very limited marketing program for small business services, or partnering with out-of-region, non-facilities-based DSL providers, but has concluded that even these limited measures are not warranted and it has not implemented them. Even if they had been implemented, however, these strategies would not have made AT&T a significant mass market competitor relative to the many other competitors in BellSouth’s region. *See, e.g., Verizon/MCI Merger Order* ¶ 104 (finding Verizon/MCI merger would not harm mass market competition even though MCI continued to engage in limited active marketing).

<sup>298</sup> *SBC/AT&T Merger Order* ¶ 103.

<sup>299</sup> *See FTC v. Nat’l Tea Co.*, 603 F.2d 694, 700 (8th Cir. 1979).

<sup>300</sup> *SBC/AT&T Merger Order* ¶ 103; *see also In re Applications of Time Warner Inc. & Am. Online, Inc.*, Memorandum Opinion and Order, 16 F.C.C.R. 6547, 6613 ¶ 152 (Jan. 22, 2001) (“AOL/Time Warner Order”) (detailed analysis of market definitions and participants “is not necessary [] where the Commission can accurately assess the competitive impact of the merger without such a detailed analysis”).