JOINT DECLARATION OF
MARK N. COOPER AND TREVOR ROYCROFT

on behalf of

CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION, FREE PRESS, AND USPIRG

I, Mark N. Cooper, hereby declare the following:

I, Trevor Roycroft, hereby declare the following:

I. QUALIFICATIONS

I, Mark N. Cooper, am Director of Research at the Consumer Federation of America. I received my Ph.D. from Yale University. I am a former Yale University and Fullbright Fellow. Over the past 25 years I have testified approximately 250 times before regulatory, legislative and judicial bodies in over 40 jurisdictions in the United States and Canada. I have published five books and numerous articles dealing with the economics and industry structure in the telecommunications and energy areas. A copy of my vita is attached.

I, Trevor R. Roycroft, am a consulting economist specializing in telecommunications and information technology industries. I received my Ph.D. in economics from the University of California. From 1994 to 2004 I was a professor Ohio University's J. Warren McClure School of Communication Systems Management. A copy of my vita is attached.

II. INTRODUCTION

The proposed merger of the largest and dominant regional Bell operating company (RBOC), AT&T, and BellSouth, another of the remaining RBOCs will contribute to the ongoing consolidation observed in telecommunications markets in the U.S. and have profoundly anticompetitive effects across the full range of product and geographic markets touched by the merging parties. To mask this obvious potential for harm to the public interest, the merging parties have provided the Commission with a mountain of rhetoric, but not even a molehill of specific product and geographic market data with which to analyze the impact of the mergers. If not rejected or dramatically altered, this merger will further regress the marketplace to a world more akin to deregulated monopoly, one where competitive forces are held at bay by a dominant firm.

Seven years ago, in analyzing the last major merger wave in the local telephone industry, CFA et al. urged the Commission to consider the overall harm to industry structure. These concerns were reiterated with the merger-wave of 2005, which has now resulted in SBC and Verizon each absorbing one of their major competitors. In stating opposition to the SBC-Ameritech merger, and chastising the Commission for approving the Bell Atlantic Nynex merger, CFA, et al., demonstrated the following.

> These mergers would result in a market structure that is simply too concentrated to support effective competition. For the purposes of this discussion, we include an analysis of the independent and combined effects of the two mega-mergers. There are two reasons we discuss both mergers.
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> First, the nation will be deeply affected by each merger. Second, it is also critical for regulators at the federal and state levels to begin to take a comprehensive view of the emerging structure of the telecommunications industry. The continuation of a deal-by-deal, piecemeal view will allow the industry to slip into a thoroughly anticompetitive structure with no overarching consideration of the cumulative effect of individual deals on the prospect for competition.
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> In presenting our opposition to the SBC-AT&T and Verizon-MCI mergers we stated:
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> The Commission simply cannot look back on the carnage of the past six years and conclude that its decision to allow a handful of incumbents to dominate the local telecommunications market has served the public interest. Not only have we suffered through a wave of bankruptcies and scandals that destroyed billions, if not trillions of dollars of equity, but the piecemeal approval of mergers and the failure to enforce market opening and network access policies enacted by Congress has allowed the industry structure to devolve into what Business Week called a "cozy duopoly."[1] This "cozy duopoly" has failed to serve the most fundamental public interest objective of the Communications Act.

Now, with the ink barely dry on the approval of the SBC/ AT&T and Verizon/MCI mergers, we see the "next logical step" from the point of view of these dominant firms, a new assault on competition. However, as will be discussed below, the impact of the AT&T-BellSouth merger extends beyond the CLEC market that was the focus of the SBC-AT&T and Verizon MCI mergers. This latest consolidation will create the nation's largest provider of broadband Internet access facilities, and a new target at which AT&T will take aim with the goal of the elimination of competition—the Internet. While the Internet today provides a limited threat to AT&T from "over-the-top" Voice Over Internet Protocol (VOIP) providers, a more pressing threat, in the view of AT&T, is emerging from "over-the-top" alternative providers of video services that rely on the Internet and who threaten to compete with AT&T's video delivery plans. Thus, if the Commission does not take appropriate action, by either denying this merger, or placing stringent enforceable conditions on the merger, it can look forward to a full-scale attack on competition and innovation in markets for Internet content, services, and applications.

In a 2005 interview, the CEO of the new AT&T, Edward Whitacre responded as follows to the question "How concerned are you about Internet upstarts like Google (GOOG), MSN, Vonage, and others?"

> How do you think they're going to get to customers? Through a broadband pipe. Cable companies have them. We have them. Now what they would like to do is use my pipes free, but I ain't going to let them do that because we have spent this capital and we have to have a return on it. So there's going to have to be some mechanism for these people who use these pipes to pay for the portion they're using. Why should they be allowed to use my pipes?[2]

Other owners of broadband last-mile facilities, such as BellSouth, Verizon, and Comcast have expressed similar sentiments.[3] Thus, the prospect for AT&T, which owns broadband access networks and Internet backbone facilities, to discriminate against the providers of Internet content and services, and to favor content and services provided by AT&T the broadband provider (or its affiliates or strategic partners) is very real. Such an occurrence would result in the potential for AT&T to leverage their market power into the previously competitive markets for Internet content and applications.

FAILURE TO PROMOTE THE PUBLIC INTEREST

The merger of AT&T and BellSouth will do nothing to undermine the growing market dominance exhibited by AT&T, rather, it will further cement AT&T's position as a dominant local and long distance provider, and an emerging dominant firm in the Internet access market. Competitive benefits for consumers are entirely lacking.

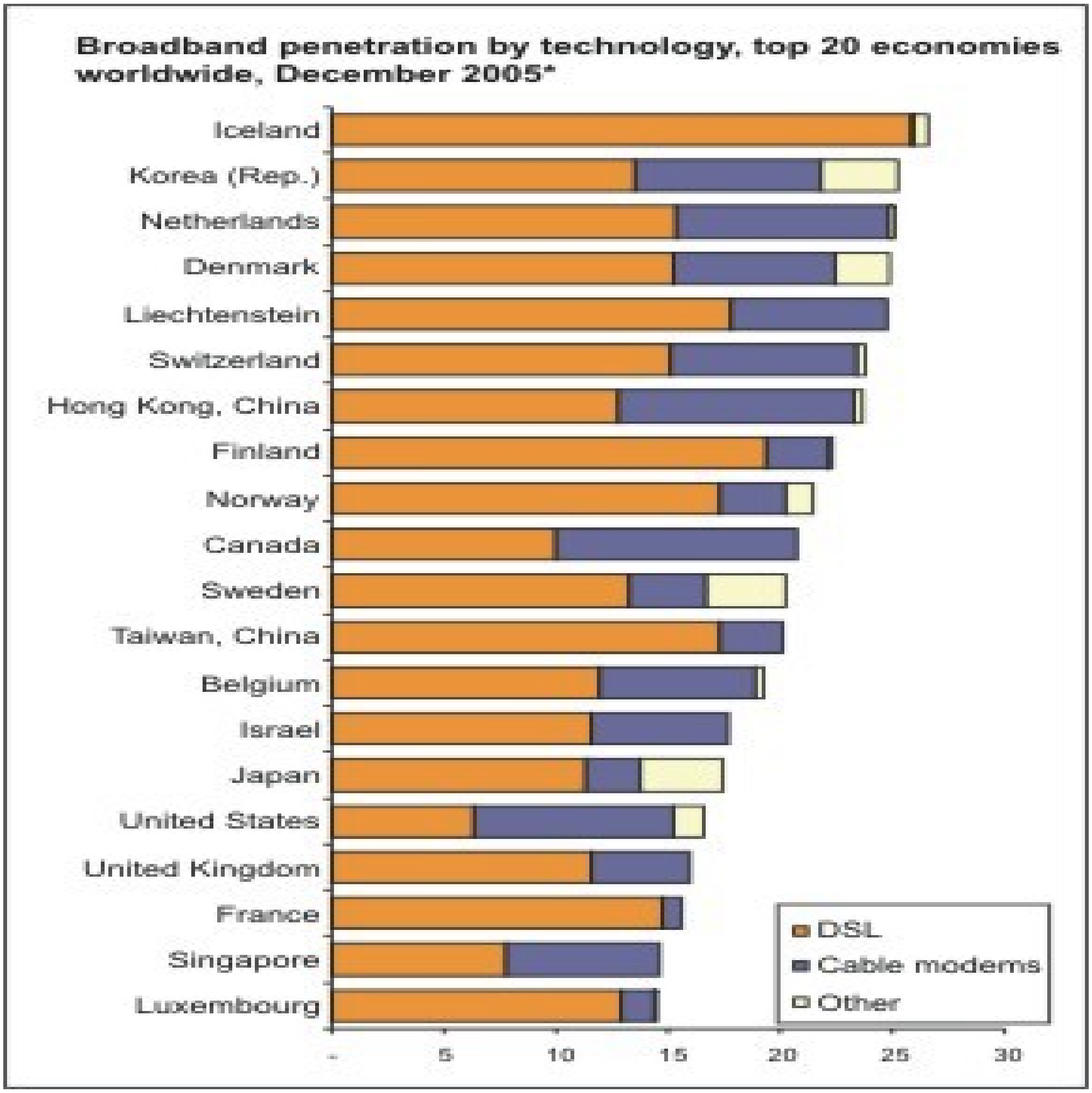
The Commission must recognize that simply rubber-stamping whatever consolidations come down the path ultimately has an impact on economic development and technological progress in the U.S. Hopefully, the Commission can remember the benefits that consumers realized due to the introduction of competition in telecommunications markets, beginning with the advent of private microwave in the late 1950s and culminating with the divestiture of the Bell system and the pro-competitive provisions of the Telecommunications Act of 1996. Now, we see the Bell system reforming, with the cold comfort provided by reassurances of “intermodal competition.” However, as will be discussed in detail below, the prospects of intermodal competition do not appear promising at this time precisely because of the market advantages that are being cultivated by dominant firms like AT&T and Verizon.

The competitive advantages these firms are gaining, which are clearly discussed in the joint applicants’ Public Interest Showing, indicate that the wave of exit and retrenching resulting from the elimination of UNE-P is likely to continue or accelerate, and that competition in the market for Internet content and services is coming under siege. The RBOCs and cable companies have already begun to rattle the sabers of discrimination and exclusion with regard to Internet markets that face a growing choke-point in the form of privately held last-mile broadband facilities that are free of common carrier obligations.

The Commission has let monopoly market forces guide telecommunications policy. As a result of this lack of analysis and direction, real consequences are emerging. The U.S. is now falling further behind in areas of broadband penetration, and is risking further harms to Internet development by entertaining the abandonment of network neutrality principles. The most recent statistics from the OECD show the U.S. ranked 16th among the top 20 economies with regard to broadband provision (see Exhibit 1).

The failure of the cozy duopoly to provide affordable broadband service is at the core of the decline of America from third in broadband penetration in 2000 to 16th in the world. The culprit for the digital divide is not population density or spendthrift government subsidies; rather, it is the lack of competition and the abuse of vertical market power. With lagging broadband penetration, innovation in the applications

EXHIBIT 1:



International Telecommunications Union.

layer and the services that use the physical connection has gone abroad. Jobs follow the exit of innovation.[4] The precipitous decline in leadership has been widely noted in well-respected rankings, as recently reported in the Harvard Business Review. Harvard Business School's Michael Porter, for instance, ranked the United States as the world's most competitive nation in his initial 1995 Global Innovation Index. According to Porter's projections, by 2005, the U.S. will have tumbled to sixth among the 17 member countries of the Organization for Economic Co-operation and Development (OECD) trailing (in order) Japan, Finland, Switzerland, Denmark, and Sweden. The 2004 Globalization Index developed by A.T. Kearney and published in Foreign Policy ranks the United States seventh behind Ireland, Singapore, Switzerland, the Netherlands, Finland, and Canada.[5] There are obviously many causes of this decline, but it is interesting to note that eight of the nine countries ranking ahead of the U.S. in this list have higher levels of penetration of broadband than the U.S.

Furthermore, broadband growth in the residential market is showing a pronounced cooling trend, as is demonstrated in FCC's own data, shown below, which shows a definite flattening of growth rates in recent periods (see Exhibit 2).

Exhibit 2: Residential High-Speed Lines and Growth Rate, 2000- 2005			
		Residential High Speed Lines	Growth
2000	June	3,163,666	
	December	5,170,371	49.12%
2001	June	7,812,375	41.28%
	December	11,005,396	34.27%
2002	June	13,984,287	23.95%
	December	17,356,912	21.61%
2003	June	20,645,769	17.35%
	December	25,976,850	22.97%
2004	June	30,088,091	14.69%
	December	35,266,281	15.88%
2005	June	38,515,303	8.81%

III. THE CURRENT STATE OF COMPETITION

The basic dynamics of a competitive marketplace are clear in theory. When companies vigorously compete against one another, they have incentives to beat the competition through lower prices and are driven to make the investments necessary to improve quality or develop new services. The market forces firms to invest and price aggressively, for fear of falling behind. Vigorous competition ensures that we all pay fair prices for the goods and services we enjoy.

Unfortunately, the telecommunications marketplace is anything but competitive. Rather than competing with one another for each customer, the telecom giants got bigger by merging with one another, resulting in less competition. As these large companies acquired a larger and larger footprint, it became harder and harder for new entrants to gain a toehold in the market, a fact repeatedly pointed out by joint applicants with regard to BellSouth's increasing difficultly in surviving as an independent entity.[6] The difficulty in entering and competing with an ILEC is amply demonstrated by the lack of out-of-region activity by SBC, prior to its merger with AT&T, and by BellSouth. Joint applicants admit that only "limited success" can be achieved as a market entrant, and thus have stuck to operations within their respective service areas.[7] Today, the result is a concentrated market that is far from the economic vision of vigorous competition. And the proposed AT&T-BellSouth merger, if approved, will only raise additional entry barriers, and defeat the intention of the Telecommunications Act of 1996.

Wireline Services

Competing local exchange carriers or CLECs were supposed to bring competition to the marketplace after passage of the 1996 Act. But SBC, BellSouth, and Verizon litigated, stymied, and strangled local voice competition until it has almost completely withered. As a result, the CLECs that were supposed to offer so much competition to the dominating Bells are dying in droves. Born as local monopolies, the Bell companies have remained anti-competitive to the core. Once the 1996 Act was signed into law, the Bell companies immediately set out to bulk up their local monopolies into regional monopolies through mergers and acquisitions. In the end, they never competed in one another’s regions as envisioned by Congress, and they never fulfilled the promises they made during their pervious mergers. This will only get worse if this merger is approved.

The CLEC meltdown, following by the elimination of UNE-P, has led to a substantial reduction in consumer choice and competitive pressure on the incumbent monopolies. Given the demise of the CLEC sector as a price-constraining source of competition, incumbents such as AT&T and BellSouth point instead to "intermodal" competition. As will be discussed in more detail below, intermodal competition still shows limited potential, with alternatives such as wireless providing an inferior and more costly alternative to wireline services and one that is, in significant part, not independent of the dominant wireline firms. Over-the-top VoIP service, which is only available to the minority of U.S. households that have a broadband connection is plagued by quality problems and other limitations.

Long Distance

AT&T and Verizon have run a brutal bait-and-switch game with long distance service. After having been allowed to re-enter the long-distance market because policymakers determined local markets were open – a finding that was overwhelmingly based on the availability of UNE-Ps – they then launched a vigorous campaign to eliminate the availability of UNE-Ps. SBC and Verizon’s gambit was a success and, as expected, the competition is drying up. As will be discussed further below, the merger will result in AT&T establishing an overwhelming market position for wireline long distance services in BellSouth’s region.

Intermodal Alternatives

In its discussion of future competitive prospects when approving the SBC-AT&T merger, the Commission repeatedly pointed to “intermodal” competition as providing the “significant” competitive force in the future.[8] To date, this expectation still has not been realized. According to the FCC’s most recent data, about 5% of all last-mile facilities used to provide voice services are provided over CLEC-owned facilities.[9] Cable companies generally do not market voice services outside of a bundle of services, and may not even push voice services for customers who don’t also take high-speed Internet service, and/or a bundle of video programming.[10] Joint applicants admit that cable operators target high-end customers who are willing to purchase a bundle of voice and video services.[11] As is noted by the joint applicants, situations were multiple wireline facilities are present, such as those markets where cable overbuilders exist, are negligible, with only two percent (2%) of communities having cable overbuilds.[12]

VOICE OVER INTERNET PROTOCOL (VOIP)

AT&T and BellSouth point to new technologies, such as “over-the-top” VoIP as the source of the supposedly high level of competition, but these are actually quite limited. Given that approximately 60 percent of U.S. households don’t have broadband service and, therefore, cannot take advantage of VoIP calling, VoIP is not yet an effective competitor to the traditional wired phone service.[13] And VoIP has other problems. VoIP does not have reliable 911 service. It does not work when the power goes out. Even worse, local telephone companies have blocked access from VoIP providers[14] and cable companies plan to discriminate against “over-the-top” VOIP.[15]

These problems with VoIP have resulted in customer dissatisfaction, with a recent survey showing that consumers of over-the-top VoIP to be much less satisfied with the service than customers who purchase VoIP from a facilities-based cable operator.[16] Similarly, the business case for over-the-top VoIP providers is called into question by the recent Vonage IPO, which reflects the lack of investor confidence in the over-the-top VoIP model, as facilities-based providers ramp-up their VoIP offerings.[17] Vonage's operating results are shaky. Vonage reports in an April 2006 Securities and Exchange Commission filing a monthly customer churn of 2.11%, and marketing costs of customer acquisition of $210 per customer. Thus, Vonage is spending about $7 million per month to replace customers who churn. These customer-churn costs consume the equivalent of the monthly revenues from 255,000 Vonage customers (16% of Vonage's total customer base) on the replacement of the 33,000 Vonage customers who churn each month. Whether such a business model is sustainable in the long run is questionable.[18]

Making matters worse, AT&T and BellSouth also have used an anti-competitive bundling tactic to ensure that VoIP can never effectively compete with their basic local voice services. Enabled by the Commission's 2005 ruling, BellSouth need not sell a consumer DSL on a stand-alone basis, what is known as "naked" DSL.[19] BellSouth forces consumers to buy their voice service in order to get a DSL line. So a consumer who wants to buy VoIP from a competitor has to pay for local service twice. The Commission required that both the new AT&T and Verizon provide ADSL service without bundled "circuit switched voice,"[20] which was a step in the right direction. However, this condition does not preclude either company from bundling its own over-the-top VoIP product with ADSL, which would have the same impact as the bundling of circuit switched service.

WIRELESS

With regard to wireless services, while cord-cutting activity may appeal to those who are younger and have lower incomes,[21] there is no question that ILECs who control wireless assets, like AT&T, are taking aggressive actions with regard to integration of wireless and wireline services. For example, Cingular has introduced products, such as *MinuteShare* and *FastForward,* which are designed to integrate their wireless customers' usage with their local telephone service.[22] These integration efforts are already bearing fruit for those providers who offer wireline and wireless services and have the ability to integrate them. According to recent analysis, cord cutting among wireless users is most prevalent with T-Mobile, a wireless-only provider.[23]

However, joint applicants indicate that an intensive effort is being undertaken which will lead to a much deeper integration of wireline and wireless services.[24] Joint applicants indicate that service integration, not service bundling is the winning strategy for the future,[25] and the merger will place the resulting company in a unique position with regard to its ability to integrate wireless and wireline voice, data, and video services. The joint applicants envision the "shared bucket of minutes" extending to all voice, video, and data services supplied across AT&T's delivery platform.[26] This integration certainly will alter the dynamic behind the Commission's vision of intermodal competition, as provision of integrated services which cross wireless and wireline delivery platforms will have a profound impact on cord-cutting activities.

Even if one ignores the efforts of firms like AT&T to integrate wireline and wireless services, there are market and cultural barriers to replacing a wireline phone with wireless. Wireless telephone plans bill for usage for both incoming and outgoing calls. Wireless plans may offer "buckets" of minutes that can be used at any time, however, exceeding one's limit may result in charges as much as $0.45 per minute.[27] Consumer aversion to measured local calling is one barrier to the outright replacement of a wireline telephone with a wireless phone. Second, wireless telephones do not provide a reasonable means for Internet access. This point is discussed in more detail below. Third, for a family to replace a wireline telephone with a wireless alternative, multiple wireless telephones will be required. This would replace the current single main number for reaching a residence with multiple numbers. Even with number portability, a main household number would require maintenance of a separate wireless phone for that purpose.

The ergonomics of wireless phones are not suitable for all portions of the population. Wireless telephones are difficult to hold compared to larger, more ergonomically designed telephone sets available for wireline networks.[28] In addition, wireless handsets present keypads which are often more difficult to see and use. These factors may be highly significant for portions of the population, such as the elderly, or those with physical disabilities.

Use of a wireline phone is necessary for a variety of complementary technologies. For example, home security companies frequently require a wireline phone to operate, as do satellite television systems, and digital video recorders. Wireless phones do not provide a reasonable means to send or receive a fax. The ability to access banking and financial records without a wireline phone may be limited. Even the ability to order a pizza may be hindered by the absence of a wireline phone.[29] Finally, wireless telephones may not be E911 compatible, which may be a significant consideration when considering the prospect of abandoning a wireline phone for wireless.

Wireless phones provide an inferior and more costly means to access the Internet. It is technically possible to use a wireless phone to provide dial-up Internet access. Absent the purchase of a more costly wireless data plan, data transfer speeds are much lower than DSL and much more expensive to boot. The low data speeds would have an unfavorable impact on many Internet applications, such as World Wide Web applications—not to mention the use of costly wireless minutes.

Several wireless carriers are offering high-speed wireless data plans at monthly prices in the $60-$80 per month range for "unlimited" use. These rates are in addition to any applicable purchase price for a PC data card. These high speed data services are advertised as providing data throughput averaging 400-700 kbps, but the service is asymmetrical, with upload speeds typically on the order of 100 kbps or less. These wireless data services currently provide limited coverage, principally within major metropolitan areas and airports. Thus, these wireless data services, despite the advantage of mobility within limited coverage areas, are both more expensive and less capable than typical wired broadband services.[30]

Finally, for all of the bluster regarding wireless competition contained in the Public Interest Showing and other supporting documents filed by the joint applicants, they simply ignore the fact that Cingular Wireless is the nation's largest cell phone company, and thus has little incentive to compete with either AT&T's or BellSouth's wireline affiliates.

The applicants present Wall Street (Deutsche Bank) projections that purport to show a substantial erosion of ILEC market share in the local connectivity market (traditional wireline, wireless and "over the top" VOIP) between 2006 and 2012 (see Exhibit 3).[31] The Deutsche Bank report indicates that 15% of users will be "wireless only" by the end of 2006, which is an aggressive projection.[32] However, the Deutsche Bank analysis is not relevant to the merger of AT&T and BellSouth (or the market position of other ILECs), because it completely ignores the dominant position of the merging parties as in-region wireless providers, which is a serious oversight.

Exhibit 3: Concentration Of Local Connectivity Markets		
CONNECTIVITY SHARE (%)	2006	2012
Wireless Only	15	21
Cable Telephony	8	21
Over-the-top VOIP	3	6
Other	8	3
Traditional Wireline	67	50
HHI Ignoring in-Region Wireless	4851	3427
HHI Including in- Region Wireless	5687	4268

Using the Deutsche Bank information provided by the joint applicants and the HHI index, which is a measure of market concentration used in the DOJ/FTC merger guidelines, the Deutsche Bank data shows that the market for local connectivity in 2006 is highly concentrated whether or not one accounts for ILEC control of wireless assets. However, the impact of properly accounting for wireless market data shown in the Deutsche Bank analysis results in a substantial increase in market power as measured by the HHI. The Merger Guidelines define a market as highly concentrated if the HHI exceeds 1800 and any merger in such a market that increases concentration by more than 50 points is a source of concern.[33] Assuming that the in-region market share of the wireless customers is 50% for the incumbent LEC, which is a very conservative assumption, the Deutsche Bank data shows an ILEC HHI of just under 5700.[34] Thus, the Deutsche Bank data implies that divestiture of the ILEC’s wireless business would lower the HHI index in the market for local connectivity by over 800 points. This would be a substantial improvement in the competitive landscape, although the market would still be highly concentrated.

The tightening hold of the telephone-cable duopoly on the local connectivity market is quite clear in these projections.

If our conservative assumption of a 50% in region market share for the incumbent's wireless business is applied to the Deutsche Bank market projection for 2012, then the duopoly of cable and telephone companies as the dominant providers of local connectivity remains unchanged over the projection period. According to the Deutsche Bank projection, in 2006, the incumbent wireline/wireless and cable operators account for 82.5 percent of the market. In 2012, they account for 81.5 percent.[35]

This leads us to the aspect of wireless communications that comes into play in this merger.[36] BellSouth holds substantial, in region licenses and usage rights in the 2.3 to 2.69 GHz band must be considered among the spectrum bands on which mobile broadband services can be offered. We realize that the FCC has not typically considered these bands as part of the wireless spectrum it considers when it evaluates the spectrum an entity holds in a market. However, changes in technology and regulation mandate that these ranges of spectrum be considered along with cellular, personal communications service ("PCS"), specialized mobile radio ("SMR") as broadband wireless spectrum. The Commission itself has recognized that there will soon be a convergence of the types of services to be offered on PCS, cellular, and 2.5 GHz spectrum.[37] In all of these bands, the next generation of offerings will emphasize broadband anywhere, and mobility will be possible in the 2.5 GHz band within the foreseeable future.[38] The control of this spectrum by a post-merger AT&T would diminish the possibility for competition both for competition in the wireless and broadband markets.

IV. COMPETITION THROUGH THE LOOKING-GLASS OF THE APPLICANTS' PUBLIC INTEREST SHOWING

The supporting materials filed by the joint applicants are quick to point out that the merger will do "no competitive harm."[39] However, it is clear from information supplied in the filing that competitive harm will arise, especially in mass-market voice services. These competitive harms will be discussed in detail below. However, the real irony of the Public Interest Showing is the juxtaposition of the snowballing competitive advantages that will accrue to AT&T as a result of the merger with the diminishing competitive environment that joint applicants attempt to put the best face on.

The Public Interest Showing supplied by AT&T and BellSouth identify the substantial strategic and market advantages that the merger will bestow on the merged companies. According to the applicants, "the merger will enable the creation of a single IP Multimedia Subsystems (IMS) network."[40] The merger will "enable the combined company to integrate Cingular offerings in ways that are not possible with Cingular subject to joint ownership and control."[41] The combination of AT&T and BellSouth will "enable AT&T, BellSouth and Cingular to consolidate separate ordering and provisioning systems and obviate the need for AT&T and BellSouth customers to be transferred back and forth to Cingular to activate their wireless service."[42] The merger will generate substantial scale economies for the combined companies.[43] The results of the prior consolidation of the legacy AT&T and SBC are resulting in cost savings and consolidation benefits that are exceeding initial estimates, both with regard to the magnitude and timing.[44] The merger will eliminate the need for BellSouth to construct two "super hub" facilities associated with the delivery of IPTV services.[45]

AT&T and BellSouth point to the benefits of IP Multimedia Subsystems (IMS) arising from the merger. This technological upgrade will enable the delivery of video content to three screens—PC, television, and mobile device.[46] Given the difficulties which the joint applicants allege with control over the technology platforms absent the merger, it is clear that the resulting consolidation will place AT&T in a unique position in the marketplace, with complete control over wireless operations, Internet access facilities, and the IP television platform. Furthermore, the "merged firm would expect to be a more attractive partner to content providers and be able to obtain more favorable terms in the future as a result of offering content owners a larger potential customer base with greater geographic reach. Pursuing content acquisition in combination with Cingular also may improve the merged firm's negotiating position."[47] These benefits of this consolidation will not be available to the few remaining CLEC competitors who AT&T faces in its service area, and will be more difficult for AT&T's cable competitors to achieve. The net result is a substantial competitive advantage for AT&T, while a lack of competitive pressures to pass efficiency gains through means consumers do not benefit.

The Public Interest Showing describes a BellSouth that is, according to the joint applicants, strategically disadvantaged in the marketplace.[48] Joint applicants claim that BellSouth cannot compete effectively in the enterprise market.[49] The difficulties in establishing IPTV have discouraged BellSouth from taking the steps needed to offer these services, and BellSouth has told the Commission that it is only still assessing the prospects of IPTV.[50] If a firm the size of BellSouth is at a competitive disadvantage as a result of these shortcomings, then the CLECs who joint applicants identify must be marginal market operatives, not the "vigorous and varied"[51] competitors discussed in the Public Interest Showing.

The joint applicants also point to advantages that they allege are uniquely associated with their rivals' capabilities in the marketplace, such as the joint venture between Sprint-Nextel and several cable operators. However, the Public Interest Showing, when discussing nearly identical market or technological arrangements that exist for BellSouth and AT&T, describes these same market or technological arrangements as insurmountable obstacles. For example, joint applicants lament the limitations that result from the current joint venture associated with Cingular:

> Because of the rapidly changing environment in which Cingular must operate, the challenges inherent in any joint venture have become increasingly more prominent in the management and strategic focus of Cingular. These challenges will only become more significant and complex with the increasing convergence of wireless and wireline telecommunications services. By unifying Cingular's ownership and management, the combined company will be much more efficient and effective in providing new services that will benefit consumers.[52]

AT&T declarant Kahan states when discussing the disadvantages of the current Cingular joint venture:

> Because of shared ownership, we have had to spend extra time working through issues such as: Where is the customer information located? Who is responsible for updating and maintaining that data? Can/should Cingular offer fixed voice services? Can/should the parents offer wireless service as a part of converged services? Will the greater network investment be made by Cingular or the parents?

> While the three companies could eventually resolve these issues, the fact that three companies must agree has slowed decision-making on this project.[53]

This sentiment is further reinforced in Carlton and Sider's declaration where they cite to academic research on this subject:

> While joint ventures can have efficiency enhancing effects, a variety of studies have noted that divergent interests in joint ventures commonly create conflict and other organizational inefficiencies. For example:
>
> Since the interests of parent firms do not fully overlap and are often in conflict, JV managers live a precarious existence, trying to represent the interests of their respective parent firms while attempting to make the complex relationship of a JV work.[54]

Thus, joint applicants indicate that when it comes to their operations, a joint venture is inefficient and limiting. However, when it comes to joint ventures which might be pursued by their rivals, joint applicants point to an entirely different interpretation, i.e., joint ventures lead to no difficulties and enable seamless and efficient pursuit of management objectives:

> Cable competition will further intensify as a result of the recently announced joint venture involving Sprint Nextel, Comcast, Time Warner Cable and Advance Newhouse that aims to provide access "to the most advanced integrated entertainment, communications and wireless products available anywhere in the United States." The joint venture will be able to offer the

> “quadruple play” of video, wireless voice and data, high speed Internet and wireline voice service to the 75 million homes passed by the cable companies.[55]

Thus, the Commission is expected to believe that, on one hand, a closely held joint venture with the two controlling firms (AT&T and BellSouth) holding equal representation on the joint venture’s board cannot effectively manage the deployment and marketing of technologies which will enable the further integration of wireless and wireline voice, data, and video services. On the other hand, the Commission is asked to believe that a loosely knit joint venture, which is not even characterized by ownership interest, will be able to accomplish what AT&T and BellSouth say that they cannot do absent the merger.

Likewise, joint applicants bemoan the market disadvantages accruing to BellSouth, due to its lack of control over the physical facilities needed to provide out-of-region data services:

> 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 . . .. 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.[56]

However, when it comes to the position which CLECs, which must rely on BellSouth's wholesale services, an entirely different perspective is presented:

> BellSouth also competes with many wireline carriers that use unbundled network elements or commercially negotiated substitutes therefor. For example, a number of carriers use negotiated UNE-P replacement arrangements; MCI (Verizon), for one, continues to advertise its "Neighborhood" calling plans in the BellSouth region, and MCI is still one of the largest takers of BellSouth's mass-market customers.[57]

Joint applicants' can't have it both ways. It is unlikely that the joint venture between Sprint-Nextel and multiple cable operators will "come off without a hitch," as implied by joint applicants' interpretation. Similarly, if the wholesale route is less than optimal for BellSouth, there is no reason to expect that joint applicants' rivals view the use of wholesale facilities as anything more than a necessary evil. Finally, it is also interesting to note that joint applicants' assessment of the activities of MCI within BellSouth's service area contradict the Commission's assessment of the future role of MCI in the mass market. In the Verizon-MCI Merger Order, the Commission stated:

> Regardless of what role MCI played in the past, we conclude it no longer is, and is unlikely to become, a significant provider (or potential provider) of local service, long distance service, or bundled local and long distance service to mass market

> consumers given the significant reduction in its marketing and consumer operations, and its declining mass market customer base. The record indicates that MCI determined that it would be uneconomical to continue its original mass-market strategy. We reject as speculative and unrealistic commenters' suggestion that MCI could easily reverse its current market position. The record demonstrates that MCI has implemented steps to de-emphasize its mass-market operations, and there is no indication that, absent the merger, MCI would reverse this decision. Because MCI has shifted its focus away from the mass market, it is no longer a significant participant in this market or uniquely positioned to offer mass-market services.[58]

Thus, according to joint applicants, the Commission was dead wrong in its assessment of the future prospects of MCI. The fact that MCI is continuing its operations outside of the Verizon region indicates that this action could have just as easily been pursued by an independent MCI inside of Verizon's region. The end result is that the Verizon-MCI merger did in fact lead to a substantial reduction in CLEC activity in Verizon's service area. As will be discussed below, the Commission should not fall into the "fool me twice" trap with regard to the impact of the AT&T-BellSouth merger, as AT&T's out-of-region CLEC activities should not be conceded by the Commission to the horizontal consolidation resulting from the AT&T-BellSouth merger.

Joint Applicants' Contradictory Take on VoIP

As was discussed above, over-the-top VoIP services do not offer a reasonable substitute for circuit-switched services for most consumers. However, the Commission should carefully consider the impact of this merger on the over-the-top VoIP market, as joint applicants make contradictory claims regarding the merger's impact on the VoIP market in BellSouth's service area. Joint applicants indicate that the merger will not harm competition in the VoIP market.[59] Joint applicants state that AT&T's CallVantage service has only 80,000 customers nationwide, and 14,000 customers in the BellSouth region.[60] Growth rates for AT&T's CallVantage are downplayed.[61] Joint applicants also indicate, at one point, that "AT&T has no relevant facilities or current capability that would provide significant advantages relative to the many other over-the-top VoIP providers in the market."[62] However, statements made elsewhere in the application materials raise questions regarding these statements. For example, it is elsewhere revealed that the customer growth rate for AT&T's VoIP service, CallVantage, was 100% in the last year.[63] AT&T declarant Kahan indicates that the company has in fact been promoting its CallVantage product.[64] AT&T declarants Rice indicates that

CallVantage will soon have capabilities that will give the service unique advantages in the marketplace:

> In the consumer space, the financial resources of the legacy SBC business are being made available to increase the capacity of the AT&T Call Vantage platform. We are investing to increase the number of consumers that platform can support, and to make it IMS (IP Multi-media Subsystem) compliant. IMS is the architecture that is being utilized in our Project Lightspeed broadband network, as described below, and building it into the AT&T Call Vantage platform will allow that platform to support new features and functionality.[65]

In the SBC-AT&T merger order, the Commission indicated that over-the-top VoIP services should not be included in the market for local voice services.[66] This indicates that it is reasonable to consider the market for over-the-top VoIP in a separate analytical treatment. The contradictions contained in the application materials regarding the status of AT&T's VoIP offerings should be further clarified.

AT&T Has Failed To "Harvest" A Substantial Number Of Customers In Bellsouth's Service Area.

In its approval of the SBC-Ameritech merger, the Commission required that the combined company begin to provide business and residential local exchange service in areas outside of its service territory:

> As a condition of this merger, within 30 months of the merger closing date the combined firm will enter

> at least 30 major markets outside SBC's and Ameritech's incumbent service area as a facilities-based provider of local telecommunications services to business and residential customers. This will ensure that residential consumers and business customers outside of SBC/Ameritech's territory benefit from facilities-based competitive service by a major incumbent LEC. This condition effectively requires SBC and Ameritech to redeem their promise that their merger will form the basis for a new, powerful, truly nationwide multi-purpose competitive telecommunications carrier. We also anticipate that this condition will stimulate competitive entry into the SBC/Ameritech region by the affected incumbent LECs.[67]

As the Commission is well aware, and as the joint applicants freely admit, SBC did not engage in any meaningful attempt to compete outside of its region. When discussing the mass-market impact of the merger, AT&T declarant Kahan does not even find the need to mention legacy SBC activity in BellSouth's service area.[68] The reason for this is quite clear; it is because SBC's out-of-region activities were next to nonexistent. However, SBC's acquisition of AT&T did provide a meaningful SBC/AT&T competitive presence in BellSouth's service area. Thus, joint applicants' claim that the merger will lead to an outcome where there is "no increase in horizontal concentration in any relevant market"[69] is patently false. Despite the joint applicants' claim to the contrary, AT&T continues to play a role in the CLEC market in BellSouth territory. In the SBC/AT&T merger order, the Commission stated:

> Regardless 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. We base this conclusion on AT&T's cessation of marketing, its reductions in consumer operations, its retirement of infrastructure used to support mass market 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.[70]

In this proceeding, the Commission is again told that AT&T has, since 2004, ceased active marketing, and has increased prices to "harvest" its existing customers.[71] While joint applicants provide no detailed data to back up their claims that AT&T is no longer viable competitive force in BellSouth's service area, the data that is available show that the "harvest" has proceeded slowly, and that AT&T continues to act in the mass market as a substantial CLEC, and stand-alone long distance provider, in BellSouth's service area. Joint applicants indicate that "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 has fewer than 2 million stand-along long distance customers in the BellSouth franchise territory."[72] While joint applicants attempt to downplay the significance of AT&T's 285,000 all-distance customers, elsewhere, joint applicants point to "Supra Telecom – which provides wireline local, long-distance and Internet bundles to consumers and businesses – has over 200,000 customers . . ." as an example of a "very active" traditional wireline provider in BellSouth's service area.[73]

According to data provided by BellSouth to the FCC for year-end 2005, all CLECs relying on UNEs and resale in the BellSouth service area utilize approximately three million (3 million) of these BellSouth-supplied facilities.[74] This would indicate that AT&T purchases approximately 9.4% of all of these facilities. The merger will certainly remove this competitive source from BellSouth's service area and increase BellSouth's already prominent market share. As joint applicants' declarant Kahan indicates with regard to the legacy AT&T customers which were acquired through the SBC-AT&T merger, "in region, we have actively pursued AT&T customers to try to sell them a bundle of services, including local and long-distance voice, DSL, wireless and video . . ."[75] As a condition of this merger, the Commission should require that AT&T's CLEC operations in the BellSouth region be spun off and sold.

With regard to long distance services, AT&T continues to display a substantial presence for mass-market consumers. According to information provided by joint applicants, and information provided in BellSouth's quarter investor briefing, stand-alone AT&T long distance customers currently make up 16% of the overall long distance market.[76] Thus, following the merger, BellSouth will absorb these stand-alone long distance customers, resulting in a BellSouth market share of approximately 75%.[77] While joint petitioners tell the Commission that "no one thinks long distance is a separate, standalone market,"[78] both BellSouth and AT&T continue to report the scope of their long-distance operations to their investors.[79] There is no question that the proposed merger will result in reduced customer choice and increased concentration in the long distance market.

V. MARKET POWER OVER 21ST CENTURY COMMUNICATIONS INFRASTRUCTURE

Local Transport And Special Access Markets

In the SBC-AT&T and Verizon-MCI mergers, the Commission accepted the remedies imposed by the Department of Justice, which required a divestiture of certain special access facilities that would be controlled by the merged company, through indefeasible rights of use. This merger presents identical issues with regard to buildings served by special access facilities. However, given the paucity of information provided by the joint applicants, it is difficult to assess the magnitude of the problem. Joint applicant's declarants Carton and Sider, who are identified in the Public Interest Showing as the "go-to" witnesses on special access, admit that their analysis is "preliminary."[80] However, based on this preliminary analysis, joint applicants go on to argue:

> 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. Under these circumstances, no remedy is merited.[81]

Thus, joint applicants allege that the problem is smaller in this case, which can only be verified with additional information, which the joint applicants have not provided with their filing. However, they admit that the same problem which required the attention of the Department of Justice in the SBC-AT&T merger is associated with “less than 50” buildings. They then go on to argue that no action needs to be taken on this matter. This logic once again reinforces the fact that the merger does nothing to improve competition, and in fact will cause competitive harm.

The complete dominance of the local transport and special access markets by the incumbent local exchange carriers, particularly after the absorption of their two largest competitors has been clearly demonstrated in prior merger proceedings. This merger extends that process to another region. The longstanding failure of competition to discipline price in the special access market, even prior to recent absorption of the largest competitive providers of local transport and special access refutes the claim that there would be sufficient post-merger competition to prevent anticompetitive abuse in this market. The track record on special access rates provides a chilling warning about the concentration of these facilities. The FCC deregulated these rates in 1999 on the mistaken belief that this market was competitive. Since then, rates and profits have risen dramatically. There is simply inadequate competition to discipline BOC market power over price. There should be little wonder why. The incumbent local exchange carriers have billions of miles of local loop and interoffice transport deployed; the competitors have, at most hundreds of thousands.

As legacy AT&T concluded in urging the FCC to reverse it decision to deregulate special access charges,

> It is now crystal clear that the Commission's predictive judgments that special access rates would be disciplined by competitive entry were wrong. Facilities-based competition for all but the highest capacity special access facilities remains extremely limited. Yet the Commission's pricing flexibility rules have allowed the Bells to avoid rate regulation for all capacities and to all locations within entire MSAs.[82]

Exhibit 4 shows two aspects of special access pricing, the increase in profits which has been driven by falling costs. The key here is that as costs have fallen, prices have not.

Exhibit 4: Costs and Profits in Special Access

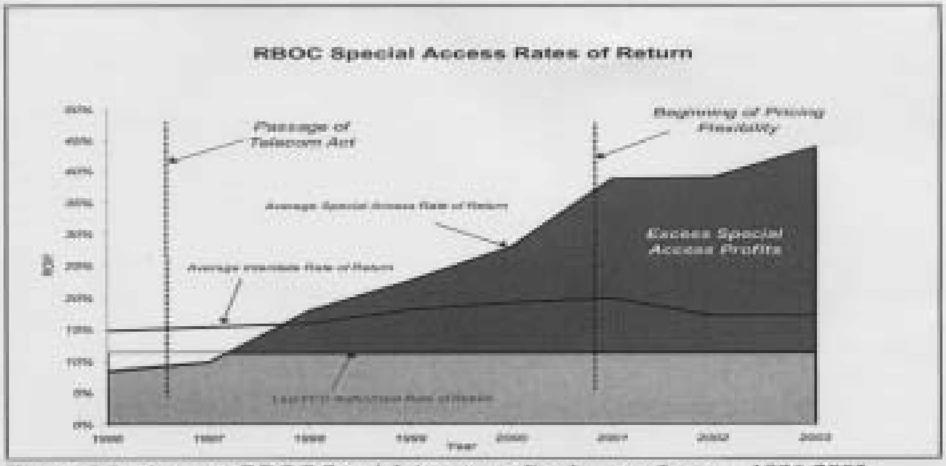


Figure 3.2. Average RBOC Special Access realized rates of return. 1996-2003.

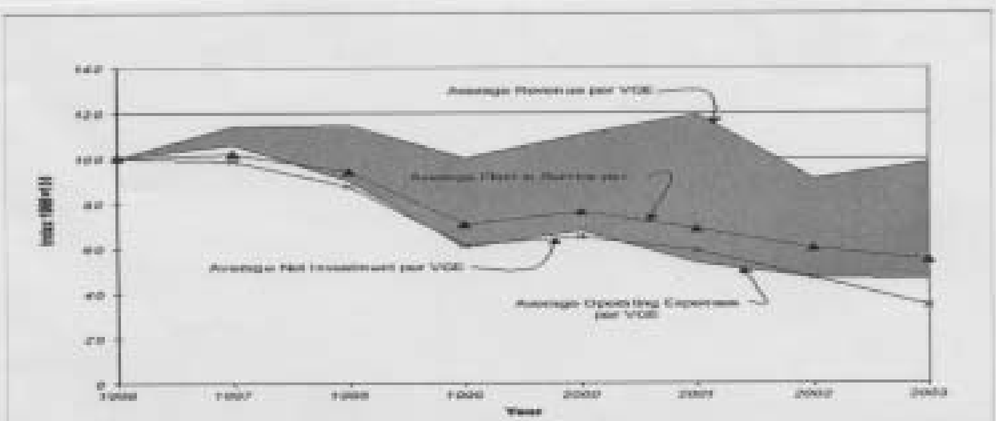


Figure 4. The Widening Special Access Price/Cost Gap – SBC. (See Attachment 1 for data sources and data.)

Source: Returns from: Ad Hoc Telecommunications Users Committee, *Competition in Access Market: Reality or Illusion* (Economics and Technology, Inc., August 2004), p. 30; "Reply Comments of BT Americas Inc. and BT Infonet USA, *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Federal Communications Commission, WC Docket No. 05-65, May 10, 2005, p. 10.*

Indeed, they have risen slightly. This underscores the important point that cost savings are not passed through to consumers if markets are not sufficiently competitive. The reduction in special access competition resulting from the merger should be of concern to this Commission.

THE MERGER, NETWORK NEUTRALITY, AND THE INTERNET

In the SBC-AT&T merger order the FCC imposed, as an enforceable condition of the merger, the provisions of the Commission's September 2005 Policy Statement.[83] Joint applicants indicate that with regard to the AT&T-BellSouth merger, that no "Net Neutrality" conditions need to be imposed on the merger.[84] The unreasonableness of this contention is demonstrated by information supplied by the joint applicants in their filing.

It is first important to note that the merger will result in the creation of the nation's largest last-mile broadband provider, with the combined company controlling nearly 23% of all residential and small business broadband lines.[85] The resulting market structure thus displays a highly concentrated structure, with the four largest broadband providers, AT&T, Comcast, Verizon, and Time Warner, controlling 65.76% of all broadband connections nationwide.[86] However, from an economic standpoint, the impact of market concentration must also be considered in light of the other significant advantages gained from the increase in *network effects* for the merged company. As the size of AT&T's overall customer base increases, the gain in network effects can make strategic behavior more likely, as the Commission recognized when discussing the AOL-Time-Warner merger:

> A different outcome, and one less beneficial for consumers, can also occur in markets with strong network effects. If one provider achieves a larger market share, either through superior performance or a first mover advantage, then it may not have an incentive to interoperate. If that provider wants to dominate the market, it can adopt a strategy of refusing to interoperate with the other, smaller providers. This, compared to a strategy of interoperation, will make its service less valuable and will hurt its users. But while these ill effects will be relatively slight, because the users will still be able to reach most other users, refusing to interoperate will hurt the smaller providers and their users greatly, because their users will not be able to reach most other users.[87]

While the Commission's analysis focused specifically on advantages gained from being the first mover or offering a superior product, it is also the case that larger market share may be achieved through merger, as opposed to the superior performance suggested by the Commission. Also, while the

Commission was focused on issues related to AOL's control of the Name and Presence Database associated with its instant messaging service, the economics of gaining a critical mass associated with network effects applies more generally, and certainly raises concerns due to the increasing size of AT&T. AT&T, due to the growing size of its broadband customer base, will be able to disadvantage not only smaller ISP rivals which may or may not provide broadband access, but also providers of Internet content and services. This potential will be discussed in more detail below. As a result, the merger adds to the risk of anti-competitive strategic behavior that the Commission recognized by adopting its Policy Statement regarding network neutrality as an enforceable condition of the SBC-AT&T and Verizon-MCI mergers. [88]

NETWORK NEUTRALITY CONDITIONS ARE NECESSARY

Joint applicants claim:

> The history of the Internet conclusively demonstrates that competition and innovation are best served by letting the marketplace decide what products, services and terms will be offered, rather than constraining market forces by government regulation.[89]

However, as the Commission is well aware, the Internet did not emerge in an environment that was free of regulation.

Rather, due to a regulatory structure that was adopted by the Commission through its *Computer Inquiries*, telephone companies were prevented from offering data processing and data communications services on an integrated basis. Furthermore, telephone companies were required to provide the necessary telecommunications facilities to the providers of enhanced (information) services on a nondiscriminatory basis. It is notable that the Internet emerged and flourished precisely during the period when the RBOCs were prohibited from participating in the market for Internet content and services, and when they were bound by common carrier obligations in the provision of Internet access facilities.

The Commission is also well aware that these constraints are no more. The RBOCs and cable companies can now provide content, applications, and services on an integrated basis. These companies are also no longer under any obligation to provide access to critical last-mile broadband facilities. The RBOC response has been predictable, rattling the sabers of discrimination and exclusion, as was illustrated in AT&T's CEO's statement, cited earlier in these comments.

The Public Interest Showing provides ample evidence of why network neutrality conditions must be part of the Commission's approval of this merger. For example, joint applicants state:

> AT&T's IPTV service will entail a switched, two-way, client server architecture designed to send each subscriber only the programming the subscriber chooses to view at a particular time. Unlike the all-at-once broadcast model of traditional cable systems, AT&T's IPTV service will provide subscribers with maximum flexibility in customizing what they see and when they see it by untethering subscribers from the confines of a programmer's pre-set schedule. And, while the ultimate breadth and scope of such capabilities will be a function of a number of factors, including arrangements with content owners and other programming vendors, AT&T's IPTV service will utilize an architecture designed to give customers additional choices in video programming that are not available today.[90]

This statement is notable for a number of reasons. First, it reiterates AT&T's plans to be a major player in the delivery of video services. However, it also indicates that AT&T's plans to sell video are associated with an AT&T commitment to a network architecture that it will use to deliver video services. AT&T indicates that its video services will be delivered through the "client-server" model.   While the client-server model grants the content provider a high degree of control over the delivery of content, other technologies, such as the BitTorrent content-delivery architecture, utilize bandwidth more efficiently.[91] Furthermore, service delivery architectures such as BitTorrent are now being commercially adopted by firms that will be competing with AT&T in the delivery of programming. For example, Warner Brothers has recently announced that it will be utilizing the BitTorrent technology to deliver Warner Brothers content to end users, both televison programming and movies.[92] The presence of competing content providers *and* competing delivery architectures raise the real potential for discrimination and exclusion that will be harmful to consumers. Given the traffic identification and prioritization that AT&T is capable of achieving with the network technologies that are provided by vendors such as Alcatel and Cisco Systems, and the loudly declared intention to strike deals with content and applications providers, the competitive threat is real. For example, Cisco Systems addresses the ability to discriminate in stark terms:

> One of the most significant risks that broadband service providers face is the threat from ‘nonfacility’ service offerings for music or video downloads, VoIP, or interactive gaming. With the increased bandwidth for high-speed Internet services, operators risk having their service regarded as a baseline commodity as their users subscribe to third-party services from off-net destinations. Examples include:
>
> - Broadband voice services such as Skype, Google-talk, or Vonage that directly compete with a service provider’s VoIP service offering.

> • Online DVD streaming and download services such as CinemaNOW or RealNetworks SuperPass, which compete for subscription fees of IP-based video services.
>
> Although nonfacility services ride on a best-effort network and may not have the same quality control as the provider's services, for many users the experience is good enough, and nonfacility operators benefit from lower operational expenses and a larger addressable market, making them formidable competitors.
>
> However, broadband service providers can treat nonfacility operators as partners rather than competition. By creating an "open network" environment through which nonfacility operators can ensure adequate customer experience for their application traffic, broadband service providers can open the door for new revenue-sharing schemes. To do this efficiently, a broadband service provider must be able to easily identify the traffic streams of nonfacility services so that it can adequately bill for, audit, and guarantee their performance. The application recognition and granular billing capability of the Cisco Service Control Solution help in the development of these services.[93]

While Cisco's efforts to place the proper spin on the capabilities of their product are amusing, the "open network" world envisioned by Cisco simply empowers the owners of last-mile broadband networks to present third-party content and application providers with an ultimatum—pay-up through our "revenue sharing scheme, or else." The "or else" would be discrimination against the nonfacility sources of applications and content, which is described by Cisco as follows:

> The ability of Cisco Service Control to classify and enforce traffic policies. . ., as well as its ability to manage traffic on *an individual user basis*, provides a powerful tool for service providers to manage network traffic through "subscriber-friendly" policies.
>
> Some of the relevant functions include:
>
> • Classification and identification of all application traffic, regardless of port number or IP address, including support for port-hopping applications (P2P applications such as BitTorrent, eDonkey, or Gnutella), multiflow applications (such as SIP voice over IP or RTSP streaming), and "hidden applications (such as HTTP running on nonstandard port numbers).
>
> • Prioritizing interactive and delay-sensitive applications (such as gaming, voice, streaming, or even Web browsing) at the expense of noninteractive applications (such as P2P file exchange, file downloads, or news transfers), so that preferential treatment can be given to latency-sensitive applications during periods of increased network congestion.
>
> • Establishing "fair-use" policies for customers through usage management algorithms that give every subscriber a fair allocation of available bandwidth—heavy users can no longer take excessive bandwidth and degrade the experience for other subscribers. . .[94]

Thus, if an AT&T broadband customer prefers to purchase video programming from Warner Bros., and use the BitTorrent technology to receive this content, AT&T can easily (1) identify the customer which has made this choice, (2) assign lower priority to the delivery of this content, thus degrading the alternative (and more efficient BitTorrent) technology, (3) designate the consumers who purchase their content from non-AT&T sources as “heavy users” who “take excessive bandwidth,” and (4) charge these end users (whose only offence is to make a competitive choice) more than those customers who purchase AT&T-sourced content. It is notable that the Cisco whitepaper, cited above, identifies an end-user “service tier” pricing approach associated with the capabilities of its network management equipment. These service-tier pricing plans either specifically limit the end-user to certain types of applications, or charge them more if they pursue certain applications (especially those which might compete with the broadband provider’s offerings). Cisco suggests that end users who activate certain types of applications could be charged higher prices on a “pay-as-you-go” scheme, and specifically identifies “streaming, gaming, voice (Skype, SIP)”[95] as targets for higher prices. Clearly, the ability to charge an end-user each time they activate an application which *competes* with offerings similar to those provided by the last-mile broadband provider (e.g., video, gaming, and voice) indicates that the technological architecture to discriminate exists. The existence of competition which is capable of delivering content *more efficiently* that AT&T also indicates that AT&T will be facing tough competition, providing a high degree of motivation to protect their investments in the previous generation of video delivery technology.

The benign language that Cisco now uses to try to obscure this profound ability to control the flow of data to advantage some content and applications providers and disadvantage others should not mislead the Commission. Discrimination to maximize profits is what this is about, as Cisco wrote more bluntly in describing the same capabilities to cable operators a few years ago.

> Multiple service delivery over IP networks brings with it an inherent problem: How do these multiple services—packetized voice, streaming media, Web browsing, database access, and e-mail—coexist without competing with each other for bandwidth?
>
> Cisco QoS has solved the problem by putting absolute control, down to the packet, in your hands….
>
> The ability to prioritize and control traffic levels is a distinguishing factor and critical difference between New World networks employing Internet technologies and "the Internet."
>
> But beyond that, new advanced QoS techniques give you the means to maximize revenue generated through bandwidth capacity providing highest quality for your most valuable services….
>
> Admission control and policing is the way you develop and enforce traffic policies. These controls allow you to limit the amount of traffic coming into the

network with policy-based decisions on whether the network can support the requirements of an incoming application. Additionally, you are able to police or monitor each admitted application to ensure that it honors its allocated bandwidth reservation.

Preferential queuing gives you the ability to specify packet types—Web, e-mail, voice, video—and create policies for the way they are prioritized and handled….

Committed access rate (CAR) is an edge-focused QoS mechanism provided by selected Cisco IOS-based network devices. The controlled-access rate capabilities of CAR allow you to specify the user access speed of any given packet by allocating the bandwidth it receives, depending on its IP address, application, precedence, port or even Media Access Control (MAC) address.

For example, if a “push” information service that delivers frequent broadcasts to its subscribers is seen as causing a high amount of undesirable network traffic, you can direct CAR [Committed Access Rate] to limit subscriber-access speed to this service. You could restrict the incoming push broadcast as well as subscriber’s outgoing access to the push information site to discourage its use. At the same time, you could promote and offer your own or partner’s services with full-speed features to encourage adoption of your service, while increasing network efficiency.

CAR also lets you discourage the subscriber practice of bypassing Web caches. It gives you the ability to increase the efficiency of your network by allocating high bandwidth to video and rich media coming from a Web-cached source and low bandwidth to the same content coming from an uncached source.

Further, you could specify that video coming from internal servers receives precedence and broader bandwidth over video sources from external servers….

> Another backbone-based control capability offered by Cisco QoS is the combination of preferential queuing (PQ) and weighted fair queuing (WFQ).
>
> PQ ensures that important traffic gets the fastest handling at each point where it is used. Because it is designed to give strict priority to important traffic, PQ can flexibly prioritize according to network protocol, incoming interface, packet size, source or destination address.[96]

AT&T states that "AT&T's IPTV service will utilize an architecture designed to give customers additional choices in video programming that are not available today." This statement clearly illustrates the problem created by AT&T's increasing dominance over last-mile broadband facilities, combined with its control over substantial Internet backbone facilities. It also shows why network neutrality principles must be imposed. The Internet has never been about one firm's vision of network architecture or service delivery. Network neutrality principles, rather, are about keeping the Internet free of impediments that will improve technology through highly disruptive processes of innovation unhindered by any gatekeeper. This disruptive process can only be viewed as a threat by those which make commitments to specific technology platforms, and the control of the last-mile facilities which AT&T enjoys provide leverage which has, until only recently, been unavailable to any firm which provides content and services over the Internet.

Joint applicants go to great length to describe the process through which they have developed their IPTV product an undertaking that has involved the expenditure of considerable time and money:

> We have already spent three years on planning and development of the Lightspeed IP video service and its implementation, and expect to spend more than $4 billion in network-related deployment costs and capital expenditures beginning in 2006 through 2008. We have spent several hundred million dollars more on the business and office support systems that are essential to move IPTV service to broad scale deployment. . .
>
> Hundreds of AT&T employees have spent the last three years on support and development of the video elements of Project Lightspeed, including: (1) identifying and purchasing video-specific network facilities and equipment; (2) managing construction activities across a 13-state region, including, among other things, the construction of a “super hub” facility and the on-going construction of video hub offices; (3) developing and modifying an in-region deployment schedule; (4) working out the technical aspects of IP-based platform and associated middleware; (5) acquiring a full range of video content; (6) developing marketing materials and an overall marketing strategy; (7) training employees in video sales, marketing and customer service; (8) entering into contracts for network and customer premises equipment; and (9) developing scalable back office activities and business support systems, including billing, ordering, customer service and support necessary to provide IPTV services to millions of customers.[97]

The Commission must ask itself whether AT&T, through the inevitable incentives that it faces to protect the investments that it is making in content-delivery platforms, should be permitted to inhibit or prevent alternative technologies which may do the job better than AT&T's technology choice. Likewise, whether AT&T should be able to discriminate against consumers who utilize alternative technologies to access content, or alternative providers of content. Because of AT&T's control over last-mile broadband facilities, market forces will not be able to discipline AT&T's actions toward its customers, or the providers of alternative content, services, and applications. With regard to the issue of network neutrality, the need for enforceable merger conditions is clear.

INTERNET BACKBONE MARKETS

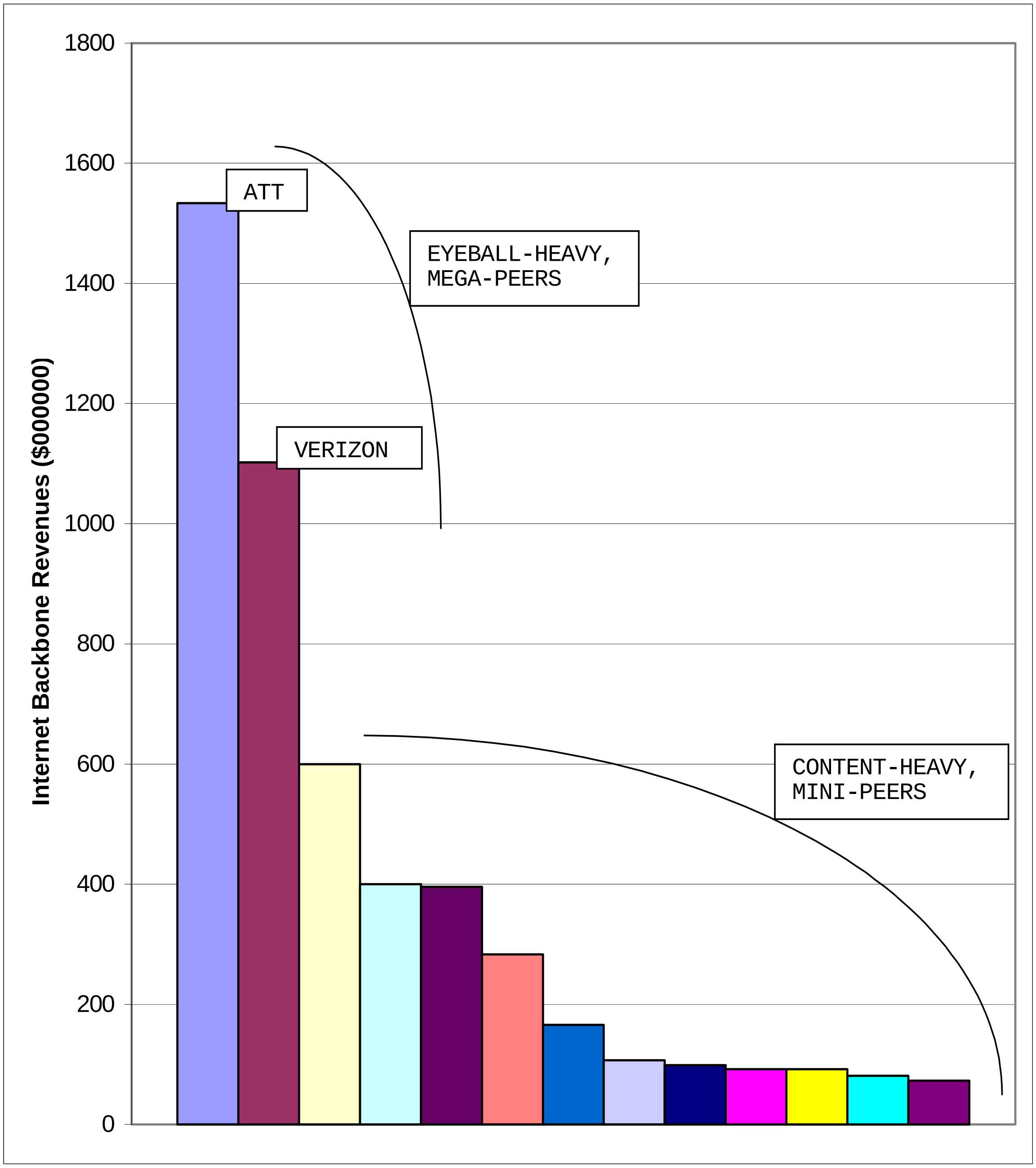
Joint applicants argue that the merger will not adversely impact the market for Internet backbone services.[98] To support this proposition, the joint applicants point to the Commission's analysis in the SBC-AT&T Merger Order.[99] While the Commission concluded in that Order that it was unlikely that Internet backbone markets would be adversely affected by the merger of AT&T and SBC, the merger of the new AT&T and

BellSouth demands renewed examination of this issue. The mergers of SBC and AT&T and Verizon and MCI created two uniquely situated backbone providers. According to the Commission, there are between six and eight Internet backbone providers: AT&T, Verizon, Sprint, Qwest, Level 3, Global Crossing, and by some measures, SAVVIS and Cogent.[100] Two of these backbone providers stand out as vertically integrated providers of large numbers of last-mile broadband facilities, as well as Internet backbone services. The resulting market configuration presents a highly skewed structure in which these two giants dominate the landscape.

Even the picture presented in Exhibit 5, which is based on national revenue shares underestimates the problem, since Internet backbone markets have local or regional characteristics in which the facilities available within the area are much more limited than the national figures would suggest.

Given the size, the unique traffic mix and the vertical integration, the merger poses a severe problem for consumers in the BellSouth service area. The integration infuses unique incentives to the vertically integrated companies' operations. When AT&T and MCI were independent backbone providers, their

Exhibit 5: Vertically Integrated Mega-Peers Dominate Internet Backbone



Source: Declaration of Marius Schwartz, SBC-AT&T

interest was to maximize traffic flows, and this provided a strong incentive for interconnection and non-discrimination. However, the delivery of video services, as well as other proprietary content, provides incentives to restrict access and discriminate, as is evidenced by the quote from AT&T CEO Edward Whitacre, cited above, and the materials from Cisco Systems, which are directed at companies which control last-mile broadband facilities.

Access to the last-mile pipes controlled by AT&T can only be achieved through interconnection with AT&T's backbone network. If AT&T's strategy is to exclude, or charge extra, for the delivery of certain content to end-users which subscribe to AT&T's broadband Internet access services, then the previous assumptions held by the Commission regarding the impact of vertical mergers between backbone and last-mile-broadband networks must be reexamined.

The AT&T-BellSouth merger only increases the incentives to discriminate and exclude, which will have the potential to adversely influence the Internet backbone market. As is discussed elsewhere in these comments, the merger will make AT&T the largest provider of residential and small business broadband lines. Of the other last-mile broadband providers which also have Internet backbone facilities (Verizon and Qwest), AT&T will be the market leader by far, holding nearly ten (10) million subscribers, to Verizon's five (5) million, and Qwest's one and one-half (1.5) million. This unique market position should not be overlooked by the Commission.

The result of this proposed merger will expand vertical integration between a major provider of Internet backbone and last-mile-broadband networks. AT&T would have an incentive to abuse their control over those assets to restrict access, rather than maximize the revenue flowing over those assets. As a vertically integrated entity, the resulting company would have an incentive to maximize profits by using its leverage in the form of a price squeeze, raising the prices that rivals must pay to have their content and services carried to AT&T's last-mile-broadband customers, exactly as described by AT&T CEO Whitacre.

The evidence is overwhelmingly clear. The Commission should just say no to this merger or impose substantial conditions to reverse the severe anticompetitive harms they will impose. The unique position that AT&T will hold in the Internet backbone market as a result of this merger is another reason to require, at a minimum, as an enforceable condition of the merger, that AT&T abide by the FCC’s Policy Statement regarding network neutrality.

VI. CONCLUSION: MERGER CONDITIONS

Should the Commission decide to approve this merger, certain conditions should be imposed on the operations of the combined companies.

For the purposes of these Conditions, the term “Merger Closing Date” means the day on which, pursuant to their Merger Agreement, AT&T, BellSouth, and Cingular cause a Certificate of Merger to be executed, acknowledged, and filed with the Secretary of State of New York as provided in New York Corporation Law.

AT&T Out-Of-Region Operations In Bellsouth’s Service Area

Within twelve months of the merger closing date, AT&T will divest its out-of-region operations, including AT&T out-of-region facilities used to provide local exchange and special access service, in the BellSouth service area. These operations include business and residential customers which were served by AT&T, either on a facilities, resale, or UNE basis as of January 1, 2006.

Unbundled Network Elements

For a period of five years, beginning on the Merger Closing Date, AT&T-BellSouth shall not seek any increase in state-approved rates for unbundled network elements ("UNEs") that are currently in effect, provided that this restriction shall not apply to the extent any UNE rate currently in effect is subsequently deemed invalid or is remanded to a state commission by a court of competent jurisdiction in connection with an appeal that is currently pending. In the event of a UNE rate increase in Illinois, Indiana or Texas during the five-year period, following a court decision invalidating or remanding a UNE rate, AT&T-BellSouth may implement that UNE rate increase but shall not seek any further increase in UNE rates in that state during the five-year period. This condition shall not limit the ability of AT&T-BellSouth and any telecommunications carrier to agree voluntarily to any UNE rate nor does it supersede any current agreement on UNE rates.

FRESH LOOK

The Commission must take a fresh look at all of its key decisions that were predicated on the existence of competition in local markets. To the extent that regulatory relief has been afforded to BellSouth based on analysis of competition that included any of AT&T customers or assets, those decisions must be revisited. Of utmost importance are the impairment proceedings that affected the availability of UNEs based on calculations of collocations and the number of business and residential lines served. Customer of AT&T and BellSouth should also be given the opportunity for a fresh look at existing contractual relationships without penalty or early termination fees for a period after the merger closes.

Local Transport and Special Access

Should the Commission not require the spin-off of AT&T’s network assets and customer base in the BellSouth region, remedies similar to those imposed by the Department of Justice on the previous mergers should be required here as well. Furthermore, the special access service quality merger condition imposed by the Commission on the SBC-AT&T and Verizon-MCI mergers should be imposed here as well.

Internet Backbone

1. For a period of five years after the Merger Closing Date, AT&T-BellSouth will maintain at least as many settlement-free U.S. peering arrangements for Internet backbone services with domestic operating entities as they did in combination on the Merger Closing Date. AT&T-BellSouth may waive terms of its published peering policy to the extent necessary to maintain the number of peering arrangements required by this condition.

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

ADSL SERVICE

Within twelve months of the Merger Closing Date, AT&T-BellSouth will deploy and offer within the BellSouth portion of its in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase voice services. AT&T-BellSouth will continue to offer this service in the entire AT&T service area for five years after the date that the final BellSouth state complies with this provision. For purposes of this condition, the "implementation date" for a state shall be the date on which AT&T-BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth's in-region territory in that state. Within twenty days after meeting the implementation date in a state, AT&T-BellSouth will file a letter with the Commission certifying to that effect.

Net Neutrality

Effective on the Merger Closing Date, and continuing for five years thereafter, AT&T-BellSouth will conduct business in a manner that comports with the principles set forth in the FCC’s Policy Statement, issued September 23, 2005 (FCC 05-151). The merger condition should state explicitly that the Commission has enforcement authority to compel compliance with the principles.

Wireless

The combined company (merged AT&T/BellSouth) should be required to divest all of its licenses in the 2.3 GHz (WCS) and 2.5-2.7 GHz (BRS/EBS) bands. This would create the possibility for entry of a third, broadband platform into the market that is currently dominated by a duopoly.

Annual Certification

For five years following the Merger Closing Date, AT&T-BellSouth shall file annually a declaration by an officer of the corporation attesting that AT&T-BellSouth has substantially complied with the terms of these conditions in all material respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, the second and third declaration shall be filed one and two years thereafter respectively.

I hereby declare under penalty of perjury that the allegations of fact in the foregoing joint declaration, except for those of which official notice may be taken, are true and correct of my personal knowledge.

Signed Mark Cooper   Executed on: June 5, 2006

I hereby declare under penalty of perjury that the allegations of fact in the foregoing joint declaration, except for those of which official notice may be taken, are true and correct of my personal knowledge.

Signed  Executed on: June 5, 2006

Endnotes

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Fellow, Council on Economic Regulation, 1989-1990

Member, Increased Competition in the Electric Power Industry Advisory Panel, Office of Technology Assessment, 1989

Participant, National Regulatory Conference, The Duty to Serve in a Changing Regulatory Environment, William and Mary, May 26, 1988

Member, Subcommittee on Finance, Tennessee Valley Authority Advisory Panel of the Southern States Energy Board, 1986-1987

Member, Electric Utility Generation Technology Advisory Panel, Office of Technology Assessment, 1984 - 1985

Member, Natural Gas Availability Advisor Panel, Office of Technology Assessment, 1983-1984

Participant, Workshop on Energy and the Consumer, University of Virginia, November 1983

Participant, Workshop on Unconventional Natural Gas, Office of Technology Assessment, July 1983

Participant, Seminar on Alaskan Oil Exports, Congressional Research Service, June 1983

Member, Thermal Insulation Subcommittee, National Institute of Building Sciences, 1981-1982

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Member, Building Energy Performance Standards Project Committee, Implementation Regulations Subcommittee, National Institute of Building Sciences, 1980-1981

Participant, Summer Study on Energy Efficient Buildings, American Council for an Energy Efficient Economy, August 1980

Member, University Committee on International Student Policy, Northeastern University, 1978-1979

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Alpha Kappa Delta, Sociological Honorary Society, 1973

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Science Fiction Short Story Award, University of Maryland, 1973

Maxwell D. Taylor Award for Academic Excellence, Arabic, United States Defense Language Institute, 1971

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National Merit Scholarship, Honorable Mention, 1963

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Economic Evidence in the Antitrust Trial: The Microsoft Defense Stumbles Over the Facts (Consumer Federation of America, March 18, 1999)

The Consumer Cost of the Microsoft Monopoly: $10 Billion of Overcharges and Counting (Consumer Federation of America, Media Access Project and U.S. PIRG, January 1999)

The Digital Divide (Consumer Federation of America and Consumers Union, February 1999)

The Consumer Case Against the SBC-Ameritech Merger (Consumer Federation, et. al, January 20, 1999)

The Consumer Case Against Microsoft (Consumer Federation of America, October 1998)

The Need for Telephone Lifeline Programs in New Jersey: An Update (Center for Media Education and the Consumer Federation of America, July 1998)

The Residential Ratepayer Economics of Electric Utility Restructuring (Consumer Federation of America, July 1998)

Competition in Local Markets: Is the Glass 98 Percent Empty of 2 Percent Full (Consumer Federation of America, February 17, 1998)

Consumer Issues in Electric Utility Restructuring (Consumer Federation of America, February 12, 1998)

Two Years After the Telecom Act: A Snapshot of Consumer Impact (Consumer Federation of America, January 21, 1998)

Stonewalling Local Competition: The Baby Bell Strategy to Subvert the Telecommunications Act of 1996 (Consumer Federation of America, January 1998)

The Need for Telephone Lifeline Programs in Kentucky (Kentucky Youth Advocates and Center for Media Education, October 1997)

Money for Nothing: The Case Against Revenue Replacement in the Transition to Local Exchange Competition: A Consumer View of the Gap Between Efficient Prices and Embedded Costs, American Association of Retired Persons, Consumer Federation of America, Consumers Union, January 1997

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A Consumer Issue Paper on Electric Utility Restructuring (American Association of Retired Persons and the Consumer Federation of America, January, 1997)

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A Consumer View of Missouri Telephone Legislation: House Bill 1363 Would Mandate Consumer Overcharges and Telephone Company Excess Profits, Consumer Federation of America, March 20, 1996

Evolving Notions of Universal Service (Consumer Federation of America, October 18, 1996)

Economic Concentration and Diversity in the Broadcast Media: Public Policy and Empirical Evidence, December 1995

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Transportation, Energy, and the Environment: Balancing Goals and Identifying Policies, August 1995

Competition and Consumer Protection in the Florida Telecommunications Legislation, Prepared for the Florida Office of the People's Counsel, April 1995

The Meaning of the Word Infrastructure, June 30, 1994

Protecting the Public Interest in the Transition to Competition in Network Industries, June 14, 1994

Local Exchange Costs and the Need for A Universal Service Fund: A Consumer View, May 1994

Milking the Monopoly: Excess Earnings and Diversification of the Baby Bells Since Divestiture, February 1994

A Consumer Road Map to the Information Superhighway: Finding the Pot of Gold at the End of the Road and Avoiding the Potholes Along the Way, January 26, 1994

Consumers with Disabilities in the Information Age: Public Policy for a Technologically Dynamic Market Environment, 1993

Selling Information Services During 800 and 900 Number Calls: The Need for Greater Consumer Protection, October 2, 1992

The Economics of Deregulation and Reregulation in the Cable Industry: A Consumer View, September 1992

Developing the Information Age in the 1990s: A Pragmatic Consumer View, June 8, 1992

Divestiture Plus Eight: The Record of Bell Company Abuses Since the Break-up of AT&T, December 1991

Public Opinion About quality, Self-Dealing and Billing for Ancillary Medical Tests, October 17, 1991

A Consumer Perspective on Direct Billing: The Next Step in Reforming the Market for Ancillary Medical Services, July 1991

Clearing the Air on Airline Deregulation, May 22, 1991

Transmission Planning, Citing, and Certification in the 1990s: Problems, Prospects and Policies, August 1990

Airport Pricing of Access for Off-Premise Auto Rental Companies: The Growing Pattern of Abuse, April 24, 1990

Expanding the Information Age for the 1990s: A Pragmatic Consumer Analysis, January 11, 1990

Public Opinion About Health Care Purchases: Cost, Ease of Shopping and Availability, April 27, 1989

Bailing Out the Savings and Loans Who Bears the Burden Under Alternative Financing Approaches, March 9, 1989

Divestiture Plus Five: Residential Telephone Service Five Years After the Breakup of AT&T, December 1988

Airport Fees for Auto Rental Companies: A Consumer Perspective, June 1988,

Public Opinion About Deregulation and Regulation in the Transportation and Communications Industries, May 1988

Telecommunications Policy Regarding Deregulation, May 1988

Universal Telephone Service in Ohio: A Review of Recent Evidence, November 12, 1987

The Role of Natural Gas in Solving the Clean Air Problem: Reconciling Consumer and Environmental Interests, April 19, 1988

A Residential Consumer View of Bypass of Natural Gas Local Distribution Companies, February 1988

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The National Energy Security Policy Debate After the Collapse of Cartel Pricing: A Consumer Perspective, January 1987

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Low Income Households in the Post Divestiture Era: A study of Telephone Subscribership and Use in Michigan, October 1986

The Costs and Benefits of Exclusive Franchising: The Case of Malt Beverages, September 17, 1986

Punitive Damages in Product Liability Cases: Setting the Record Straight, September 1986

Local Rate Increases in the Post-Divestiture Era, Excessive Returns to Telephone Company Capital, September 1986

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The Energy, Economic and Tax Effects of Oil Import Fees, October 25, 1985

The Great Train Robbery: Electric Utility Consumers and the Unregulated Rail Monopoly Over Coal Transportation, Overview, The Rail Monopoly Over Bulk Commodities, A Continuing Dilemma for Public Policy, August 1985

Industrial Organization and Market Performance in the Transportation and Communications Industries, July 1985

Ringing Off the Wall: An Alarming Increase in Residential Phone Rates, 1984-986, May 12, 1985

Divestiture: One Year Later, December 19, 1984

The Bigger the Better: The Public Interest in Building a Larger Strategic Petroleum Reserve, June 12, 1984

The Consumer Economics of CWIP: A Short Circuit for American Pocketbooks, April, 1984

Public Preference in Hydro Power Relicensing: The Consumer Interest in Competition, April 1984

Concept Paper for a Non-profit, Community-based, Energy Services Company, November 1983

Deregulation of the Dairy Industry, November 1983

The Consumer and Energy Impacts of Oil Exports, April 1983

Up Against the Consumption Wall: The Impact of Rising Energy Prices on Lower Income Consumers, March 1983

A Decade of Despair: Rising Energy Prices and the Living Standards of Lower Income Americans, September 1982

The Impact of Rising Energy Prices on the Delivery of Public Service by Local Governments, August 1982

The Impact of Rising Energy Prices on the Low Income Population of the Nation, the South, and the Gulf Cost Region, July, 1982

A Comprehensive Analysis of the Impact of a Crude Oil Import Fee: Dismantling a Trojan Horse, April 1982

The Past as Prologue II: The Macroeconomic Impacts of Rising Energy prices, A Comparison of Crude Oil Decontrol and Natural Gas Deregulation, March, 1982

The Past as Prologue I: The Underestimation of Price Increases in the Decontrol Debate, A Comparison of Oil and Natural Gas, February 1982

Oil Price Decontrol and the Poor: A Social Policy Failure, February 1982

Natural Gas Decontrol: A Case of Trickle-Up Economics, January 1982

Meal Production Costs in School Food Kitchens: An Economic Analysis of Production Processes and Efficiencies, December 1981

A Comprehensive Analysis of the Costs and Benefits of Low Income Weatherization and Its Potential Relationship to Low Income Energy Assistance, June 1981

Summary of Market Inhibitors, February 1981

Program Models and Program Management Procedures for the Department of Energy's Solar Consumer Assurance Network Project: A Rapid Feedback Evaluation, February 1981

An Analysis of the Economics of Fuel Switching Versus Conservation for the Residential Heating Oil Consumer, October 1980

Energy Conservation in New Buildings: A Critique and Alternative Approach to the Department of Energy's Building Energy Performance Standards, April, 1980

A Study of Program Management Procedures in the Campus-based and Basic GRANTS Programs: Final Report, March 1980

The Basics of BEPS: A Descriptive Summary of the Major Elements of the Department of Energy's Building Energy Performance Standards, February, 1980

A Study of Program Management Procedures in the Campus-based and Basic Grants Programs: Site Visit Report, December 1975

A Comparative Evaluation of Operation Breakthrough, Chapter 3, August 1975

Judging the Merits of Child Feeding Programs, 1975

A Comparative Evaluation of Ongoing Programs in Columbia, Kenya, and the Philippines, 1974

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Education

Ph.D., Economics, University of California, Davis, 1989.
M.A., Economics, University of California, Davis, 1986.
B.A., Economics, with honors, California State University, Sacramento, 1984.

Fields of Specialization

Industrial Organization and Regulation
Public Finance
Economic History

Experience

Independent Consultant, June 1994 to present. Provides economic and policy research and analysis for clients. Presents expert testimony in state and federal venues. Performs economic and statistical studies of market conditions. Matters addressed include pricing plans, market structure analysis and competition, alternative regulatory frameworks, productivity growth, service quality, cost calculations, cost allocation, cost modeling, network unbundling, capital costs, wireless markets, and broadband policy. Dr. Roycroft has also provided expert testimony on economic damages.

Associate Professor, J. Warren McClure School of Communication Systems Management, Ohio University, September 1994 to November 2004. Granted tenure, Spring 2000. Conducted graduate and undergraduate courses in regulatory policy and law, and the economics of the telecommunications industry, as well as general education courses covering telecommunications technology, markets, policy, and the social impact of communications technology. Conducted research with a focus on the telecommunications industry. Provided academic advising to graduate and undergraduate students within the school and across the university. Served on department, college, and university committees.

Interim Director, J. Warren McClure School of Communication Systems Management, Ohio University, July 2000 to June 2002. Responsibilities included: program planning, evaluation, and assessment; recruiting faculty and staff; managing fiscal resources; administering the School's curriculum; and establishing and maintaining relationships with internal and external constituencies of the school.

Chief Economist/Acting Chief Economist/Assistant Chief Economist/ Principal Economist, Indiana Office of Utility Consumer Counselor, May 1991 to June 1994. Conducted research and prepared testimony, cross examination, and legal briefs to be presented before the Indiana Utility Regulatory Commission in major cases involving gas, water, electric, and telecommunications utilities. Prepared analysis and comments to be presented before the Federal Communications Commission. Advised Director of Utility Analysis and the Utility Consumer Counselor on policy issues; assisted in formulation of policy. Coordinated technical analysis in major cases. Presented agency policy positions to outside groups. Supervised Economics and Finance Staff of eight professionals. Reviewed and provided extensive analysis of Economics and Finance Staff testimony.

Experience (continued)

Visiting Assistant Professor, Kenyon College, September, 1989 to May, 1991. Conducted courses in Introductory Economics (Macro and Micro), Economics of the Public Sector, Industrial Organization, and Economic Development in the Third World. Rendered college service on award and hiring committees.

Lecturer, California State University, Sacramento, Fall 1987, academic year 1988. Conducted courses in Intermediate Microeconomic Theory, Introductory Macroeconomic and Microeconomic Theory.

Teaching Assistant, University of California, Davis, 1985-1988. Assisted the professor in conducting courses in Introductory Macroeconomic Theory, Introductory Microeconomic Theory, and Public Finance.

Publications

"E-Auctioning: The U.S. Federal Communications Commission and Spectrum Management." Ari-Veikko Anttiroiko and Matti Malkia, eds. *Encyclopedia of Digital Government*, forthcoming.

"Empirical Analysis of Entry in the Local Exchange Market: the Case of Pacific Bell." *Contemporary Economic Policy,* Vol. 23, No. 1, January 2005.

"Internet Access." Johnson, D. ed. *Encyclopedia of International Media and Communications*, Academic Press, April 2003.

"Internet Subscription in Africa: Policy for a Dual Digital Divide." (With Siriwan Anantho.) *Telecommunications Policy*, Vol. 27, Nos. 1-2, February/March 2003.

"The Impact of State and Federal Alternative Regulation Plans on the RBOCs—a State Level Analysis." in *Telecommunications for the 21st Century*. Special issue of *The International Journal of Development Planning Literature*. William Baumol and Victor Beker eds. Vol. 16, Nos. 1 & 2, January and April 2001.

"Trouble Reports as an Indicator of Service Quality: The Influence of Competition, Technology, and Regulation." (With Martha Garcia-Murrilo.) *Telecommunications Policy,* Volume 24, No. 10, November, 2000.

"The Telecommunications Act—Law of Unintended Consequences?" *Public Utilities Fortnightly*, Volume 138, No. 3, February 1, 2000.

"Alternative Regulation and the Efficiency of Local Exchange Carriers—Evidence from the Ameritech States." *Telecommunications Policy,* Volume 23, No. 6, July, 1999.

Publications, Continued

"The Billy Goats Gruff. A Fairy Tale for the Third Anniversary of the Telecommunications Act of 1996." *Info: The Journal of Policy, Regulation and Strategy for Telecommunications, Information and Media,* Volume 1, No. 2, April, 1999.

"A Dynamic Model of Incumbent LEC Response to Entry Under the Terms of the Telecommunications Act of 1996." *Journal of Regulatory Economics*, Volume 14, November, 1998.

"Ma Bell's Legacy: Time for a Second Divestiture?" *Public Utilities Fortnightly.* Vol 136, No. 12, June 15, 1998.

"The Telecommunications Act of 1996: An Unfunded Mandate for the States." (With Phyllis Bernt.) *Central Business Review*, Volume XV, No. 2, Summer 1996.

Reports and White Papers

"Network Neutrality, Product Differentiation, and Social Welfare. *A Response to Phoenix Center Policy Paper No. 24*." Roycroft Consulting Policy White Paper. May 3, 2006. Available at: http://www.roycroftconsulting.org/response_to_Ford.pdf

"Network Diversity—A Misguided Policy. A Response to Christopher S. Yoo's 'Promoting Broadband Through Network Diversity'." Roycroft Consulting Policy White Paper. March 1, 2006. Available at: http://www.roycroftconsulting.org/response_to_Yoo.pdf

"Wireless Consumer Protection: A Model Bill for the States." AARP Research Center, September, 2003.

"The End of Telecommunications? An Epilogue to Tangled Web: The Internet and Broadband Open Access Policy." AARP Research Center, June, 2002.
Available at: http://research.aarp.org/consume/2002_10_tangled_1.html

"Tangled Web: The Internet and Broadband Open Access Policy." AARP Research Center, January, 2001. Available at: http://research.aarp.org/consume/d17331_tangled_1.html

Conference Papers

"The Impact of State and Federal Alternative Regulation Plans on the RBOCs—a State Level

Analysis," July 1999. Presented at the Western Economic Association International Annual Meeting, San Diego, California.

"The Billy Goats Gruff. A Fairy Tale for the Third Anniversary of the Telecommunications Act of 1996," June, 1999. Presented at the Academic Seminar at the 1999 National Cable Television Association Convention, Chicago, Illinois.

Conference Papers (continued)

"Alternative Regulation and the Efficiency of Local Exchange Carriers—Evidence from the Ameritech States." November, 1998. Presented at the 68th Annual Conference of the Southern Economic Association, Baltimore, Maryland.

"A Dynamic Model of Incumbent LEC Response to Entry Under the Terms of the Telecommunications Act of 1996." July 1998. Presented at the Western Economic Association International Annual Meeting, Lake Tahoe, Nevada.

"Do We have the Bugs Out of Telephone Deregulation?" April 1998. Presented at the Law and Policy Division of the Broadcast Education Association, Las Vegas, Nevada.

"The Telecommunications Act of 1996 and Imposed Costs in the Local Exchange Market: A Dynamic Model of Incumbent Behavior." September 1997. Presented at the *Telecommunications Policy Research Conference*, Arlington Virginia.

"Towards an Advanced Information Infrastructure," August 1995. Presented to the National Association of Regulatory Utility Commissions' Annual Regulatory Studies Program at Michigan State University.

"Sorting, Bonding, and Barriers to Entry: Strategies of the Entry Concerned Firm," July 1990. Presented at the Western Economic Association Meetings, San Diego, California.

Additional Presentations

"Broadband Open Access." Presented to AARP's National Legislative Council. October, 2000. Washington, D.C.

"Telecommunications Policy, Markets, and Regulation–Who's On First?" Presented to the Maryland Office of Peoples' Counsel and Maryland Public Service Commission. October, 2000. Baltimore, MD.

"Broadband Open Access–Implications for the Internet and Consumers." November 1999. Panelist at the National Association of Utility Consumer Advocates Annual Convention. San Antonio, Texas.

"Validation of Proxy Cost Models." January 1997. Panel discussant at the Federal Communications Commission workshops on proxy cost models (CC Docket 96-45).

"Impact of the Telecommunications Act of 1996 on Telecommunications Managers." December 1996. Presented to members of the *Association of Telecommunications Professionals*. Columbus Ohio.

"Caveat emptor! Local competition, possible effects on prices and the reality of choice." October 1995. Presented at the Public Information Session on Telephone Competition. Dayton, Ohio.

Additional Presentations (Continued)

"Cost Allocation in Network Industries," August 1995. Presented to the National Association of Regulatory Utility Commissions' Annual Regulatory Studies Program at Michigan State University.

"Incremental Cost Methodology in Telecommunications," June 1995. Presented to the Ohio Office of Consumers' Counsel.

"Regulatory Issues Connected with the Implementation of the Clean Air Act Amendments of 1990," August 1993. Presented at the Indiana Bar Association's Utility Law Section Summer Meetings.

"Consumer Perspectives on the Ameritech Customer's First Plan," August 1993. Presented at the Ameritech Regional Regulatory Committee Ad Hoc Working Group Meeting.

"Consumer Perspectives on Universal Telecommunications Service," December 1992. Presented at the Indiana Utility Regulatory Commission Workshops on Regulatory Flexibility in Telecommunications.

Honors

Competitive paper finalist. The Academic Seminar at the 1999 National Cable Television Association Convention, Chicago, Illinois. Paper title: "The Billy Goats Gruff. A Fairy Tale for the Third Anniversary of the Telecommunications Act of 1996."

Courses Taught

Competition and Market Structure in Network Industries, *Ohio University*
Communication Regulatory Policy, *Ohio University*
Applications of Common Carrier Regulation, *Ohio University*
Introduction to Common Carrier Regulation, *Ohio University*
Introduction to Communication Systems Management, *Ohio University*
Consumer Issues in Communication Systems Management, *Ohio University*
Topical Seminar (New Technologies and Telecommunication Policy), *Ohio University*
Topical Seminar (The Telecommunications Act of 1996), *Ohio University*

Special Studies in Communication Systems Management, *Ohio University*
Economics of the Public Sector, *Kenyon College*
Industrial Organization, *Kenyon College*
Economic Development in the Third World, *Kenyon College*
Intermediate Microeconomics, *California State University, Sacramento*
Microeconomic Principles, *Kenyon College; California State University, Sacramento*
Macroeconomic Principles, *Kenyon College; California State University, Sacramento*

Service

Faculty Advisor, University College, *Ohio University*, 1998-2004
Member, Baker Fund Committee, *Ohio University,* 2003-2004
Member, College of Communication Curriculum Committee, *Ohio University,* 2003-2004
Chair, College of Communication Dean's Evaluation Committee, *Ohio University,* 2003-2004
Faculty Advisor, Communication Week, *Ohio University,* 1994-2002
Faculty Advisor, Students in Communication Systems Management, *Ohio University*, 1994-1996
Member, University General Education Review Committee, *Ohio University*, 1998-1999
Member, College of Communication Curriculum Committee, *Ohio University*, 1998-2000
Member, College of Communication Graduate Committee, *Ohio University*, 1997-2002
Member, University Calendar Review Task Force, *Ohio University*, 1996-1997
Member, Outstanding Civil Service Award Committee, *Ohio University*, 1995-1996
Member, Mathematics Department Search Committee, *Kenyon College*, 1990-1991
Member, Williams Memorial Award Committee, *Kenyon College*, 1989-1991

Professional Membership

American Economic Association

Ph.D. Dissertation Supervision

"The Examination of Strategic Interactions in One Local Access Telephone Market, the Effects on Expected Price for Access and Universal Access." Judith Ann Molka-Danielsen. School of Information Sciences, Telecommunications Program, University of Pittsburgh, 1998.

Referee Service

Journal of Regulatory Economics
Telecommunications Policy
Social Science Computer Review
Utilities Policy
Journal of Economic Studies
Communications of the Association for Information Systems

Expert Testimony Presented

California (On behalf of The Utility Reform Network [TURN])

PUCC Cause No.	**Title**	**Topic**
Application: 05-04-020 (August 15, 2005)	Verizon/MCI Merger.	Market Structure and Market Power.
Rulemaking 05-04-005 Direct Declaration (May 31, 2005) Reply Declaration (September 2, 2005)	Order Instituting Rulemaking to Assess and Revise Regulation of Telecommunications Utilities	Local exchange Competition and Policy.
Applications: 01-02-024 01-02-035 02-02-031 02-02-032 02-02-034 02-03-002 (February 7, 2003 [Reply Declaration]) (March 12, 2003 [Rebuttal Declaration])	Review of UNE Rates.	TELRIC Compliance of UNE Rates. Progress of local exchange competition.
Rulemaking 93-04-003 Investigation 93-04-002 (Phase II) (July, 2001)	Permanent Line Sharing Phase II	Pricing and Cost Allocation for the High Frequency Portion of the Local Loop in the NGDLC Environment.
Rulemaking 93-04-003 Investigation 93-04-002 (Phase I) (June, 2001)	Permanent Line Sharing Phase I	Pricing and Cost Allocation for the High Frequency Portion of the Local Loop.

Canadian Radio-Television and Telecommunications Commission (On Behalf of Action Réseau Consommateur, et al.)

CRTC Case No.	Title	Topic
Public Notice CRTC 2001-37 (August, 2001)	Price Cap Review and Related Issues	Price cap regulation and productivity growth. Accommodative entry policy.

Colorado (On behalf of AARP)

CPUC Docket No.	Title	Topic
04A-411T (February, 2005)	In the Matter of Qwest Corporation Application For Service Reclassification And Deregulation	Analysis of local exchange market.

Kansas (On behalf of the Citizens' Utility Ratepayer Board [CURB])

KCC Docket No.	Title	Topic
05-SWBT-997-PDR (May, 2005)	In the Matter of SWBT's Application for Price Deregulation of Certain Residential and Business Services	Analysis of local exchange market.

Indiana (On behalf of the AARP and Citizens Action Coalition of Indiana)

IURC Cause No.	Title	Topic
42405 (October, 2003)	SBC Indiana's Request for Alternative Regulation	Analysis of local competition, Price Cap Regulation and Productivity
41911 (July, 2001)	Commission's Investigation of Ameritech Indiana Service Quality	Service Quality Performance.
40785-S1, 40849, 41058 (January, 2001)	Approval of Settlement Agreement between Ameritech And other Parties	Service quality, Advanced Services Deployment, Alternative Regulation.

Indiana (On behalf of the AARP and Citizens Action Coalition of Indiana, continued)

IURC Cause No.	Title	Topic
41058 (August, 2000)	Agreement between Ameritech And other Parties	Cost of Service, Cost Modeling, Compliance with §254(k)of the Telecommunications Act of 1996.
40785-S1 (September, 1999)	Commission's Investigation Ameritech Indiana's Compliance With Section 254(k) of the Telecommunication Act	Economic Cost of Service/ Cost Allocation.
40849 (November, 1997)	Commission's Own Motion On Ameritech Indiana's Request for Interim Relief	Interim and Permanent Alternative Regulation/Rate Design.
40849 (September, 1997)	Ameritech Indiana Request for Interim Relief	Interim Alternative Regulation/ Rate Design.

Ohio (On behalf of the Ohio Consumer's Counsel)

PUCO Case Nos.	Title	Topic
05-13050TP-ORD (December, 2005) (March, 2006)	Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service.	Existence of entry barriers. Appropriate competitive test.
02-1280-TP-UNC (May, 2004)	SBC Ohio's TELRIC Costs for Unbundled Network Elements	TELRIC cost modeling, Local Competition.
98-1082-TP-AMT (December, 1998)	SBC/Ameritech Request for Approval of Merger	Sharing of cost saving. Total factor productivity growth.
96-899-TP-ALT	Cincinnati Bell	Price Cap Regulation/

(December, 1997)	Alternative Regulation	Rate Rebalancing/ Rate Design.

Ohio (On behalf of the Ohio Consumer's Counsel, Continued)

PUCO Case Nos.	Title	Topic
94-2019-TP-ACE (May, 1995)	MFS INTELENET	Financial, Managerial, and Technical Ability to Provide Local Exchange Service.
93-487-TP-ALT and 93-576-CSS (September, 1994)	Ohio Bell: Alternative Regulation	Incremental Costs/ Fully Distributed Costs/ Alternative Regulation.

Maryland (On behalf of the Maryland People's Counsel)

MPSC Docket No.	Title	Topic
8730 (Rebuttal Testimony) (November, 1996)	Bell Atlantic ISDN Tariff Proposal	ISDN pricing and cost of service.
8730 (Direct Testimony) (October, 1996)	Bell Atlantic ISDN Tariff Proposal	ISDN pricing and cost of service.
8715 (Rebuttal Testimony) (April, 1996)	MCI Request for Alternative Regulation for Bell Atlantic Maryland	Price Cap Regulation, Cost Allocation and Loop Cost Recovery.
8715 (Direct Testimony) (March, 1996)	MCI Request for Alternative Regulation for Bell Atlantic Maryland	Price Cap Regulation, Cost Allocation and Loop Cost Recovery.

Washington (On behalf of Public Counsel Section of the Washington Attorney General)

WUTC Docket No.	Title	Topic
UT-050814 (September, 2005)	Verizon/MCI Merger	Market Structure and Market Power. Merger Conditions.

Indiana (On behalf of the Indiana Consumer Counselor)
***Testimony prepared, but not filed due to case settlement.**

IURC Cause No.	Title	Topic
40611 (June, 1997)	Ameritech Indiana Approval of Statement of Generally Available Terms	Analysis of TELRIC studies.
39853 (March, 1994)	Teleport Communications Group of Indiana, Inc.	Authority to provide intraLATA and interLATA Private Line Services.
39705 (January, 1994)	Indiana Bell Telephone	Alternative Regulation/ Competition/Infrastructure Deployment/Imputation.
39474 (May, 1994)	Indiana Payphone Association v. Indiana Bell Telephone	Imputation/separate subsidiary.
39755 (September, 1993)	GTE North Inc./GTE Intelligent Network Service Inc.	Divestiture of Assets/Policy.
39718 (August, 1993)	Ameritech Advanced Data Services	Affiliate Relationships.
39475 (March, 1993)	Indiana Payphone Association	Dial-Around Compensation.
38269-S4 (February, 1993)	IntraLATA Toll Compensation	Toll Rate Deaveraging.
39369 (February, 1993)	IURC Investigation into Access Charge Parity	Access Charge Parity/Recovery of Non-Traffic-Sensitive Costs/Policy.

39618 (January, 1993)	IURC Investigation into Special Access Collocation	Collocation Policy.
39385 (October, 1992)	Indiana Bell Telephone: Competition and Pricing Flexibility	Evaluation of Competition in Dedicated Communications Market/Policy.

Indiana (On behalf of the Indiana Consumer Counselor, continued)

IURC Cause No.	Title	Topic
39353*	Indiana Gas Company	Temperature Normalization Tracker/Demand Side Management/Reproduction Cost of Rate Base/Capital Costs.
39314 (September, 1992)	Indiana Michigan Power Co.	Clean Air Act Amendments /Demand Side Management.
39221 (January, 1992)	American Telecommunications Corporation	Financial Viability.
39215 (January, 1992)	Indiana American Water Co.	Reproduction Cost of Rate Base/Capital Costs.
39166 (November, 1991)	Indiana Cities Water Co.	Reproduction Cost of Rate Base/Capital Costs.
39164/39165 (October, 1991)	Ohio Valley Gas Corp.	Reproduction Cost of Rate Base/Capital Costs.
39017*	IURC Investigation into Indiana Bell Earning	Reproduction Cost of Rate Base/Capital Costs.

Comments Filed

Federal Communications Commission (On Behalf of National Association of Utility Consumer Advocates)

In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45. Affidavit addressing application of forward-looking economic cost methodology to rural ILECs with 100,000 or more access lines. (December 14, 2004.)

Federal Communications Commission (On behalf of AARP)

In the Matter of Inquiry into High-Speed Access to the Internet Over Cable and Other Facilities. GN Docket No. 00-185, FCC No. 00-355. "Tangled Web: The Internet and Broadband Open Access Policy." (January 10, 2001).

Indiana Utility Regulatory Commission (On behalf of the Indiana Consumer Counselor)

A Comprehensive Approach to Local Exchange Competition in Indiana (October, 1995).

Comments Filed (Continued)

Indiana Utility Regulatory Commission (On behalf of the Indiana Consumer Counselor, continued)

Comments of the Office of the Office of Utility Consumer Counselor to the Telecommunications Regulatory Flexibility Committee (1993).

New York Public Service Commission (On behalf of Independent Telephone Companies [NYNEX and Rochester excluded])

Proceeding on Motion of the Commission to Examine Issues Related to the Continued Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market: "Comments on Compensation Arrangements Related to Module 2" (April, 1995).

Maine Public Service Commission (On behalf of Independent Telephone Companies [NYNEX excluded])

Inquiry Into the Provision of Competitive Telecommunications Services (Chapter 280), Docket 94-114: "Reply Comments to the `Preliminary Proposal for a Revision and Restructuring of the Access Charge Provision of Chapter 280'" (June, 1995).

Federal Communications Commission (On behalf of the Indiana Consumer Counselor)

Comments of the Indiana Office of Utility Consumer Counselor on the Ameritech Customers First Plan (1993).

Reply Comments of the Indiana Office of Utility Consumer Counselor on the Ameritech Customers First Plan (1993).

June 2006