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**REPLY DECLARATION OF**  
**DENNIS W. CARLTON AND HAL S. SIDER**

**June 19, 2006**

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I, Dennis W. Carlton, hereby declare the following:

I, Hal S. Sider, hereby declare the following:

**I. INTRODUCTION AND OVERVIEW**

1. We previously submitted a declaration in this matter dated March 29, 2006 (hereafter, Carlton/Sider Declaration). Our qualifications and curricula vitae are included in that report.

2. In that declaration we concluded based on our analysis to date that the proposed merger of AT&T Inc. (AT&T) and BellSouth Corp. (BellSouth) will not adversely affect competition. We also concluded that the proposed transaction would benefit consumers by creating a more efficient firm better positioned to develop and deploy new services.

3. We have been asked by counsel for AT&T and BellSouth to evaluate claims made by various parties submitted in opposition to the proposed transaction. We may supplement our response based on continuing analysis of respondents' claims.

4. Given the limited time available to prepare a reply, we have not attempted to address each claim made by respondents. Instead, we have focused on the major arguments that are common to a variety of respondents. Our failure to address a particular claim made by a respondent should not be interpreted to imply that we agree with the claim.

5. Our comments focus on respondents' claims relating to:

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- Whether the proposed transaction significantly reduces competition in the provision of special access services by eliminating AT&T as an alternative provider of Type I or Type II special access services.
- Whether the proposed transaction, by increasing vertical integration, creates incentives for the merged firm to disadvantage or discriminate against rival suppliers of business services by raising special access rates or increasing technical discrimination against downstream rivals.
- Whether the proposed transaction will adversely affect the development of broadband wireless services by increasing the merged firm's incentive to "warehouse" spectrum.
- Whether the proposed transaction, by reducing the number of ILECs and increasing the size of AT&T's ILEC "footprint," (i) increases AT&T's incentives to discriminate against CLECs; (ii) significantly harms regulators' ability to monitor ILEC performance; and (iii) eliminates a significant potential entrant into mass market services.
- Whether the proposed transaction will harm the provision of retail services to mass market and business consumers.
- Whether efficiencies generated by the proposed transaction are merger-specific or otherwise should be given weight in evaluating whether the proposed transaction is in the public interest.

6. We conclude that respondents' claims are based on incomplete analysis and do not have empirical support. Their comments do not lead us to alter our prior

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conclusions that the proposed transaction is unlikely to adversely affect competition and is likely to benefit consumers.

7. The major conclusions discussed in this declaration are as follows:
  - ***Special Access:*** Respondents fail to identify significant merger-related harm in the provision of special access services. Application of the general approach taken by the Department of Justice (DOJ) in the SBC/AT&T transaction demonstrates that virtually all of the buildings served by both AT&T and BellSouth do not raise significant competitive concerns. Respondents also fail to identify or establish merger-related harm in the provision of special access services due to increased vertical integration. For example, Sprint's claim that the merger will increase incentives to discriminate in the provision of special access services to rival wireless carriers is inconsistent with industry experience.
  - ***Broadband Wireless Services:*** The transaction raises no concerns regarding harm to competition in the provision of broadband wireless services. There is very limited overlap in AT&T and BellSouth's holdings of spectrum available to entrants. The merged firm will account for only a modest share nationwide of spectrum identified as suitable for broadband wireless services and additional spectrum will soon be made available. Thus, the merged firm does not have the ability to harm competition by denying entrants access to spectrum.
  - ***The FCC's 1999 "Ameritech" Concerns:*** Respondents present no analysis or evidence to support their claim that the proposed merger

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would, by increasing AT&T's geographic "footprint," increase its incentive to discriminate against downstream rivals given the changes in competitive conditions since the FCC expressed this concern in 1999. Respondents also fail to recognize that significant changes in competitive conditions since 1999 have reduced the risk of harm to competition resulting from the loss of an ILEC benchmark. Finally, respondents fail to recognize that BellSouth has no plans to provide mass market services outside of its region and events since 1999 indicate that LECs have no advantage over other firms in providing mass market services in adjacent regions. Given the current competitive conditions in the industry, respondents provide no basis to conclude that the proposed transaction eliminates a significant potential competitor.

- ***Retail Services:*** Respondents provide no support for their claim that that increased vertical integration between Cingular and AT&T would increase prices for wireless or landline services. Increasing competition from cable firms, VoIP providers and rival wireless carriers indicates that attempts to raise price would simply drive customers to rival carriers. In addition, there is no basis for respondents' claim that suppliers that make use of special access services provided by ILECs to offer VoIP and other services are not independent competitors.
- ***Efficiencies:*** The respondents incorrectly claim that the claimed efficiencies are speculative and are not merger-specific. Instead, available evidence indicates that anticipated cost savings are large, credible, merger-

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specific and will benefit consumers. We show that the proposed transaction will enable the merged firm to be a more effective supplier of wireless and “converged” services. We also show that the expected acceleration of the deployment of IPTV services would be likely to generate significant benefits to consumers in BellSouth’s region.

8. The remainder of this declaration is organized as follows:
  - Section II addresses respondents’ claims that the transaction will reduce competition in the provision of special access services, including both “horizontal” and “vertical” concerns.
  - Section III addresses respondents’ claims relating to potential harm to competition in the provision of wireless services.
  - Section IV addresses respondents’ claims relating to issues raised in the 1999 SBC/Ameritech transaction. These include claims that the increase in the size of AT&T’s ILEC footprint will result in increased discrimination against CLECs; claims that the loss of an ILEC benchmark will harm competition; and claims that the proposed transaction eliminates potential competition.
  - Section V addresses the impact of the proposed transaction on retail mass market and business services.
  - Section VI addresses respondents’ claims relating to efficiencies claimed to result from the proposed transaction.

**II. RESPONDENTS FAIL TO IDENTIFY SIGNIFICANT MERGER-RELATED HARM IN THE PROVISION OF SPECIAL ACCESS SERVICES.**

**A. OVERVIEW OF RESPONDENTS' COMMENTS<sup>1</sup>**

9. A variety of respondents claim that the proposed transaction will reduce competition in the provision of special access service and have asked the Commission to impose remedies as conditions for approving the proposed transaction.

10. Sprint Nextel (Sprint) claims that the proposed merger will reduce competition in the provision of Type I special access and will result in increased discrimination by AT&T against downstream rivals.<sup>2</sup> Sprint requests that the merger be approved not only subject to conditions similar to those imposed in the SBC/AT&T transaction, including divestitures of IRUs to selected buildings, but also that additional restrictions on AT&T's marketing and pricing of special access services be imposed.<sup>3</sup>

11. Cbeyond claims that the merger will harm competition in the provision of Type I and Type II special access services.<sup>4</sup> Cbeyond argues that approval of the proposed merger should be conditioned on price regulation of special access rates, and the divestiture of all of AT&T's local facilities in the BellSouth region.<sup>5</sup>

12. Time Warner Telecom also argues that the merger will harm competition in the provision of Type I special access services and will result in increased discrimination by AT&T against its downstream rivals.<sup>6</sup>

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1. These comments are more fully summarized and cited in Appendix 1.  
2. Sprint Comments, p. ii.  
3. Sprint Comments, p. iii-iv.  
4. Cbeyond Comments, pp. 65-66.  
5. Cbeyond Comments, pp. 106-9.  
6. TWTC Comments, pp. 7, 33.

13. Several respondents cite ARMIS data to support their claim that a remedy is required.<sup>7</sup> As discussed further below, it is widely recognized that special access returns calculated from ARMIS data provide a highly misleading view of the returns, and changes in returns, earned by ILECs in the provision of special access.

14. This section briefly reviews the conclusions presented in our prior declaration regarding the impact of the proposed transaction on competition in the provision of special access services. We then present additional analysis to address these respondents' claims regarding special access issues, first analyzing horizontal issues; then vertical issues.

**B. OVERVIEW OF CONCLUSIONS FROM OUR INITIAL DECLARATION**

15. Many of the claims made in respondents' comments were anticipated and addressed in our March 29 declaration. Our major conclusions regarding special access in that declaration were as follows:

- AT&T faces competition from a variety of fiber networks in each of the 11 metropolitan areas in the BellSouth territory which it has local facilities.
- AT&T provides service to fewer than 330 buildings in the BellSouth region. More than half of these are served by at least one other CLEC. Application of criteria we understand were used by the Department of Justice in evaluating the SBC/AT&T merger indicates that potential competitive issues remain at fewer than 50 buildings.

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7. Sprint Comments, p. 2; TWTC Comments, p. 12.

- AT&T has de minimis sales of Type II special access services (which rely in part on ILEC facilities) in the BellSouth region and there are a variety of other firms that are as well situated as AT&T to provide Type II special access services.

**C. RESPONDENTS PRESENT NO EVIDENCE SUPPORTING THEIR CLAIMS THAT THE PROPOSED TRANSACTION WILL RESULT IN A SUBSTANTIAL REDUCTION IN HORIZONTAL COMPETITION.**

**1. Application of the general approach taken by the DOJ in the SBC/AT&T transaction reveals no competitive concerns in all but a small number of buildings.**

16. Various respondents rely on national data to suggest that the provision of special access services is not competitive. For example, Sprint writes that the merging parties' "overwhelming [national] shares belie any suggestion that the marketplace for special access service is meaningfully competitive."<sup>8</sup> National shares, however, are of little if any relevance in evaluating the impact of the proposed merger on competition in special access. As the DOJ and FCC recognized in the SBC/AT&T Order and other proceedings, competition in the provision of special access services is highly localized in nature and can vary on a building by building basis.

17. In the SBC/AT&T merger, the Department of Justice required certain building-specific remedies. Several respondents have requested that the FCC impose building-specific divestitures similar to those required by the DOJ in the SBC/AT&T merger.<sup>9</sup>

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8. Sprint Comments, p. 2. See also Cbeyond Comments, pp. 22-24.

9. Sprint Comments, p. iii. See also Paetec Comments, Appendix 1, p. 3.

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18. The Department of Justice generally considered a variety of criteria in analyzing the competitive conditions in each building. From our involvement in that process and DOJ's public filings, we understand these criteria include the following:

- The presence or absence of another fiber-based CLEC providing service to the building;
- Estimates of the demand for bandwidth for the building at issue;
- The building's proximity to CLEC fiber routes;
- Other building characteristics identifying locations that do not raise competitive concerns, including buildings that are vacant or occupied only by the merged firm.<sup>10</sup>

19. Since submitting our initial declaration, we have obtained additional information and updated the building-specific analysis presented in our March 29, 2006 declaration, which uses using the approach that we understand the Department of Justice used to evaluate special access competition in the SBC/AT&T merger.<sup>11</sup>

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10. Reply of the United States to ACTel's Opposition to the United States' Motion for Entry of the Final Judgment, p. 20.

11. As explained in our March 29, 2006 declaration, this analysis incorporates information from a survey of certain locations not excluded by the criteria described above. At the time the Public Interest Statement was submitted, Applicants had not yet gained access to inspect many of the Atlanta and Miami buildings that AT&T's records indicate were served with AT&T local fiber connections. Almost all of these buildings have now been inspected and analyzed. Additional inspections would serve only to reduce the number, reported below.

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20. These updated figures indicate that there are only 318 buildings in BellSouth's territory in which AT&T provides a Type I connection. Fully two-thirds of these are served by at least one other CLEC. Another 71 buildings meet at least one of the other criteria that we understand that the DOJ used to evaluate special access competition in the SBC/AT&T merger. Only two areas – Miami and Atlanta (which each have over a dozen firms with fiber networks) – have more than six buildings that raise potential competitive issues after application of these criteria. Moreover, we understand that wireless carriers such as XO and First Mile Communications have deployed fixed wireless facilities that could be used as a substitute for special access services in Miami and Atlanta.<sup>12</sup> AT&T does not serve any wholesale customers in any of the remaining buildings in Miami and Atlanta.

21. In total, there are only 32 buildings which are not excluded using these criteria.<sup>13</sup> More than 65 percent of the remaining buildings have at least one CLEC within 0.1 mile and more than 35 percent have two or more CLECs within 0.1 mile.

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12. See coverage map at [http://www.xo.com/about/network/maps/wireless\\_large.html](http://www.xo.com/about/network/maps/wireless_large.html). According to XO, these services “deliver[ ] business grade broadband services over high-speed wireless links” that eliminate “the need to lease local access facilities from incumbent telephone companies.” Press Release, XO Communications Inc., April 24, 2006, available at <http://www.xo.com/news/300.html>. See also, Press Release, First Mile, April 18, 2006, available at <http://www.firstmile.com/content/40.htm>.
13. Based on our experience in the prior transaction, we have attempted to replicate the DOJ analysis by excluding: buildings in which there is OCn level demand with at least one CLEC fiber network within 0.1 to 0.5 miles, where the greater the demand the greater the likelihood of entry from a longer distance; buildings in which AT&T or an affiliate is the only customer, vacant buildings, buildings identified as repeater huts, buildings identified as local nodes; buildings in which AT&T obtains access through an IRU on a lateral and the provider of the IRU retains a significant number of fibers to the building; and areas in which the residual potential competitive issues are *de minimis*.

22. Overall, the number of buildings that remain after application of these criteria is de minimis when evaluated relative to the number of buildings with special access level demand in the BellSouth region.<sup>14</sup> As discussed in our prior report, data from Dun & Bradstreet indicate that there are more than 219,000 such buildings in the BLS territory.<sup>15</sup> Further, in many instances, CLECs can purchase loop and transport UNEs to many of these buildings at TELRIC-based rates. BellSouth data show that UNE loops are currently available to nearly two-thirds of the 32 remaining buildings.

**2. Respondents do not dispute that there has been entry by numerous firms into the provision of Type I and Type II special access services in the Bellsouth region.**

23. Available data indicate that there are a large number of firms that have deployed fiber networks and facilities in the BellSouth region, indicating that there are no significant barriers to the entry or expansion of special access services there. More specifically, available data indicate that multiple CLECs have deployed local fiber networks and thus are capable of offering Type I service in the 11 areas in the BellSouth region where AT&T has deployed local network facilities. For example, in our March 29, 2006 declaration, we reported data on the number of CLECs with local (e.g., last mile) fiber facilities identified in the GeoTel data, as well as in lists of CLEC-lit buildings maintained by AT&T. Table 7.1 from our March 29, 2006 report indicates that many firms provide Type I special access service in areas in BellSouth's territory where AT&T has deployed local fiber networks.<sup>16</sup> For example:

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14. Since mergers tend to generate efficiencies, it is appropriate to consider the relative magnitude of competitive concerns and efficiencies, which tend to depend on the size of the transaction. We discuss efficiencies in more detail in Section VI.

15. See Carlton/Sider Declaration, ¶112.

16. As explained in our March 29, 2006 declaration, GeoTel acknowledges that its data can undercount CLECs with fiber networks because certain firms do not report their

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- For Atlanta, GeoTel data indicate that 17 firms have deployed local fiber, and building lists provided to AT&T report 14 firms providing service.
- For Miami, the GeoTel data indicate that 15 firms have deployed local fiber networks, while the AT&T building lists report 8 firms.
- Even in Nashville, the 39th largest metropolitan area in the United States, the GeoTel data indicate that five firms have deployed local fiber, while the lit building lists report that nine firms provide Type I service.

24. These data indicate that there are no significant barriers to the deployment of local fiber networks and thus the provision of Type I special access services in the BellSouth region.

25. Available data also indicate that there has been substantial deployment of fiber-based collocations which means that a variety of firms currently are capable of deploying Type II special access services. Since we completed our initial declaration, BellSouth has undertaken a review of the number of CLECs that have fiber-based collocations in BellSouth central offices in which AT&T has fiber-based facilities. We understand that BellSouth, along with AT&T, is continuing to evaluate these data and may revise its estimates. Fiber-based collocations indicate the presence of a CLEC with a fiber network (even if it does not provide “last mile” connections) and thus the ability to provide Type II special access services.

26. As shown in Table 2.1, BellSouth reports that AT&T has deployed fiber-based facilities in 88 of the central offices surveyed by BellSouth. The BellSouth data

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fiber holdings to GeoTel. In addition, the AT&T lit building lists list only firms that provide Type I services to AT&T and thus are likely to understate the number of CLECs serving an area.

indicate that there are other fiber based collocators in 84 of these 88 central offices and that there are at least 2 other CLECs with fiber-based collocations (in addition to AT&T) in 76 (86 percent) of these central offices.<sup>17</sup>

**Table 2.1**

**Number of Fiber-Based CLEC Collocations in BellSouth Central Offices Where AT&T Is Collocated**

Number of Non-AT&T CLECs	Number of COs	Percentage of COs	Average Number of Non-AT&T CLECs per CO
0	4	4.5%	0.0
1	8	9.1%	1.0
2	16	18.2%	2.0
3+	60	68.2%	6.1
Total	88	100.0%	4.6

Source: BellSouth physical survey.

Note: SBC Collocations treated as AT&T Collocations.

**3. Respondents fail to acknowledge the limitations of rates of return for special access services based on ARMIS data.**

27. As noted above, respondents cite rate of return measures derived from the FCC’s Automated Reporting Management Information System (ARMIS) to argue that there is “inadequate competition”<sup>18</sup> in the provision of special access services or that ILECs exercise “dominance”<sup>19</sup> in the provision of special access services.

28. Respondents, however, fail to acknowledge the well-recognized limitations of the ARMIS data for identifying the returns earned by ILECs on special access services. As discussed below, it has been widely noted that ARMIS data overstate

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17. Of the four locations with no CLEC other than AT&T, two are “rifle-shot” collocations that are outside of the 11 areas in BellSouth’s region where AT&T operates local networks. As the FCC and DOJ concluded in prior transactions, such locations that are not part of a local network raise no competitive concerns.

18. Cooper/Roycroft Declaration, pp. 42-44.

19. Sprint Comments, p. 2.

the economic returns earned by ILECs on special access services and that this distortion has grown over time.

29. Rates of return based on the ARMIS data reflect accounting rules established by the FCC. FCC rules require carriers to apportion operating costs and capital expenditures across services, such as switched access and special access, which share facilities.<sup>20</sup> Costs are further allocated between regulated and non-regulated services and between interstate and intrastate services.<sup>21</sup>

30. The FCC's cost allocation rules relating to these services are based on cost studies from the late 1990s and have been frozen since 2001.<sup>22</sup> Since that time, however, there has been a substantial divergence in demand for special access and switched access services. For example, the FCC's Statistics of Common Carriers report that revenue from special access services increased 61 percent between 2000 and 2004 while revenue from switched access services fell 4 percent.<sup>23</sup>

31. As a general rule, allocation of common costs across specific products does not reflect costs imposed by the production of each. However, even if the FCC's cost allocations made economic sense when initially determined, the divergence in revenue generated by switched and special access implies that these rules would no longer be appropriate. To the extent that too few costs are now allocated to special

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20. Declaration of David Toti on Behalf of SBC Communications, In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, WC Docket 05-25, June 13, 2005, pp. 3-4, hereafter Toti Declaration.

21. Toti Declaration, pp. 8-9.

22. Toti Declaration, pp. 6-7.

23. FCC, "Statistics of Common Carriers 2000/2001 Edition," September 15, 2001, Table 2.10; FCC, "Statistics of Common Carriers 2004/2005 Edition," November 2005, Table 2.8. These calculations are based on total revenues in accounts 5082 (Switched Access Revenues) and 5083 (Special Access Revenues) for all RBOCs.

access services in the ARMIS data, calculation of the return generated by special access services based on these data will be too high.<sup>24</sup>

32. The resulting distortion in special access returns based on ARMIS data has been previously recognized. For example, David Toti, then the Executive Director – Regulatory Accounting for SBC, explained in comments filed in a prior FCC proceeding that, as a result of the FCC’s rules:

ARMIS results that understate the costs an ILEC incurs to provide any service that has experienced significant growth in volumes. The costs for interstate special access services are particularly susceptible to this understatement because demand has increased dramatically over the past several years with the explosive growth in data services. The result is a mismatch between costs which do not properly reflect current utilization and volumes and revenues which do. This mismatch, of course, will overstate the calculated rate of return.<sup>25</sup>

33. Alfred Kahn and William Taylor also highlight the problems in interpreting accounting returns for special access services due to the joint nature of many network costs.

The allocations of RBOC accounting costs between regulated and unregulated intrastate and interstate services are of necessity, not based on cost-causation. Among interstate services, the allocation of costs to special access services requires additional, similarly arbitrary assumptions . . . each RBOC’s network provides interstate and intrastate services, carrier services (special and switched access) and retail services (local and toll): a large fraction of these network costs cannot be assigned on a cost-causal basis to individual services.<sup>26</sup>

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24. Toti Declaration, p. 3. William Taylor and Aniruddha Banerjee also highlight distortions in measuring returns on special access services based on ARMIS data resulting from the FCC’s fixed rules for allocating joint costs. Declaration of William Taylor and Aniruddha Banerjee on behalf of BellSouth, November 8, 2004, In the Matter of AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Special Access Services, RM No. 10593 ¶15.

25. Toti Declaration, p. 3.

26. Declaration of Alfred E. Kahn and William E. Taylor on Behalf of BellSouth Corporation, Qwest Corporation, SBC Communications, Inc. and Verizon, In the Matter of AT&T Corp Petition for Rulemaking to Reform Regulation of Incumbent

34. More generally, the difficulties in using accounting rates of return to estimate economic profits, and in turn, to infer market power are well recognized. For example, Franklin Fisher and John McGowan note that “there is no way in which one can look at accounting rates of return and infer anything about relative economic profitability or, a fortiori, about the presence or absence of monopoly profits.”<sup>27</sup>

**4. Data on CLEC pricing indicate that there is extensive competition in the provision of special access services in the Bellsouth territory**

35. While data on accounting returns suffer from well-recognized limitations, pricing data typically provides better information for analyzing market conditions. Available data indicate that special access prices charged by CLECs in BellSouth’s region have fallen rapidly in recent years.

36. Data compiled by RHK, a consulting firm employed by BellSouth, indicate that between January 2003 and January 2005, prices charged by BellSouth’s competitors for DS-3 circuits fell from \$1,200 per circuit to \$775 per circuit, a decline of 35 percent. Similarly, these data indicate that prices of DS-1 circuits fell from \$210 to \$138 per circuit, a decline of 34 percent.<sup>28</sup> This price decline indicates that special access consumers have been the beneficiaries of increasing competition and productivity improvements.

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Local Exchange Carrier Rates for Interstate Special Access Services, RM No. 10593, November 27, 2002, p. 8.

27. Franklin Fisher and John McGowan, “On the Misuse of Accounting Rates of Return to Infer Monopoly Profits,” *American Economic Review*, vol. 73, no. 1, 82-97 (1983)

28. BellSouth, “Competitive Analysis ICS Transport and Data Service,” Fall 2005, p. 18.

**D. THERE IS NO BASIS FOR RESPONDENTS' REQUEST FOR EXPANSIVE REMEDIES.**

37. Certain respondents ask the FCC to impose remedies relating to special access services that are far more expansive than those imposed in the SBC/AT&T proceeding. For example, Cbeyond asks that the FCC order divestiture of all of AT&T's local facilities in the BellSouth territory.<sup>29</sup> Access Point also asks requests divestiture of all of AT&T's facilities and customers in BellSouth's territory.<sup>30</sup> Both firms also request non-divestiture related conditions relating to pricing and requirements to provide unbundled network elements.

38. Such a request cannot be justified based on a comparison of AT&T deployment of local facilities in the BellSouth and legacy SBC regions. More specifically, AT&T had local fiber connections to about 2000 buildings in the legacy SBC region while it has local fiber connections to fewer than 320 buildings in the BellSouth region. In addition, AT&T wholesale local private line sales in the BellSouth region are less than 10 percent of those in the legacy SBC region.

39. More generally, respondents provide no economic basis for granting more expansive relief than that imposed by the DOJ in the SBC/AT&T merger. In the SBC/AT&T merger, the DOJ imposed a remedy in buildings where AT&T was the only CLEC serving a building (e.g., 2 to 1 situations). In other situations (e.g., 3 to 2), there is no necessary basis to conclude that a merger will adversely affect competition because the existence of multiple CLECs in a building can indicate (i) that demand conditions at the building are sufficient to attract entry by multiple CLECs and (ii) that multiple CLECs have the capability of serving the building. In addition, the sunk costs of the

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29. Cbeyond Comments, p. 109.

30. Access Point, p. 65.

facilities used to deploy dedicated access services are another factor that stimulates competition.

40. The remedy required by the DOJ reflects its assessment of competitive conditions and was informed by a full evaluation of a variety of sources including “millions of pages of documents, scores of interviews, network maps, lists of online buildings” and other information.<sup>31</sup>

**E. RESPONDENTS FAIL TO IDENTIFY MERGER-RELATED HARM IN THE PROVISION OF SPECIAL ACCESS SERVICES DUE TO INCREASED VERTICAL INTEGRATION.**

**1. Respondents raise no new concerns and present no evidence to support their concerns about vertical integration.**

41. As noted above, certain respondents claim that the merger will increase the incentive of the merged firm to discriminate against downstream rivals in the provision of special access services. More specifically, they claim that the merged firm will raise special access prices and/or degrade the quality of service provided to downstream rivals that use special access services provided by BellSouth to provide retail business services in competition with those provided by AT&T.

42. These concerns are similar to those raised by opponents to the SBC/AT&T transaction and discussed in our Reply Declaration in that matter, and rejected by the FCC in approving the SBC/AT&T merger.<sup>32</sup> Respondents present no new analysis or data to support this concern. For example, respondents present no evidence that, at least

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31. Reply of the United States to ACTel’s Opposition to the United States’ Motion for Entry of the Final Judgments, p. 16.

32. See Reply Declaration of Dennis W. Carlton and Hal S. Sider, WC Docket No. 05-65, In the Matter of SBC Communications and AT&T Corp. Applications for Approval of Transfer of Control, May 9, 2005, ¶¶ 63-73 (hereafter Carlton/Sider SBC/AT&T Reply).

to date, the SBC/AT&T and MCI/Verizon mergers have resulted in higher prices or greater technical discrimination in the provision of special access services to downstream rivals.

**2. Sprint's claim is inconsistent with industry experience.**

43. Sprint's claim that the proposed transaction increases the merged firm's incentives to discriminate in providing special access services to Cingular's rivals in the provision of wireless service raises only a minor variation on previously presented concerns about increased discrimination resulting from vertical integration.

44. More specifically, Sprint claims that BellSouth's incentive to discriminate against Cingular's rivals (such as Sprint) is currently reduced by the fact that, as a part owner of Cingular, BellSouth reaps only 40 percent of the gains from wireless traffic diverted to Cingular from rival wireless carriers. Sprint claims that competition will be harmed after the proposed transaction because the merged firm will be fully integrated and thus will gain 100 percent of any benefits generated by discriminating against rival wireless carriers.<sup>33</sup>

45. Because the post-merger AT&T would face the same incentives as other ILECs that own 100 percent of wireless service providers, Sprint's claim implies that existing vertical integration between wireless firms and ILECs would lead to discrimination against rival wireless carriers and would give ILECs an advantage in competition with non-affiliated carriers. Sprint, however, presents no evidence to support these views.

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33. Sprint Comments, pp. 9-10.

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46. Historically, ILECs (including each RBOC as well as independent LECs including Sprint and GTE) have been affiliated with entities that provide wireless services. Further, while AT&T, BellSouth and Verizon today participate in wireless services through joint ventures, these carriers and their predecessors previously had complete ownership of their wireless affiliates. Likewise, Sprint until very recently was a LEC and has wholly owned wireless operations. Despite the presence of these vertically integrated carriers, there has been massive investment and widespread deployment of national and regional wireless networks both by firms with no ILEC affiliation as well as expansion by ILECs outside their footprint, where they gain no advantage from vertical integration.

47. The success of Verizon, Cingular and Sprint outside the footprints served by their ILEC parents, as well as the success of T-Mobile, Nextel (since acquired by Sprint) and AT&T Wireless (since acquired by Cingular), all unaffiliated with ILECs, indicates that the alleged discrimination of the type alleged by Sprint is not of competitive significance. Similarly, past decisions by ILECs such as Qwest and Pacific Telesis to divest their wireless subsidiaries, as well as Sprint's recent decision to divest its own ILEC operations, are inconsistent with Sprint's claims that vertical integration between an ILEC and a wireless carrier can benefit itself and harm competition by disadvantaging non-integrated wireless carriers.

48. While there is no need to fully recount the history of the wireless industry, it is important to note that it has been characterized by explosive growth in subscribers served and in minutes of use as well as by dramatic declines in price per minute of use.

All of these facts are inconsistent with Sprint's concerns that full integration between Cingular and AT&T will adversely affect rival wireless carriers.

49. Sprint's concerns that discrimination against rival wireless carriers will harm competition are further undermined by the fact that special access accounts for only a small portion of the costs faced by wireless carriers. For Cingular, for example, we understand based on discussions with Cingular that costs of special access and transport services accounted for less than five percent of its total costs in 2005. Under these circumstances, even a significant increase in special access prices would not be expected to have a significant impact on wireless carriers.

**3. Respondents raise concerns that are independent of the proposed merger.**

50. The theoretical concerns about increased special access discrimination raised by the merger opponents derive from BellSouth's alleged market power in the provision of special access service. If special access services are competitively supplied, there can be no concern that the proposed transaction will create an incentive to raise special access prices or to engage in technical discrimination against downstream rivals.

51. However, even if concerns relating to ILECs' position in the provision of special access services exist, then they apply industry wide, not just in BellSouth's region. Such concerns are appropriately addressed in the regulatory arena, not in the context of a merger review. Such a review would also appropriately consider efficiency benefits resulting from vertical integration.

52. As discussed further below, the proposed transaction also would not increase the ability of the merged firm to engage in technical discrimination as the performance of ILECs in providing special access services is now widely reported and

monitored. As we noted in our initial declaration AT&T tracks 2.3 million performance measures on a monthly basis which are readily monitored by regulators and rivals.<sup>34</sup>

#### **CONCLUSION – SPECIAL ACCESS**

53. Respondents fail to identify significant merger-related harm in the provision of special access services. Application of the general approach taken by the DOJ in the SBC/AT&T transaction shows that all but a small number of buildings raise no potential competitive concerns. Respondents also fail to identify merger-related harm in the provision of special access services due to increased vertical integration. For example, Sprint's claim that the merger will increase incentives to discriminate in the provision of special access services to rival wireless carriers is inconsistent with industry experience. Given the Commission's on-going jurisdiction over special access pricing and the DOJ's investigation in this matter of building-specific special access issues, among others, we conclude that there is no basis for the FCC to impose merger conditions relating to special access.

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34. See Carlton/Sider Declaration ¶ 140.

**III. THE PROPOSED TRANSACTION RAISES NO CONCERN REGARDING HARM TO COMPETITION IN THE PROVISION OF BROADBAND WIRELESS SERVICES.**

**A. OVERVIEW OF RESPONDENTS' COMMENTS<sup>35</sup>**

54. Various respondents express the concern that the merged firm will “warehouse” its unused wireless spectrum in order to impede entrants and nascent competitors and harm competition in the provision of wireless services that compete with mobile broadband services and DSL services provided by AT&T.<sup>36</sup>

55. These respondents request that approval of the transaction be conditioned on divestiture of spectrum by the merged firm. Clearwire requests that the transaction be conditioned on the divestiture of the combined firm’s 2.5 GHz spectrum.<sup>37</sup> Declarants for the Consumer Federation of America request that approval of the proposed transaction should be conditioned on divestiture of the firms’ 2.3 WCS and 2.5 BRS spectrum. Cbeyond<sup>38</sup> and the Center for Digital Democracy also argue that the Commission should require the divestiture of BellSouth’s spectrum.<sup>39</sup>

56. This section shows that there is no merit to respondents’ claims that the proposed transaction will harm competition in the provision of wireless broadband services because:

- There is much spectrum available to potential entrants and nascent competitors for the provision of wireless broadband services;
- Post-transaction, AT&T will have only limited holdings of such spectrum;

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35. These comments are more fully summarized and cited in Appendix 1.

36. See, generally, Clearwire Comments, Cooper/Roycroft Comments, Center for Digital Democracy Comments, and Cbeyond Comments.

37. Clearwire Comments, pp. 17-18.

38. Cbeyond Comments, pp. 109-110.

39. Center for Digital Democracy Comments, p. 6.

- There is very limited overlap in the merging firms’ holdings of such spectrum, so the proposed transaction has no material impact on its incentive to “warehouse” spectrum; and
- AT&T already faces significant competition in the provision of both wireless and landline broadband services, which implies that there is no basis to conclude that any “warehousing” strategy would be successful, and thus no basis to assume it would be attempted.
- Respondents’ claims imply that the 2.5GHz spectrum band is a relevant market without recognizing that other spectrum bands can be used to provide the same or similar services.

**B. OVERVIEW OF WIRELESS BROADBAND SERVICES**

**1. Types of wireless broadband services**

57. “Wireless broadband services” include three distinct types of service: (i) mobile broadband services; (ii) fixed (point to multipoint) wireless broadband services; and (iii) point-to-point wireless broadband services.

***Mobile Broadband Services***

58. Mobile broadband services provide subscribers with wireless broadband access to the Internet with full mobility within the network coverage area. Network connections for subscribers that are in transit are handed off between transmitters in precisely the same way that wireless voice calls are handed off.

59. Cingular is in the process of deploying mobile broadband services. It now offers service in 16 metropolitan areas and has announced plans to deploy services in

most of the top 100 metropolitan areas by the end of 2006.<sup>40</sup> Verizon Wireless and Sprint each began network deployment earlier than Cingular and now both offer services in over 150 metropolitan areas.<sup>41</sup> Alltel has also recently deployed mobile broadband services<sup>42</sup> and T-Mobile is also expected to deploy mobile broadband services, although the expected date of their deployment is unknown.<sup>43</sup>

60. Cingular, Verizon Wireless and Sprint each offer two types of services: (i) Internet access for laptop users; and (ii) entertainment-based services accessed on handsets. Each of these services is provided over cellular and PCS spectrum using the facilities also used for wireless voice service.

***Fixed Broadband Services***

61. Fixed broadband services provide subscribers wireless broadband access to the Internet within an area served by a fixed transmitter. These services provide “point to multipoint” connections and are “portable” in the sense that they allow subscribers to move within the coverage of a transmitter. However, they are not “mobile” because network connections are not handed off between transmitters when the subscriber is in-transit.

62. Fixed broadband services include “WiFi,” the service deployed in a variety of airports and public areas by T-Mobile. A number of “WiMax” services which cover larger service areas than WiFi systems are being developed by a variety of firms

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40. BellSouth, “BLS Investor News,” April 20, 2006, p. 11.

41. <http://www.verizonwireless.com/b2c/mobileoptions/broadband/serviceoverview.jsp>;  
[http://www2.sprint.com/mr/news\\_dtl.do?id=11040](http://www2.sprint.com/mr/news_dtl.do?id=11040)

42. Alltel’s Axxess Broadband product is currently available in 11 metropolitan areas as of June 8, 2006. See  
[http://www.alltel.com/business/enhanced/mobilelink\\_coverage.html](http://www.alltel.com/business/enhanced/mobilelink_coverage.html).

43. Morgan Stanley Equity Research, “Cross-industry insights: the North American 3G wireless report,” February 28 2006, p. 4.

using different spectrum bands. Fixed broadband services are expected to compete for certain subscribers now served by cable modem and DSL services.<sup>44</sup>

***Point to Point Broadband Services***

63. “Point to point” wireless services connect two fixed locations. These services are often used as substitutes for special access services provided on landline facilities and may not be close substitutes for mobile and fixed broadband services. Respondents’ comments focus on mobile and fixed broadband services rather than point to point services. Therefore, we focus on spectrum that various parties claim is suited to mobile and fixed services.<sup>45</sup>

**2. Spectrum available to provide mobile and fixed broadband services**

64. As noted above, the major wireless carriers have deployed mobile broadband services using the cellular and/or PCS spectrum used to provide wireless voice service. There are also a variety of other spectrum bands that various parties have identified as being suitable to use for mobile and fixed broadband services. These spectrum bands are summarized in Table 3.1 and are discussed in more detail below.

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44. FCC, In the Matter of Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, Memorandum Opinion and Order, August 2, 2005 , ¶167, hereafter, Sprint-Nextel Order.

45. We understand that AT&T owns spectrum in the 39 GHz band while Cingular and BellSouth do not own spectrum in any of these bands.

**Table 3.1**

**Spectrum Identified as Available for  
Mobile and/or Portable Broadband Wireless Services**

Spectrum Band	MHz	Licensing Status
Lower 700 MHz	18	Current
Lower 700 MHz	30	Future <sup>46</sup>
Upper 700 MHz	6	Current
Upper 700 MHz	30	Future <sup>47</sup>
SMR 800 MHz	14	Current
Cellular 850 MHz	50	Current
SMR 900 MHz	5	Current
WCS 1.4 GHz	8	Future <sup>48</sup>
WCS 1.6 GHz	5	Current
AWS 1.7-2.1 GHz	90	August 2006 <sup>49</sup>
PCS 1.9 GHz	130	Current
AWS 1.915-2.180 GHz	40	Future <sup>50</sup>
WCS 2.3 GHz	30	Current
ISM 2.4 GHz ISM	83.5	Unlicensed
BRS/EBS 2.5 GHz	194	Current
U-NII 5 GHz	555	Unlicensed

Note: Additional sources discussed in text.

65. The FCC has identified various spectrum bands as suitable for the provision of mobile and fixed wireless broadband services and has stated that it will be making additional suitable spectrum available. In the Commission's 6<sup>th</sup> CMRS (Commercial Mobile Radio Services) Competition Report, it discussed spectrum bands below 6 GHz:

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46. [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=N2](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=N2)

47. [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_factsheet&id=31](http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=31)

48. [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=N7](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=N7)

49. [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_factsheet&id=66](http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=66)

50 FCC News Release, "FCC Designates Spectrum For Advanced Wireless Services And Proposes Licensing And Service Rules," September 9, 2004.

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these bands have similar technical characteristics, because they are used to offer similar services, and because many lowerband operators employ more than one of these bands to offer these services...<sup>51</sup>

66. More specifically, the FCC found that lower-band operators:

... generally offer high-speed Internet access at around 1.5 Mbps to residential and small office/home office customers in a range of geographic areas that includes rural and underserved areas.<sup>52</sup>

67. The FCC analysis covered only spectrum in commercial use as of 2001, including cellular spectrum, PCS spectrum, MDS (which included 2.1-2.2 GHz spectrum and 2.5-2.7 GHz spectrum at the time), WCS spectrum, and unlicensed spectrum including the 900 MHz band, the 2.4 GHz band, and the 5 GHz band.<sup>53</sup> The FCC also identified SMR spectrum as intended for “mobile voice and data” services and 700 MHz spectrum as intended for “interactive data.”<sup>54</sup> Since the FCC’s 2001 6<sup>th</sup> CMRS report, some spectrum allocations have changed and the FCC has announced that additional spectrum in this range will be licensed.<sup>55</sup>

68. The FCC also identified additional spectrum suitable for mobile broadband services in its Sprint-Nextel Order and explained that the 2.5 GHz band that is the focus of respondents’ attention “does not appear to be a uniquely suitable input for any specific market.”<sup>56</sup> In discussing mobile and fixed wireless broadband services, the FCC noted that:

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51. FCC, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Sixth Report, June 20, 2001, p. A-5, hereafter 6<sup>th</sup> CMRS Report.

52. 6<sup>th</sup> CMRS Report, p. A-4.

53. 6<sup>th</sup> CMRS Report, pp. A-2 – A-4.

54. 6<sup>th</sup> CMRS Report, p. B-2.

55. For a more general overview of spectrum uses, see also the National Telecommunications and Information Administration’s U.S. Frequency Allocation Chart. <http://www.ntia.doc.gov/osmhome/allochrt.pdf>.

56. Sprint-Nextel Order, ¶151.

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The onset of competitors' needs for additional spectrum generally will align with the arrival of suitable spectrum in future auctions, including those for Advanced Wireless Services (AWS).<sup>57</sup> [...] [S]ubstantial opportunities exist for service providers to develop and offer even higher speed services over numerous spectrum blocks that will become available in the future.<sup>58</sup>

69. The first of these auctions is scheduled to occur in August 2006, when the FCC is auctioning 90 MHz of AWS (1.7 to 2.1 GHz) spectrum. The FCC has stated that this spectrum "can be used to offer a variety of wireless services, including Third Generation ('3G') mobile broadband and advanced wireless services."<sup>59</sup>

70. Various other sources also identify spectrum suitable for wireless broadband services. For example, the research firm NPRG reports that:

Though the entire spectrum is capable of supporting each of these types of wireless communications services, mobile wireless service is provided primarily in the 800 MHz-1.9 GHz range, portable wireless primarily in the 2.4-5.8 GHz range, and fixed wireless primarily in the 10-90 GHz range.<sup>60</sup>

NPRG also notes:

Numerous frequency bands below 6 GHz are used for fixed, portable, and mobile wireless communications. [...] Indeed, with Wi-Fi, WiMax, and pre-WiMax services deployed and in development, broadband wireless is primarily a sub-6 GHz service offering.<sup>61</sup>

71. In addition, companies holding spectrum in the lower and upper 700 MHz and 1.6 GHz ranges are deploying wireless broadband services. For example, Aloha Partners, a holder of "lower 700 MHz" licenses, states that "700 MHz is the optimum spectrum to deliver wireless broadband."<sup>62</sup> Access Spectrum LLC, a holder of "upper

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57. Sprint-Nextel Order, ¶151.

58. Sprint-Nextel Order, ¶156.

59. [http://wireless.fcc.gov/services/index.htm?job=service\\_home&id=aws](http://wireless.fcc.gov/services/index.htm?job=service_home&id=aws)

60. NPRG, Fixed Wireless Carriers Report, 2006, Chapter 1, p. 1.

61. NPRG, Fixed Wireless Carriers Report, 2006, Chapter 3, p. 15.

62. [http://www.flarion.com/new/pr\\_2004/101404.asp](http://www.flarion.com/new/pr_2004/101404.asp).

<http://www.alohapartners.net/townsend.htm>.

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700 MHz” licenses, states that “the Upper and Lower 700 MHz bands [are] particularly desirable for broadband applications...”<sup>63</sup> Crown Castle, a holder of 1.6 GHz spectrum with a national footprint, has reported that it is testing a network broadcasting digital video to handsets.<sup>64</sup>

72. As mentioned by the FCC, unlicensed spectrum also is used in the provision of broadband wireless services (e.g., T-Mobile “Hot Spots”) and has the prospect of being more fully utilized. In a working paper, FCC staff summarized comments from Microsoft and others submitted to the FCC’s Spectrum Policy Task Force highlighting the potential use of unlicensed spectrum for broadband wireless services.

The Spectrum Policy Task Force sought comment from the industry about whether additional spectrum should be set aside for unlicensed use. [...] Commenters generally expressed support for the allocation of additional unlicensed spectrum. For example, Microsoft argued that [unlicensed spectrum] could be used to supplement cable and DSL services and could “jump-start” the creation of competitive wireless broadband networks in the U.S. Similar support for additional unlicensed spectrum was expressed by Cingular, Cisco Systems, Inc., the Consumer Federation of America, Ericsson, Information Technology Industry Council, Motorola, Proxim, Rural Telecommunications Group, Wireless Ethernet Compatibility Alliance and others. In their joint reply comments, the New America Foundation, Consumers Union, *et al*, state that there is tremendous support in the record for the allocation of additional frequency bands of spectrum for unlicensed use, particularly to facilitate broadband wireless networking.<sup>65</sup>

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63. “Implementing the Vision for 700 MHz: Rebanding the Upper 700 MHz A and B Blocks for Next-Generation Wireless Broadband,” White Paper submitted by Access Spectrum et al to the FCC in WT Docket No. 05-157, p. App. 3, available at <http://www.accessspectrum.com/images/ASLWhitePaper080305.pdf>.

64. Crown Castle International Corp, 10-K, December 31, 2005, p. 9.

65. Kenneth R. Carter, Ahmed Lahjouji and Neal McNeil, “Unlicensed and Unshackled: A Joint OSP-OET White Paper on Unlicensed Devices and Their Regulatory Issues,” FCC OSP Working Paper Series 39, May 2003, p. 48.

**3. Spectrum held by AT&T, BellSouth and Cingular**

73. AT&T and BellSouth hold licenses in certain geographic areas for portions of certain spectrum bands that can be used to provide wireless broadband services. These include:

- **WCS:** AT&T and BellSouth each hold licenses in the WCS spectrum in a range of areas and there is limited overlap in the firms' geographic coverage. BellSouth holds WCS licenses in certain areas in AT&T's ILEC territory (including parts of Southern California, Missouri, Wisconsin, and Texas). None of AT&T's WCS licenses are in BellSouth's territory. Additionally, none of AT&T's WCS licenses overlap BellSouth's BRS/EBS spectrum (discussed below) with the exception of one license that covers a portion of one county in Indiana. Post-transaction, AT&T will have a near national WCS footprint, although it will not have spectrum in several significant areas including New York, Philadelphia, Dallas, San Antonio and surrounding areas. The average bandwidth held by AT&T and BellSouth in the 428 areas in which they have WCS spectrum (calculated as a population-weighted average across areas) is 15.4 MHz.
- **BRS/EBS:** BellSouth holds BRS/EBS licenses or leases in 34 areas that are exclusively within its nine-state territory, with the exception of parts of southern Illinois and Indiana. AT&T does not hold BRS/EBS licenses. The (population-weighted) average bandwidth held by BellSouth in these areas is roughly 90 MHz.

- **Cellular / PCS:** Cingular has a near-national cellular/PCS footprint. The (population-weighted) average bandwidth held by Cingular in the PCS and cellular spectrum bands is 48 MHz.

**C. THE TRANSACTION DOES NOT INCREASE AT&T’S ABILITY TO FORECLOSE ENTRY INTO THE PROVISION OF MOBILE OR FIXED WIRELESS SERVICES IN ANY GEOGRAPHIC AREA.**

74. As discussed above, respondents claim that the transaction increases the ability of AT&T to exclude potential entrants into the provision of mobile or fixed broadband services by “warehousing” spectrum capable of providing wireless broadband services.

75. Moreover, as noted above, there is virtually no geographic overlap in the holdings by AT&T and BellSouth of WCS or BRS spectrum. Thus, the transaction does not increase the merged firm’s ability to foreclose potential entrants by “warehousing” unused spectrum and denying it to potential entrants. That is, with only very limited (and competitively insignificant) exceptions there will be no increase in any given geographic area in the amount of unused spectrum held by the merged firm, and thus no change in the availability of wireless broadband spectrum to compete with the Applicants in any area.

**D. THE MERGED FIRM ACCOUNTS FOR A MODEST NATIONWIDE SHARE OF SPECTRUM SUITABLE FOR THE PROVISION OF MOBILE AND FIXED BROADBAND SERVICES.**

76. The merged firm will account for only a modest share of spectrum available for fixed or mobile broadband services. Using the bands of spectrum identified by various parties as available for wireless broadband services, we calculate AT&T’s post-merger spectrum share in a variety of ways, alternatively including or excluding

unlicensed spectrum, including and excluding spectrum that will be auctioned in the future, and including or excluding cellular/PCS spectrum. These shares are sufficiently low to indicate there should be no significant concern that AT&T will be able to harm competition based on access to spectrum.

77. While these shares are indicative of AT&T average post-merger holdings, calculations such as these should be considered as approximate because of complications due to the geographic differences in territories covered by license areas across spectrum bands, differences in technical characteristics of spectrum bands suitable for mobile and/or fixed broadband services, and variation in spectrum shares across areas. The methodology used to calculate these approximate shares is summarized in Appendix 2.

**Table 3.2**

**AT&T's Approximate Post-Transaction Share of Spectrum  
Identified as Suitable for Mobile and/or Fixed Broadband Services**

(Populated Weighted Average Share in Areas in which  
AT&T or BellSouth has WCS or BRS Spectrum)

Spectrum Status	CMRS Excluded	CMRS Included
Currently licensed	10.3 %	16.1%
Currently licensed, auction scheduled or expected	5.8 %	11.2%
Currently licensed, auction scheduled or expected, unlicensed	2.4%	5.6%

Note: Based on spectrum bands reported in Table 3.1.

78. Table 3.2 first shows AT&T's share of currently licensed spectrum identified by various parties as available to potential or nascent entrants and suitable for the provision of mobile or fixed broadband services. The figures reflect population-weighted averages across the 428 areas in which AT&T will have spectrum.

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- If we focus on currently licensed spectrum, AT&T would have roughly 10 to 16 percent of available spectrum, depending on whether CMRS spectrum is included;
- If we account for expected future auctions then AT&T's current share of identified spectrum is roughly 6 to 11 percent.
- Finally, accounting for unlicensed spectrum, AT&T's share would range from 2 to 6 percent.

**E. THE MERGED FIRM FACES SUBSTANTIAL ACTUAL COMPETITION IN THE PROVISION OF BROADBAND SERVICES, ILLUSTRATING THAT IT HAS NO ABILITY TO HARM COMPETITION BY WAREHOUSING SPECTRUM.**

79. Respondents argue that the merger will increase AT&T's incentive to warehouse spectrum in order to block competition for its DSL and mobile broadband services. However, the DSL and mobile broadband services provided by the post-transaction AT&T will continue to face significant competition in the provision of both landline and mobile broadband services as well as significant competition from potential entrants planning to use other spectrum. This competition arises from rivals who are able to use spectrum (and landline bandwidth) that would not be controlled by the merged firm. Therefore, the merged firm cannot use a warehousing strategy to harm competition.

**1. Post-transaction AT&T will face substantial actual competition in the provision of mobile broadband services.**

80. There is no basis to conclude that "warehousing" spectrum would be an effective mechanism for preventing competition for the new AT&T's mobile broadband services. As discussed above, mobile broadband services are currently provided by Cingular, Sprint Nextel, Verizon Wireless and Alltel, with T-Mobile expected to deploy

such services. T-Mobile currently provides non-mobile wireless broadband services over unlicensed spectrum through “hot spots.” As noted above, Verizon Wireless and Sprint both have mobile broadband networks that are now more widely deployed than Cingular’s. These competitors do not need to rely on spectrum that the merged firm would control. Under these circumstances, any attempt to warehouse spectrum in order to protect landline or wireless services from competition will instead result in the loss of customers to rival carriers.

**2. Post-transaction AT&T will face substantial actual competition in the provision of landline broadband services.**

81. There is also no basis to conclude that “warehousing” spectrum would be an effective mechanism for preventing competition for AT&T’s DSL services. These services already face significant competition from cable modem services in addition to competition from mobile broadband services and potential and nascent competition from other wireless broadband suppliers, including community-wide WiFi networks.<sup>66</sup> Today, less than 40 percent of the 42.8 million landline broadband customers in the United States obtain DSL service, with the vast majority of the others obtaining cable modem services.<sup>67</sup>

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66. See, for example, San Francisco Chronicle, “Santa Clara ready for wireless MetroFi to finish one of largest Wi-Fi networks in nation,” April 19, 2004; CNN Money.com, “Google bids to take San Francisco Wifi,” [http://money.cnn.com/2005/10/03/technology/google\\_wifi/](http://money.cnn.com/2005/10/03/technology/google_wifi/); and Washington Technology, “Philadelphia Broadcasts Change,” [http://www.washingtontechnology.com/news/20\\_9/statelocal/26152-1.html](http://www.washingtontechnology.com/news/20_9/statelocal/26152-1.html).

67. FCC, “High-Speed Services for Internet Access: Status as of June 30, 2005,” April 2006, Table 1. Roughly another 1.0 million obtain broadband Internet access through satellite, wireless, or “other” technologies.

**3. Post-transaction AT&T will face substantial competition from nascent and potential competitors with large spectrum holdings.**

82. Finally, there is no basis to conclude that “warehousing” spectrum would be an effective mechanism for preventing competition from nascent and potential competitors, some of which already have large spectrum holdings.

- Sprint Nextel has a near nationwide footprint of BRS/EBS spectrum that averages more than 80 MHz. Sprint and Nextel explained in their merger proceedings that they “envision using BRS-EBS spectrum to provide wireless interactive multimedia services that – unlike CMRS – will be video-optimized, data-centric and focused principally on stationary and portable consumer electronic and computing-oriented devices and hardware.”<sup>68</sup> The FCC concluded that Sprint-Nextel’s combined BRS/EBS spectrum, which is larger than the post-transaction AT&T’s, does not give it a unique or excessive competitive advantage in providing wireless broadband services.<sup>69</sup> As mentioned above, Sprint also is currently a provider of broadband wireless services.
- Clearwire claims that it “is among the largest holders of spectrum in the 2.5 GHz BRS/EBS spectrum through either license or lease and is seeking to acquire more spectrum in this band.”<sup>70</sup> Clearwire’s SEC filings state that it is the second largest holder of BRS/EBS spectrum, and that its spectrum covers roughly 160 million people.<sup>71</sup>

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68. Sprint-Nextel Joint Opposition to Petition to Deny and Reply to Comments, April 11, 2005, pp. 30-31.

69. Sprint-Nextel Order, ¶147, ¶151.

70. Clearwire Comments, p. 5.

71. Clearwire S-1, May 11, 2006, p. 44.

83. Again, the presence of these potential and/or nascent rivals means that an attempt by AT&T to warehouse spectrum will result in the loss of customers to rival carriers, not protection of existing landline or wireless services, and thus implies that such a strategy would not be undertaken.

**CONCLUSION – WIRELESS BROADBAND**

84. The transaction raises no concerns regarding harm to competition in the provision of broadband wireless services. There is no support for respondent's argument that the transaction would increase AT&T's ability to foreclose entry into the provision of broadband wireless services. In addition, the merged firm will account for a modest nationwide share of spectrum suitable for broadband wireless services and thus does not have ability to harm competition by denying access to spectrum.

**IV. RESPONDENTS FAIL TO RECOGNIZE THAT CHANGES IN THE COMPETITIVE ENVIRONMENT REDUCE OR ELIMINATE CONCERNS IDENTIFIED BY THE FCC IN THE SBC/AMERITECH TRANSACTION.**

**A. OVERVIEW OF RESPONDENTS' COMMENTS<sup>72</sup>**

85. Various respondents, including Access Point, Cbeyond and Time Warner, argue that the proposed transaction raise the same set of competitive concerns identified by the FCC in its review of the 1999 SBC/Ameritech transaction.<sup>73</sup> These concerns center on claims that the proposed transaction harms competition by:

- increasing the size of AT&T ILEC footprint which in turn increases its incentive to discriminate against rival CLECs;
- reducing the number of independent ILECs and eliminating a benchmark that regulators can use to evaluate ILEC performance; and
- eliminating a significant potential competitor in the provision of mass market services.

**B. OVERVIEW OF CONCLUSIONS FROM OUR INITIAL DECLARATION**

86. The benchmarking, discrimination, and potential competition concerns expressed by respondents mirror those expressed by the FCC with respect to the SBC/Ameritech merger in 1999. These issues were anticipated and addressed in our March 29 declaration.<sup>74</sup>

87. With respect to discrimination concerns, we concluded that:

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72. These comments are more fully summarized and cited in Appendix 1.

73. Access Point Comments, pp. 8, 15, and 21; Cbeyond Comments, pp. 35, 82 and 89-90. TWTC Comments, pp. 16, 44, 50.

74. Our March 29, 2006 declaration addressed “footprint”-related discrimination concerns at ¶¶ 122-131; benchmarking concerns are addressed at ¶¶ 132-140; and potential competition concerns are addressed at ¶¶ 141-145.

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- The increased competition faced by ILECs in the provision of both mass market and wholesale services since 1999 means that consumers frequently can turn to another carrier that does not rely on ILEC facilities to provide service, reducing both ILECs' incentive and ability to harm competition through discriminating against rival carriers.
  - Changes in the competitive environment further limit ILECs incentive and ability to engage in technical discrimination because rival carriers rely on ILEC-provided services to a more limited degree than in the past.
88. With respect to benchmarking concerns, we concluded that:
- The increase in competition faced by ILECs since 1999 reduces concerns that the loss of a potential regulatory benchmark will adversely affect competition.
  - The development, implementation and standardization of a variety of measures of ILEC performance since 1999 have improved the ability of CLECs and regulators to monitor ILEC performance. This again implies that the loss of a potential regulatory benchmark is of less competitive significance than in the past.
89. With respect to potential competition, we concluded that:
- There is no basis to find that BellSouth was likely to enter into the provision of mass market services or to expand materially its provision of retail business services in AT&T's territory.

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- We also showed that it is unlikely that AT&T would reverse its decision to cease actively marketing mass market services in BellSouth's territory or other areas outside of its ILEC footprint.

**C. RESPONDENTS PRESENT NO ANALYSIS OR EVIDENCE TO SUPPORT THEIR CLAIM THAT THE PROPOSED MERGER WOULD INCREASE INCENTIVES TO DISCRIMINATE GIVEN THE CHANGES IN COMPETITIVE CONDITIONS SINCE 1999.**

90. While respondents reiterate the FCC's 1999 concerns in its SBC/Ameritech Order regarding discrimination and benchmarking, no respondent presents any empirical (or even anecdotal) evidence to support claims that the proposed merger would adversely affect competition in these ways.

91. Respondents also fail to address the effect on ILECs' incentive and ability to discriminate resulting from: (i) the dramatic changes in the competitive environment in the telecommunications industry; and (ii) ILEC success in meeting the market opening obligations established under the 1996 Telecommunications Act and enforced by the FCC.<sup>75</sup> These fundamental changes in industry conditions necessarily mitigate against the discrimination concerns discussed by the FCC in 1999.

92. Access Point, however, is highly critical of the claim in our March 29, 2006 declaration that changes in competition "reduce the incentive and ability of ILECs to engage in the type of discrimination that was the focus of the FCC's 1999 concerns."<sup>76</sup> Access Point claims that we "do not ... provide any data or detailed information to back up these claims."<sup>77</sup>

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75. Qwest Omaha Forbearance Order ¶¶ 52-53, acknowledging that ILEC have met their requirements under Sections 251 and 271 of the 1996 Telecommunications Act.

76. Access Point Comments, p. 26, Carlton/Sider Declaration ¶ 128.

77. Access Point Comments, p. 26.

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93. However, changes in competitive conditions are discussed at ¶¶ 24-38 in our declaration which reviews and updates the FCC's own conclusions in its SBC/AT&T Order. As we note in the discussion of mass market services in our declaration, the FCC concluded:

SBC faces competition from a variety of providers of retail mass market services. These competitors include not only wireline competitive LECs and long distance service providers but also, to at least some extent, facilities-based and over-the-top VoIP providers and wireless carriers.<sup>78</sup>

And with respect to business services the FCC concluded:

There are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors.<sup>79</sup>

94. The FCC's conclusions in the SBC/AT&T Order are generally consistent with the analyses of competitive conditions discussed in our declarations to the FCC in support of the SBC/AT&T merger.<sup>80</sup>

95. Access Point also chides us (at length) for defending our published econometric analysis showing that prior ILEC mergers did not adversely affect CLEC entry.<sup>81</sup> Nonetheless, they fail to identify any academic studies that provide empirical support for their claim. (We also are unaware of any such studies.)

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78. SBC/AT&T Order, ¶ 100.

79. SBC/AT&T Order, ¶ 64.

80. See Carlton/Sider SBC/AT&T Declaration, February 21, 2005 (¶¶ 17-29) and Carlton/Sider SBC/AT&T Reply Declaration, May 9, 2005 (¶¶ 17-62). Our reply declaration focused on special access competition issues. The FCC concluded that the transaction did not adversely affect competition in the provision of Type II special access services and ordered limited remedies with respect to Type I services.

81. This analysis was submitted to the FCC in the course of its evaluation of the SBC/Ameritech merger and an expanded and updated version of the analysis was subsequently included in a 2005 volume on the use of econometrics in legal proceedings published by the ABA Section of Antitrust Law.

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96. Finally, respondents have not attempted to reconcile the contradictory assumptions that underlie their claim. As discussed in our prior declaration, respondents claims are based on the conflicting assumptions that (i) CLECs recognize the incremental discrimination resulting from ILEC mergers and respond to it by scaling back their investments and network deployment; and (ii) regulators do not recognize that ILECs have increased their discriminatory activity (and are not informed about it by CLECs).

97. This tension is more pronounced than in 1999 due to increased availability of data on ILEC performance in providing wholesale services. Whatever the merits of the “footprint” analysis as a matter of theory, respondents need to explain how the two required assumptions of the footprint theory can co-exist today before they can credibly claim that any merger-related change in incentives is of competitive significance.

98. Time Warner Telecom’s comments report difficulties it has faced in obtaining certain inputs from ILECs including AT&T. We have not attempted to evaluate the detailed factual basis for this claim. However, even if one assumes that TWTC was the victim of technical discrimination, this experience still would provide no basis to conclude that ILEC mergers result in any increase in ILECs’ incentives to discriminate. If technical discrimination by ILEC against CLEC is a concern, it is appropriately addressed through the regulatory process, not through a merger review.

**D. RESPONDENTS FAIL TO RECOGNIZE THAT CHANGES IN COMPETITIVE CONDITIONS SINCE 1999 HAVE REDUCED COMPETITIVE CONCERNS RELATING TO THE LOSS OF AN ILEC REGULATORY BENCHMARK.**

**1. Respondents ignore the development of new systems for monitoring ILEC performance developed since 1999.**

99. Respondents' claims that loss of a regulatory benchmark will harm competition are supported primarily by extensive citation to the FCC's 1999 SBC-Ameritech Order. As in their analysis of the impact of the proposed merger on discrimination incentives, respondents fail to address the increased importance of competition in constraining ILEC behavior, which implies that CLECs are less dependent than in the past on regulatory monitoring to deter such activities.<sup>82</sup>

100. Respondents also do not address (or even acknowledge) the impact of the performance monitoring systems developed since 1999, which affect the competitive significance of the loss of an ILEC regulatory benchmark. Development and implementation of a variety of standard measures of ILEC performance since 1999 have improved the ability of CLECs and regulators to monitor ILEC performance.

101. As discussed in our March 29, 2006 declaration and detailed in the accompanying declaration of William L. Dysart, Ronald A. Watkins and Brett Kissel of AT&T, and Ronald Pate of BellSouth, a wide variety of performance metrics have become available to both CLECs and regulators for gauging an ILEC's performance in providing wholesale services. These performance metrics have been adopted in the context of "performance plans" in each state in AT&T's and BellSouth's ILEC footprints and establish fines if the firms do not meet the specified standards for certain metrics.<sup>83</sup>

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82. Access Point Comments, pp. 13-19.

83. Dysart, Watkins and Kissel Reply Declaration, Section III.A; Pate Declaration, Section II.

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102. Dysart et. al. also note that performance metrics are incorporated into wholesale agreements between AT&T and certain customers. For example, AT&T's Local Wholesale Complete (LWC) plan includes a Service Assurance Plan, which provides performance standards for six performance metrics.<sup>84</sup> Under the Service Assurance Plan, AT&T is liable for payments or service credits to customers for which it fails to meet agreed upon performance standards.<sup>85</sup> Other customers have negotiated customized Service Assurance Plans with AT&T.<sup>86</sup> Similar types of performance guarantees and penalty provisions for failing to meet performance criteria are also incorporated into customized special access contracts between AT&T and its customers.

103. Similarly, Pate notes that BellSouth's special access tariffs incorporate performance metrics, such as the Service Assurance Warranty and Service Installation Guarantee, as well as service level commitments in wholesale agreements between BellSouth and certain customers. Like AT&T, BellSouth is liable for payments or service credits to customers for which it fails to meet agreed upon performance standards.<sup>87</sup>

104. The performance metrics reported by AT&T and BellSouth and monitored by regulators and CLECs routinely compare service provided by ILECs to (i) wholesale customers and (ii) the ILEC's own downstream affiliates. The widespread use of this internal benchmark indicates that the loss of an ILEC benchmark is not likely to result in

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84. Dysart, Watkins and Kissel Reply Declaration, Section III.A. These metrics include OSS Interface Availability; Mechanized Order Completion Notification Timeliness; Percent AT&T-Caused Missed Due Dates; Installation Quality; Repeat Trouble Report Rate; and Out of Service Within 48 Hours.

85. Dysart, Watkins and Kissel Reply Declaration, Section III.A.

86. Dysart, Watkins and Kissel Reply Declaration, Section III.A.

87. Pate Reply Declaration, Section II.B.

material harm to the ability of regulators or CLECs to evaluate ILEC performance. We understand that performance metrics reported by AT&T under the FCC's Non-Accounting Safeguards Order track AT&T's performance separately for non-affiliates and two separate categories of affiliates.<sup>88</sup> Similarly, Pate discusses BellSouth's continued reporting of parity metrics and its recent audits comparing metrics for affiliates and non-affiliates.<sup>89</sup>

**2. There is no basis for respondents claim that ILECs will coordinate to withhold information from regulators as a result of the proposed merger.**

105. Respondents also claim that the remaining ILECs will be more likely to conceal information from regulators or to coordinate with respect to setting performance benchmarks as a result of the merger. Again, respondents present no evidence to support this claim.

106. In respondents' view, coordination among ILECs to conceal performance information from regulators would reflect an attempt to disadvantage rival CLECs. As such, such an action would, in effect, reflect a decision by ILECs not to compete aggressively out of region. Respondents claims are similar to claims made by respondents in the SBC/AT&T proceedings and fail for many of the same reasons.<sup>90</sup>

107. A decision by AT&T and Verizon not to compete aggressively for out-of-region business customers would be very costly. Due, in part, to recent mergers both AT&T and Verizon have extensive facilities and a large base of customers outside of their ILEC footprint. Any strategy not to compete aggressively out of region would be

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88. Dysart, Watkins and Kissel Reply Declaration, Section III.A.

89. Pate Reply Declaration, Sections III.A., IV.

90. Our response to mutual forbearance claims in the SBC/AT&T proceedings are discussed in Carlton/Sider Reply in SBC/AT&T, ¶¶ 78-88.

very costly due to (i) the fixed nature of many network costs and (ii) AT&T's extensive activities outside of its ILEC footprint.

108. There is no reason to expect that the merged firm would find it in its interest not to compete aggressively outside of AT&T's ILEC region and thus no reason to expect that it would cooperate with rivals to withhold information from regulators. To the contrary, given their in-region experience in providing service to CLECs and affiliates, ILECs are likely to be able to rapidly detect discrimination by incumbents and thus discourage any such attempts.

**E. THERE IS NO BASIS FOR RESPONDENTS' CONCERNS THAT THE TRANSACTION ELIMINATES POTENTIAL COMPETITION GIVEN THE CHANGES IN COMPETITIVE CONDITIONS SINCE 1999.**

109. As noted above, certain respondents echo the FCC's concerns expressed in its SBC/Ameritech Order that ILEC mergers result in the loss of potential competition in the provision of mass market services. As discussed in our March 29, 2006 report (¶¶ 41-45), there are substantial changes in circumstances since 1999 with respect to the likelihood of out-of-region ILEC entry into mass market services. Respondents do not address these changes or the analysis presented in our prior report.

110. In its SBC/Ameritech Order, the FCC concluded that Ameritech would have entered into the provision of local service in the St. Louis area. St. Louis is adjacent to what had been the Ameritech service area and Ameritech had an existing base of wireless customers as well as name recognition in the area. Moreover, the FCC found evidence that Ameritech initially planned to serve customers through resale of SBC service and ultimately migrate these customers to facilities-based services.<sup>91</sup>

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91. SBC/Ameritech Order, ¶81.

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111. In contrast, as discussed in our March 29, 2006 declaration, there is no basis to conclude that BellSouth is a potential provider in the provision of mass market services in AT&T territory. BellSouth has stated it has no plans to deploy mass market service outside its territory.<sup>92</sup> As we discussed, AT&T's decision reflects its recognition that a resale-based, out-of-region strategy is highly unlikely to be undertaken today due to (i) the rapid growth of intermodal competition from cable firms and wireless services; and (ii) legal and regulatory changes since 1999 that have scaled back ILECs' obligation to offer unbundled network elements at subsidized rates.

112. These legal and regulatory changes were, in part, the basis for AT&T's decision to cease actively marketing mass market services.<sup>93</sup> Thus, there is no basis for Access Point's claim that AT&T remains a significant potential competitor in BellSouth's region or that, in the absence of the proposed transaction, would undertake new efforts to provide mass market services in BellSouth's region. Similarly, these changes make BellSouth unlikely to be a significant potential competitor in AT&T's region.

**CONCLUSION – FCC'S 1999 AMERITECH CONCERNS**

113. Respondents present no analysis or evidence to support their claim that, by increasing AT&T's geographic "footprint," the proposed merger would increase its incentive to discriminate against downstream rivals, in light of the changes in competitive conditions since the FCC expressed such concerns in 1999. Respondents also fail to recognize that changes in competitive conditions have mitigated concerns about harm to

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92. See Boniface Declaration, ¶35.

93. We note that in its SBC/AT&T Order, the FCC noted that "there is no indication that, absent the merger, AT&T would reverse this decision." SBC/AT&T Order, ¶103.

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competition resulting from the loss of an ILEC benchmark. Finally, respondents fail to recognize the current state of competition in the industry provides no basis to conclude that the proposed transaction eliminates a significant potential competitor.

**V. RESPONDENTS MISCHARACTERIZE THE IMPACT OF THE PROPOSED TRANSACTION ON RETAIL MASS MARKET AND BUSINESS SERVICES.**

**A. OVERVIEW OF RESPONDENTS' COMMENTS<sup>94</sup>**

114. Certain respondents argue that the proposed transaction will harm competition in the provision of retail services for mass market and business customers. Many of these claims have been previously addressed in the FCC's SBC/AT&T Opinion and in our prior declaration. Therefore, we do not respond here to each of these claims.<sup>95</sup> This section instead responds to new arguments made by respondents, including claims (i) that the merger will reduce competition between wireless and wireline services;<sup>96</sup> and (ii) that services that use special access services provided by ILEC and intermodal competitors are not significant participants in providing business services.<sup>97</sup>

**B. OVERVIEW OF CONCLUSIONS FROM OUR INITIAL DECLARATION**

115. With respect to mass market services, we concluded that the proposed transaction raised no significant competitive concerns for the reasons identified by the FCC in its SBC/AT&T Order and discussed in our declarations in that proceeding. These reasons include the recognition that AT&T no longer constrains pricing of mass market

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94. These comments are more fully summarized and cited in Appendix 1.

95. For example, the Declaration of Susan M. Baldwin and Sarah M. Bosley on behalf of the New Jersey Division of the Ratepayer Advocate (June 5, 2006) reiterates many of the competitive concerns expressed by Ms. Baldwin before the FCC and the New Jersey Board of Public Utilities (NJBPU) with respect to the SBC/AT&T merger (Docket No. TM05020168, May 4, 2005 and June 1, 2005). In addition to our declarations before the FCC, we submitted testimony in the New Jersey proceedings on May 4, 2005 and June 10, 2005 that directly addressed many of the concerns expressed by Ms. Baldwin regarding the SBC/AT&T merger.

96. See, for example, Cbeyond Comments, p. 76 and Access Point Comments, p. 45.

97. See, for example, Cbeyond Comments, pp. 57-58 and Access Point Comments, p. 45.

services provided by ILECs due to AT&T's decision two years ago to cease active marketing of its traditional services to mass market customers.

116. With respect to business services, we concluded that the proposed transaction raises no significant competitive concerns with respect to either large or small business customers for the reasons identified by the FCC in the SBC/AT&T Order and discussed in our declarations in that proceeding. More specifically, the FCC recognized that there are "numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors."<sup>98</sup> The FCC also recognized that the sophistication of business customers and complexity of business services make it unlikely that the proposed transaction would adversely affect competition.

**C. INTEGRATION OF CINGULAR WITH AT&T WILL NOT  
ADVERSELY AFFECT COMPETITION BETWEEN WIRELESS  
AND LANDLINE SERVICES.**

117. The FCC recognized in the SBC/AT&T Order that, at least for certain customers, mobile and landline services are substitutes.<sup>99</sup> However, this conclusion does not in turn imply, as Cbeyond suggests, that prices for either landline or wireless services are affected by BellSouth's ownership interest in Cingular. Nor would it imply that full integration between Cingular and its parents would affect prices for either service.

118. More specifically, there are a number of other market participants, and these firms must be considered in evaluating the competitive significance of integration between ILECs and wireless carriers. These include cable firms and over-the-top VoIP

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98. SBC/AT&T Order, ¶ 64.

99. SBC/AT&T Order, ¶ 90.

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providers that are actively competing to attract ILEC customers as well as national and regional wireless carriers.

119. Respondents present no evidence that vertical integration between ILECs and wireless carriers affects market prices for either wireless or landline services.<sup>100</sup> For example, both Cingular and Verizon Wireless are owned, at least in part, by ILECs. In addition, Sprint until recently had ILEC operations and there are numerous past examples of ILECs owning wireless carriers. Nonetheless, we are not aware of any evidence that integration led to higher prices for wireless services. In the absence of such evidence, there is no basis to conclude that full integration of AT&T with Cingular would have any adverse effect on the price of either wireless or landline services.

120. It is important to note that the FCC has on several recent occasions reviewed competitive conditions in the wireless industry, and most recently concluded in 2005 that the merger of Sprint and Nextel would not adversely affect competition.<sup>101</sup> Additionally, the FCC's CMRS Competition Reports have found that the wireless market is competitive.<sup>102</sup>

121. There is no basis to conclude that integration would have any adverse impact on wireline or wireless prices given current competitive circumstances. Any attempt by AT&T to raise the price of Cingular services would likely have the primary effect of driving wireless customers to other wireless carriers. Since the resulting loss in wireless profits is likely to be greater than the profits generated by the subset of

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100. As discussed in Section III above, respondents also present no evidence to support their related claim that ILECs that provide wireless service discriminate against rival wireless carriers.

101. Sprint-Nextel Order, ¶ 3.

102. See, e.g., the 10<sup>th</sup> CMRS Competition Report, which found that the wireless market "continues to behave and perform in a competitive manner." ¶ 2.

customers that drop Cingular service in response to the price increase that are then recaptured by AT&T's landline service, it is unlikely that the merged firm would raise the price of Cingular service.

**D. RESPONDENTS MISCHARACTERIZE THE EXTENT OF COMPETITION FOR BUSINESS CUSTOMERS.**

122. In considering the impact of the proposed transaction on retail business customers, it is important to consider all sources of competition. As noted above and discussed in our March 29, 2006 declaration (as well as our SBC/AT&T declaration), a wide variety of firms compete for business customers, including CLECs, interexchange carriers, cable companies, other ILECs, equipment vendors, systems integrators, and others.

123. As noted above, respondents suggest that suppliers of business services using VoIP (or other technologies) are not significant competitors if they access customers through ILEC-provided special access facilities. ILEC pricing of special access services is subject to price regulation unless the FCC has determined that competitive conditions warrant relaxation of pricing rules. Even in areas where price regulation is relaxed, ILECs remain subject to non-discrimination requirements that prevent them from selectively raising price in order to extract the full value of services provided to particular downstream customers. (Any concerns regarding the criteria used by the FCC for relaxing pricing regulation are not specific to the proposed merger and are appropriately considered outside of the context of a merger review.) Under these circumstances, there is no basis for respondents' concern that firms using special access services should not be considered as competitors in the provision of retail services.

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124. More generally, respondents fail adequately to distinguish the roles of special access and downstream services in evaluating competition for business customers. Much of their complaint about business services appears instead to reflect concerns about the competitiveness of special access services, which are inputs used to supply downstream business services, not the competitiveness of downstream business services themselves.

125. However, as discussed above, application of the DOJ's and FCC's criteria from the SBC/AT&T transaction indicate that the proposed transaction creates a potential competitive concern as to Type I special access services for only a small number of buildings. These criteria also imply that the proposed transaction will not adversely affect competition in the provision of Type II services.

126. With respect to business services provided using either ILEC special access or through "intermodal" competition, available evidence continues to support the FCC's prior conclusion that there are a wide variety of competitors serving business customers. As noted in our March 29, 2006 declaration, Deutsche Bank reported in December 2005 that:

[T]he market still contains a robust group of demand-hungry competitors in the long-haul space and among systems integrators, such as Cisco, IBM, EDS, Sprint, [Level 3] and a re-invigorated [Qwest].<sup>103</sup>

127. More recently, a Yankee Group report on CLEC competition for business customers concluded:

CLECs have exhibited a marketing presence and product development resurgence. Their continued focus on customer satisfaction, aggressive sales

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103. Deutsche Bank, "2006 Preview: Out with the old, in with the new," December 19, 2005, p. 16.

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tactics and leading-edge SMB offerings make them worthy adversaries for the more staid ILECs.<sup>104</sup>

Compared to the CLECs, ILECs still have a way to go in improving SMB customer satisfaction scores. CLECs lead ILECs most strongly in SMB's perceptions of local service pricing, resolution of technical issues, timely problem resolution and customer service representative accessibility . . . Historically, CLECs have set the customer satisfaction bar relatively high, which required the ILECs to play catch-up.<sup>105</sup>

[W]e anticipate robust SMB competition from the facilities-based CLECs such as XO and increasingly the multiple system operators (MSOs).<sup>106</sup>

128. In addition, there are a wide variety of intermodal carriers that continue to make significant investments in providing new or enhanced services to business customers. These include cable companies, which analysts expect to continue to expand efforts to serve business customers<sup>107</sup> and VoIP providers such as Skype, which recently announced its new "Skype for Business" service marketed to small businesses.<sup>108</sup> In addition, a variety of carriers are using fixed wireless technology to provide business services, including Access Spectrum, which offers "Exclusive Private Wireless" services that provide voice, data and wireless broadband services.<sup>109</sup>

129. The importance of intermodal competitors is further reflected in signed statements from business customers describing their views of competition and the proposed merger. For example, a variety of those statements highlight VoIP as a

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104. Yankee Group, "How Do SMBs Fare in the CLEC Versus ILEC Matchup?", April 2006, p. 2.

105. Yankee Group, "How Do SMBs Fare in the CLEC Versus ILEC Matchup?", April 2006, p. 5.

106. Yankee Group, "How Do SMBs Fare in the CLEC Versus ILEC Matchup?", April 2006, p. 3.

107. Deutsche Bank, Cable/Satellite Spotlight NCTA Wrap-Up – Business as Usual (April 11, 2006).

108. Skype Press Release, "Skype Unveils Small Business Solution," March 8, 2006 ([http://www.skype.com/company/news/2006/skype\\_smb.html](http://www.skype.com/company/news/2006/skype_smb.html)).

109. [http://www.accessspectrum.com/7\\_1.html](http://www.accessspectrum.com/7_1.html).

competitive alternative to these business customers. These include letters from the Los Angeles Times and 7-Eleven, Inc. citing their use of certain VoIP services and a letter from Marriott International highlighting Skype, Yahoo, VoIP and cable providers as potential alternative suppliers.

**CONCLUSION -- RETAIL BUSINESS AND MASS MARKET SERVICES**

130. Respondents provide no support for their claim that that increased vertical integration between Cingular and AT&T would increase prices for wireless or landline services. Competition from cable firms, VoIP providers and rival wireless carriers, as well as other categories of suppliers of business services, implies that attempts to raise price would simply drive customers to rival carriers. In addition, there is no economic basis for respondents' claim that VoIP and other services that make use of special access services provided by ILECs are not significant competitors. This claim appears to reflect respondents' failure to distinguish the competitive effects of the proposed merger on business services and special access, which is an input used in the provision of business services. There will continue to be a diverse set of providers of business services following completion of the proposed transaction.

**VI. RESPONDENTS INCORRECTLY CLAIM THAT THE IDENTIFIED EFFICIENCIES ARE SPECULATIVE AND ARE NOT MERGER-SPECIFIC.**

**A. OVERVIEW OF RESPONDENTS' COMMENTS<sup>110</sup>**

131. Certain respondents dispute many of the efficiency benefits that AT&T has identified and expects to result from the proposed transaction. Respondents, for example, claim that the synergies are not credible, are not merger specific and would not benefit consumers.<sup>111</sup>

132. This section briefly reviews the conclusions presented in our prior declaration regarding efficiencies from the proposed transaction. We then address respondents' claims based on analysis undertaken since filing our March 2006 declaration. As discussed below, the major results of our on-going analysis are as follows.

- Cost savings that the proposed transaction is expected to generate are large and credible. Consumers are likely to benefit from these cost savings both in the near and longer term.
- Efficiencies from the integration of Cingular, which is jointly owned by AT&T and BellSouth, are properly considered to be merger-specific.
- The proposed transaction will enable the merged firm to be a more effective supplier of wireless services to enterprise customers.
- The proposed transaction is expected to accelerate the deployment of IPTV services in BellSouth's region. Based on conservative assumptions,

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110. These comments are summarized and cited in more detail in Appendix 1.

111. See, generally, Access Point Comments, pp. i, 48 and 51, and Earthlink Comments, June 5, 2006, pp 31 – 32.

this is expected to result in benefits to consumers of more than one billion dollars, which is apart from any benefits that AT&T may gain as a result of this action.

**B. OVERVIEW OF CONCLUSIONS FROM OUR INITIAL DECLARATION**

133. In our March 2006 declaration, we concluded that:<sup>112</sup>

- The merger will result in significant cost savings by integrating the operations of AT&T, BellSouth and Cingular.
- The merger creates a more effective wireless competitor by accelerating the development of new wireless services.
- The merger promises to accelerate the deployment of new services, including the deployment of Internet Protocol Television services (IPTV) in BellSouth's territory.

**C. COST SAVINGS FROM THE PROPOSED TRANSACTION ARE LARGE, CREDIBLE, MERGER-SPECIFIC AND BENEFIT CONSUMERS.**

**1. Overview of estimated synergies**

134. The proposed transaction will, in effect, merge three firms – AT&T, BellSouth and Cingular. While Cingular is owned by AT&T and BellSouth and its actions are overseen and subject to approval by AT&T and BellSouth, its operations are wholly independently of its parents. As summarized in AT&T's Investor Briefing, the merger of AT&T and BellSouth is expected to result in synergies with a net present value

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112. Carlton/Sider Declaration, ¶¶ 40-68.

of \$18.0 billion, with more than 90 percent of this total reflecting cost savings.<sup>113</sup> The cost savings include: *[Begin Confidential]*

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*[End Confidential]*

135. While the synergies expected from the AT&T/BellSouth transaction are large in absolute terms, they are similar to those expected from the SBC/AT&T transaction and are not unreasonably large when considered relative to the combined revenue of the merging firms.

136. Table 6.1 compares the magnitude and source of the synergies expected from the AT&T/BellSouth and SBC/AT&T transactions.<sup>114</sup> When announced, the SBC/AT&T merger was expected to generate savings of approximately \$15 billion, and this estimate has since been raised by about 20 percent to \$18 billion.<sup>115</sup> As the table indicates, relatively more of the savings from the AT&T/BellSouth merger are derived from network integration and IT optimization compared to those expected from the SBC/AT&T transaction.

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113. AT&T Investor Briefing, March 6, 2006.  
([http://att.sbc.com/Common/files/pdf/bls\\_ib.pdf](http://att.sbc.com/Common/files/pdf/bls_ib.pdf) )

114. The table is based on data reported in: Project Olympus, Management Briefing Book, January 29, 2005; Project Mountain, Management Briefing Book, March 3, 2006.

115. AT&T press release, January 31, 2006 (<http://att.sbc.com/gen/press-room?pid=4800 &cdivn=news&newsarticleid=22065>).

**Table 6.1**    *[Begin Confidential]*

*[End Confidential]*

137. Table 6.2 shows that estimated savings are relatively modest when compared to the combined revenue of the merging parties. By the third post-merger year, the SBC/AT&T merger is expected to generate cost savings that are *[Begin Confidential]*

*[End Confidential]*

**Table 6.2**     *[Begin Confidential]*

*[End Confidential]*

**2.     The estimated synergies are credible.**

138.     While Earthlink claims that the estimated cost savings are “self serving,” a variety of factors indicate that AT&T’s estimate of synergies expected to be generated by the AT&T/BellSouth transaction is credible.

139.     Table 6.2 shows that the estimated savings are credible, in part, because they are relatively modest compared to the combined revenue of the merging parties and because they are in line with those estimated in the AT&T/SBC transaction. By the fourth post-merger year, the SBC/AT&T merger is expected to generate cost savings that are *[Begin Confidential]*

*[End Confidential]*

140.     Second, the process of planning the integration of the AT&T, BellSouth and Cingular and estimating the resulting synergies was based on the same basic methodology used by legacy SBC in evaluating its acquisition of legacy AT&T and prior

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mergers. SBC has successfully confronted many of the ILEC integration issues raised in the proposed transaction through its prior merger with Pacific Telesis, Ameritech and SNET. The proposed transaction also raises many of the vertical integration issues that AT&T is addressing in integrating the operations of legacy SBC and legacy AT&T, a process that has now been underway for more than six months.

141. Third, as summarized above, the magnitude and source of the estimated synergies are similar to those estimated for the SBC/AT&T transaction. As noted above, AT&T already has announced that it expects savings from the SBC/AT&T transaction to be 20 percent higher than originally expected.

142. Fourth, AT&T's internal monitoring indicates that, while still in a relatively early stage, the integration of legacy SBC and legacy AT&T is on track with respect to merger integration plans. In its merger integration process, AT&T develops detailed operational plans, establishes milestones for implementing these plans and monitors its success in meeting these milestones. Based on discussion with AT&T, we understand that AT&T's current status reports relating to network integration plans indicate that: *[Begin Confidential]*

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*[End Confidential]*

**3. Cingular-related cost savings are merger-specific.**

143. AT&T expects that the integration of Cingular with AT&T and BellSouth will result in significant cost savings. *[Begin Confidential]*

<sup>116</sup> *[End Confidential]*

144. Cingular operates independently of its parents and has proven to be a highly successful joint venture. AT&T and BellSouth respectively have 60 percent and 40 percent ownership interests, and each parent appoints three members to Cingular's Board of Directors. All key strategic decisions must be approved by the Strategic Review Committee which includes three members from both AT&T and BellSouth.

145. Cingular's success is reflected in the fact that it accounted for 26.5 percent of wireless voice subscribers in the United States in the second quarter of 2005, more than any other wireless carrier.<sup>117</sup> Analysts recognize that BellSouth's ownership of 40 percent of Cingular accounts for a substantial share of its market value.<sup>118</sup>

146. While Cingular is subject to the joint oversight of AT&T and BellSouth, it operates independently. For example:

- Cingular's wireless and backhaul network is designed, constructed and operated by Cingular without operational participation by AT&T or BellSouth;

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116. Project Mountain Management Briefing Book, March 3, 2006, pp. 37-46.

117. Merrill Lynch, "Global Wireless Matrix," September 23, 2005, p. 148.

118. Lehman Brothers, "BellSouth Corp: Cingular Margins Drive EPS Upside," p. 2, July 26, 2005.

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- Cingular maintains sales and service organizations that operate independently of AT&T and BellSouth;
- Cingular maintains corporate operations such as human resources, legal, IT, and administrative staffs which operate independently of AT&T and BellSouth;
- Cingular maintains a product development organization that operates separately from AT&T and BellSouth.

147. The decision by AT&T and BellSouth to operate Cingular independently of its parents has contributed to Cingular's success. As discussed in our initial Declaration, it is widely recognized that conflict between joint venture partners can lead to the instability and dissolution of joint ventures.<sup>119</sup> Such conflicts are often attributable to the fact that actions that maximize the value of the joint venture may not maximize the value of each of its parents. Cingular's success to date indicates that its parents have successfully avoided many of these conflicts.

148. However, Cingular's independence also reduces the likelihood that cost savings expected to result from the merger could be realized in its absence. For example, closer integration between Cingular's network operations with that of one of the joint venture partners would have been likely to raise concerns by the other partner that Cingular's network was not being designed or operated in a manner fully consistent with the joint venture's interest. Similarly, closer integration between Cingular's marketing operations with those of AT&T or BellSouth could raise similar concerns that marketing efforts benefited one parent at the expense of the joint venture.

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119. Carlton/Sider Declaration, ¶¶ 42-48.

149. In sum, Cingular’s operational independence from its parents has contributed to its success but also has interfered with its ability to realize potential cost savings. As discussed above, AT&T estimates that merger-related cost savings from integrating Cingular’s operations are large. If these savings could have been achieved without unduly disrupting Cingular’s operations, AT&T and BellSouth would have been expected to pursue them in the absence of the transaction. That is, the estimated cost savings are appropriately considered to be merger-specific because it is unlikely that they could be achieved in the merger’s absence.

**4. Cost savings from the proposed transaction will benefit consumers.**

150. As noted above, various respondents claim that cost savings expected from the proposed transaction will not benefit from consumers. As a preliminary matter, it is important to note that respondents’ claim is inconsistent with the DOJ’s opinions in the SBC/AT&T and Verizon/MCI mergers, in which it noted that these transactions are expected to generate “exceptionally large merger-specific efficiencies.”<sup>120</sup> The FCC concluded that the transaction generated “benefits, which are likely to flow to consumers [including] efficiencies related to vertical integration, economies of scope and scale, and cost savings.”<sup>121</sup> As described above, the cost savings expected from the AT&T/BellSouth transaction are similar in magnitude and nature to those expected from the merger of SBC/AT&T.

151. The AT&T/BellSouth merger will result in reductions in both fixed and variable costs. As is widely recognized, reductions in “variable costs” typically provide

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120. Department of Justice Press Release, 10/27/05, [http://www.justice.gov/atr/public/press\\_releases/2005/212407.htm](http://www.justice.gov/atr/public/press_releases/2005/212407.htm).

121. SBC/AT&T Order, ¶ 2.

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an immediate incentive for firms to reduce price and thus such cost reductions play an important role in analyzing the competitive effects of a merger on consumers. However, reductions in “fixed costs,” which do not change with short-run changes in output, also are relevant to merger evaluation and can benefit consumers.

152. Reductions in fixed costs reflect real resource savings to society and thus are appropriately considered in evaluating the welfare impact of a proposed transaction. More generally, many costs that are fixed in the short run vary with changes in output over the medium and longer term as firms adjust to changes in the scale of their operation. Reductions in anticipated fixed costs affect investment and pricing decisions because all costs are variable ex ante. That is, reductions in expected fixed costs can result in lower costs associated with undertaking new projects and thus increase the merged firm’s incentive to undertake investments in providing new services. These increased incentives to invest in the development and deployment of new services benefit consumers.

153. The effect of reductions in the costs of undertaking new projects is likely to be of particular importance in the telecommunications industry. This is due to the fact that competition in the telecommunications industry often takes the form of large investments to deploy new network facilities or services over broad geographic areas. The reduction in “fixed costs” such as network capital costs and certain operating expenses would be expected to reduce the fixed costs of deploying new services that make use of network backbone and infrastructure. As this implies, the reduction in expected “fixed” network capital costs and operating costs will make the merged firm a more efficient provider of new services, encourage investments in new services and

benefit consumers. Therefore, the significant savings in both fixed and variable costs resulting from the proposed transaction are likely to benefit consumers and competition.

**D. THE PROPOSED TRANSACTION WILL ENABLE THE MERGED FIRM TO BE A MORE EFFECTIVE SUPPLIER OF WIRELESS SERVICES.**

154. While the Cingular joint venture has been highly successful, the proposed transaction will enable it respond more effectively to a variety of changes in the telecommunications industry. While respondents such as Access Point assume that any coordination problems relating to Cingular can be solved through contract, this section shows that the merger is a superior mechanism for resolving such issues. As a result, the proposed transaction (i) will make Cingular a more effective supplier to enterprise customers; and (ii) will enable Cingular to better respond to the technological convergence between wireless and wireline services.

**1. The proposed transaction will make Cingular a more effective supplier of wireless services to enterprise customers.**

155. As discussed in our initial declaration, AT&T is a leading national provider of services to business and enterprise customers while BellSouth has a more limited and regional base of enterprise customers. AT&T, like legacy SBC, hopes to more effectively integrate wireless services in the bundles of services provided to enterprise customers.

156. Cingular's operational independence limits AT&T's ability to achieve this goal. More specifically, AT&T plans to include wireless services in existing package discount programs to enterprise customers that set discount levels based on the customer's aggregate spending. In addition, AT&T plans to provide enterprise customers with a single brand name (AT&T) and a single point of contact with respect to billing and

service issues. Prior to the SBC/AT&T merger, SBC had expressed similar goals after announcing its intent to expand sales to enterprise customers.

157. *[Begin Confidential]*

<sup>122</sup> *[End Confidential]*

158. This example illustrates the current difficulty of coordinating and balancing the interests of AT&T and BellSouth in providing wireless services to enterprise customers. It is likely that the interests of AT&T and BellSouth with respect to enterprise customers would diverge given the differences in each company's customer mix.

159. The deployment of new wireless services also expands the potential for disagreements between AT&T and BellSouth with respect to enterprise customers. For example, Cingular is currently deploying wireless broadband services that provide laptop computers, smartphones, PDAs and handsets with broadband services including Internet

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122. *[Begin Confidential]*

*[End Confidential]*

access.<sup>123</sup> Businesses are expected to be the principal customers of these services and the number of subscribers to these services is expected to grow rapidly.<sup>124</sup>

160. The views of AT&T and BellSouth with respect to provision of wireless broadband services to enterprise customers are likely to diverge due to differences between the two firms in how they perceive the importance of serving enterprise customers, especially on a national basis, and in the attractiveness of mobile broadband services.

161. The proposed transaction eliminates these potential sources of conflict and thus creates a more effective provider of wireless services to enterprise customers.

**2. The merged firm will be a more effective provider of “converged” services.**

162. As discussed in the Declaration of Christopher Rice, technological changes are blurring the operational distinction between wireless and wireline services. This development creates potential for conflict between AT&T and BellSouth with respect to the development and marketing of new services. The proposed transaction eliminates this potential source of conflict.

163. A variety of firms are in the process of developing and deploying “dual-mode” phones which use WiFi connections when available to access VoIP services and access cellular/PCS networks when such WiFi connections are not available. Such “integrated” services promise to improve the quality of wireless services and to lower the cost to carriers of providing service.

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123. <http://www.cingular.com/midtolarge/network>

124. Wachovia Securities, “AT&T Inc.,” April 19, 2006, p. 2.

164. *[Begin Confidential]*

*[End Confidential]*

- T-Mobile announced that it would launch its dual-mode service in the second half of 2006. This service would access a VoIP network through T-Mobile hot spots and in-home wireless networks.<sup>125</sup>
- Sprint entered into a joint venture with cable companies to provide dual-mode services to consumers.<sup>126</sup> Sprint and its cable company partners are expected to deploy this service on a trial basis in seven metropolitan areas in the second half of 2006.

165. By their nature, dual-mode services create potential conflicts between wireless and landline service providers since different entities are responsible for different portions of the service. These potential conflicts relate to, among other things, selecting which technology to utilize, establishing priorities for deployment of new services, determining which party acts as the customer's point of contact, determining which party has responsibility for service problems, and establishing transfer pricing mechanisms.

166. The proposed merger would streamline the decision-making process relating to the deployment of new services. As noted above, Cingular's current structure

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125. Analyst presentation by Robert Dotson (CEO of T-Mobile USA), January 9, 2006, p. 11.

126. Sprint Press Release November 2, 2005, [http://www2.sprint.com/mr/news\\_dtl.do?id=8961](http://www2.sprint.com/mr/news_dtl.do?id=8961), and Dailywireless.org, "Sprint's Cable Deal", November 2, 2005, <http://dailywireless.org/modules.php?name=News&file=article&sid=4885>.

requires that new services be approved by both AT&T and BellSouth. This procedure can lead to incomplete coordination and delays in decision making.<sup>127</sup>

167. The simplification of the decision-making process resulting from the proposed transaction promises to accelerate the deployment of next-generation features for dual-mode phones. We understand that the next-generation of Cingular dual-mode phones will include the following types of features:

- Network-based address book: Currently, address books maintained on wireless handsets cannot be readily accessed from landline phones. Future versions of dual-mode phones and other IMS-based services will enable subscribers to maintain a single address book that includes contacts for voice calls, email, instant messages, push-to-talk calls, etc.
- Desktop Communications Manager (DCM): The DCM will enable subscribers to manage the next generation of dual-mode phones and other IMS-based services through a web-based graphical user interface. This lets subscribers administer service features such as call routing, call forwarding, call/voice-mail alerting, messaging, call logs, etc.
- In addition, Cingular anticipates that integrated services and dual-mode handsets will enable consumers to access video content through WiFi, mobile broadband services and broadband line connections, and will allow for video sharing between handsets, PCs and IPTV.

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127. The Declaration of Christopher Rice describes the incomplete coordination between Cingular and its parents with respect to deployment of IMS network architecture.

168. In sum, with respect to Cingular, the proposed transaction avoids potential conflicts that can arise by streamlining decision making. As a result, the deployment of new services would be expected to accelerate.

**E. ACCELERATION OF THE DEPLOYMENT OF IPTV SERVICES  
AS A RESULT OF THE PROPOSED MERGER IS LIKELY TO  
GENERATE SIGNIFICANT CONSUMER BENEFITS.**

**1. Acceleration of the deployment of IPTV services is a merger-specific efficiency.**

169. In addressing efficiency claims relating to IPTV, Access Point states that “... all of these benefits could be achieved by BellSouth’s provision of video programming even if it remains independent of AT&T. Therefore, the generalized discussion of the benefits of video competition are not merger-specific.”<sup>128</sup>

170. Access Points’ statement reflects a misunderstanding of the concept of merger-specific efficiencies. An efficiency is merger-specific if it results in a benefit that would not exist in the absence of the transaction.<sup>129</sup> Thus, if the proposed merger accelerates the deployment of IPTV relative to the timing expected in the absence of the proposed merger, the benefit derived from acceleration of the deployment is properly considered to be a merger-specific benefit, even if the service would have been deployed at a later date in the absence of the transaction.

171. Available information indicates that the proposed transaction will accelerate the deployment of IPTV service. As discussed in the Supplemental

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128. Access Point Comments, p. 48.

129. Revised Section 4 Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission, April 8, 1997 defines merger-specific efficiencies as those “likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects.”

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Declaration of William Smith (May 31, 2006), BellSouth has made the decision to pursue video opportunities in only a small number of newly constructed, multi-family communities. He notes that this limited approach will not require the significant investment required for a broad commercial rollout of IPTV. He also states that BellSouth has not decided to make the investment required for such a broad rollout.

172. As discussed in the declaration of James Kahan, AT&T has made a commitment to deploying IPTV service and has already made substantial investments in network design and testing as well as substantial effort in obtaining programming services.<sup>130</sup> AT&T has publicly committed to initial deployment of services later this year.<sup>131</sup> Access Point and other commenters do not appear to dispute that, among other things, the merger would be likely to enable AT&T to (i) utilize a more efficient network design covering the expanded geographic area of the merged firm, and (ii) realize lower costs of programming, set top boxes and network equipment as the result of the larger expected subscriber base and network footprint.

173. While it is not possible to say with precision the extent to which the proposed transaction will accelerate deployment of IPTV services in BellSouth's region, it is useful to note that AT&T has been working for 18 months negotiating to acquire content and this work is ongoing.<sup>132</sup> We understand that BellSouth to date has not negotiated contracts to provide content over IPTV systems on a broad-scale commercial

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130. Kahan Declaration, ¶ 36. William Smith's May 31, 2006 declaration (¶ 17) explains that BellSouth has begun to negotiate carriage agreements to support its decision to provide video in a limited number of new developments. He explains that the terms of these agreements may not support a generally available commercial offering of IPTV.

131. <http://att.sbc.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=21874>

132. Kahan Declaration, ¶ 36.

basis and that this process would only begin if and when BellSouth were to decide to deploy IPTV.<sup>133</sup>

**2. There is no basis to respondents' claims that deployment of IPTV services will not benefit consumers.**

174. Access Point also claims that “there is no reason to believe that video competition from AT&T will produce lower prices to consumers.”<sup>134</sup> Indeed, there is every reason to expect just that result.

175. Our March 2006 FCC declaration noted that:<sup>135</sup>

- A recent survey by Bank of America found that incumbent cable companies were offering price cuts of 28 to 42 percent in areas where Verizon was rolling out its fiber-to-the-home IPTV service.
- A 2005 FCC study found that monthly cable rates were 16 percent lower in areas where cable operators faced competition from a wireline overbuilder.

176. Since that time, we have identified additional studies that confirm our rather unsurprising conclusion.

- The American Consumer Institute conducted a survey of three Texas communities in which Verizon had deployed IPTV service. They estimate that entry resulted in declines in cable television prices of

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133. Smith Declaration, ¶¶ 17-19.

134. Access Point Comments, p. 48.

135. Carlton/Sider Declaration, ¶¶ 58-59.

roughly \$19 per month.<sup>136</sup> This is roughly one-third of the monthly fee for cable television services.<sup>137</sup>

- The General Accounting Office, in its most recent “Cable-Satellite Econometric Model,” estimates that the presence of a non-satellite competitive provider of MVPD services reduced cable prices by 16.9 percent and increased available channels by 8.1 percent.<sup>138</sup>
- Verizon has reported that cable prices in Keller, Texas have dropped “by about 20 percent” since Verizon entered, and that “cable incumbents have cut prices sharply in each market where we’ve introduced FiOS TV.”<sup>139</sup>

**3. Illustrative calculation of consumer welfare gains from acceleration of the rollout of IPTV service in BellSouth’s region.**

177. This section presents illustrative calculations of the impact of the acceleration of deployment of IPTV on consumer welfare. These consumer welfare gains accrue to consumers in the BellSouth region that subscribe to either IPTV or cable service since both groups would benefit from price reductions due to increased competition.

178. We need to make various assumptions for our calculations. Although these assumptions are only (conservative) approximations, they serve to illustrate that consumers are likely to realize sizeable benefits from the proposed transaction. These

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136. The American Consumer Institute, “Does Cable Competition Really Work? A Survey of Cable TV Subscribers in Texas,” March 2, 2006, p. 3.

137. These FCC data are discussed in Section VI.E.3.b below.

138. GAO, “Telecommunications: Direct Broadcast Satellite Subscribership Has Grown Rapidly, but Varies across Different Types of Markets,” GAO-05-27, April 2005, p. 31.

139. Ivan Seidenberg, Chairman and Chief Executive Officer, Verizon Communications, testimony before the Senate Commerce Committee, “Creating Consumer Choice and Competition in the TV Marketplace,” January 31, 2005.

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calculations indicate that acceleration in the deployment of IPTV by even one year would be expected to result in more than \$1 billion in benefits to consumers in BellSouth's territory.

179. Our calculation of the gains in consumer welfare resulting from acceleration in the deployment of IPTV services in the BellSouth region are made as follows:

*a. Assumed IPTV deployment pattern with and without merger*

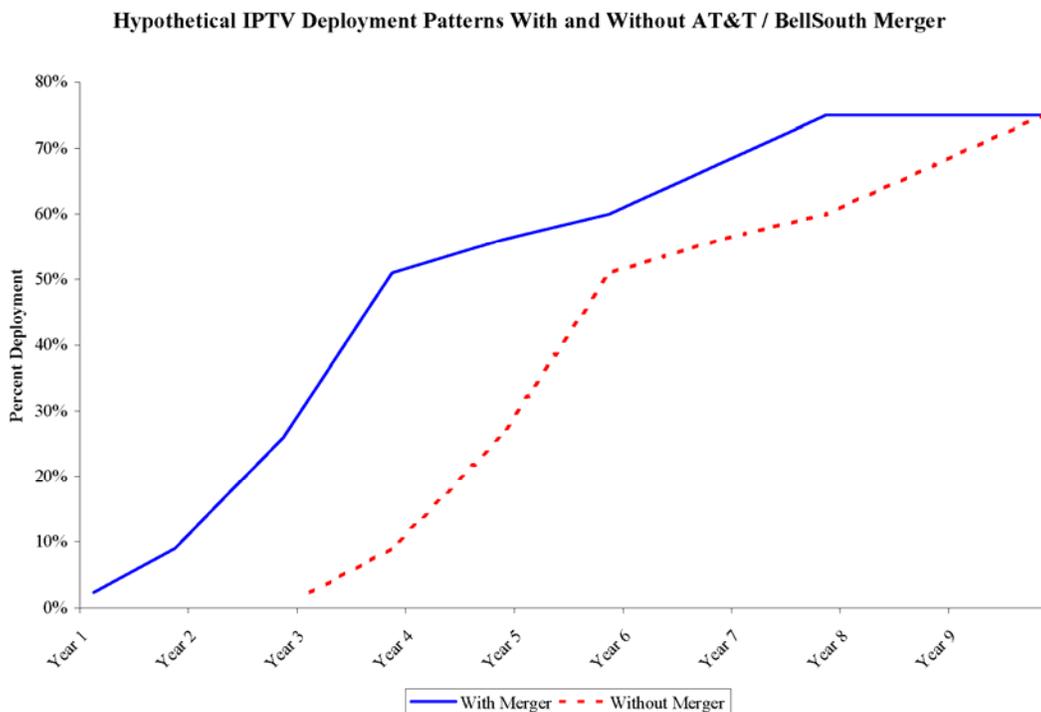
- We assume that AT&T/BellSouth would begin to deploy IPTV services in BellSouth's 9-state region following completion of the merger. We assume that in the absence of the merger BellSouth would have started to deploy IPTV services either 12 or 24 months later than the start date that would be realized following approval of the merger.
- We assume that, with the exception of the initial deployment date, the subsequent timing of the service rollout would not be affected by the merger. This assumption is likely to be quite conservative because in the absence of the merger, BellSouth would not have the benefit of AT&T's experience in deploying services.
- We assume that, following the start date, the timing of the deployment in BellSouth' region would follow JP Morgan's estimate of the expected time pattern of AT&T's IPTV deployment.<sup>140</sup> JP Morgan projects that AT&T will offer service to 9 percent of customers in the legacy SBC region within one year of initial deployment, to 26 percent of area

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140. Telecom Services / Wireline, AT&T vs. Verizon: A Pro Forma Comparison, JPMorgan, March 6<sup>th</sup>, 2006, p. 25.

subscribers after two years, to 51 percent of customers after three years and to 60 percent after five years.<sup>141</sup> Figure 6.1 compares expected deployment patterns assuming that the proposed merger accelerates deployment of IPTV services by 24 months.

**Figure 6.1**



***b. Impact of entry on price***

- We assume that AT&T's entry would result in price cuts for both IPTV and cable customers in the areas where IPTV is offered. Based on the evidence summarized above, we alternatively assume that prices to both IPTV and cable customers would fall by 20 percent and 15 percent.

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141. Our calculation extrapolates this trend and assumes that the merged company would make IPTV service available to 75 percent of customers in the BellSouth states within seven years. BellSouth currently anticipates that its current fiber upgrade will eventually be available to 75 percent of its in-region households. (Declaration of William L. Smith, March 28, 2006, ¶ 8.)

- The pre-merger price level is calculated based on FCC data which indicate the average cable household spends \$58 per month for video programming.<sup>142</sup>

*c. Impact of price decline on output*

- The decline in the price of MVPD services would be expected to result in an increase in the number of subscribers to such services. We use existing estimates of the elasticity of demand for cable services to estimate the impact of the price reduction on the expansion in output.
- We assume a price elasticity of demand of -1.5. This elasticity reflects the percentage change in output expected based on a one percent change in price. The elasticity of -1.5 is used by George Ford and Thomas Koutsky in a closely related study that is discussed in more detail below.<sup>143</sup> We also calculate the welfare gain assuming no increase in the number of MVPD subscribers resulting from the expected price reduction (e.g. an assumed elasticity of zero) to provide a benchmark for the calculation.<sup>144</sup>

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142. FCC, “In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,” FCC 06-11, March 3, 2006, Table 4. This \$58 figures includes fees for basic and premium tiers, video on demand, digital video recorder services and additional miscellaneous expenses. The figure excludes fees for high speed Internet services and telephony services (circuit switched and VoIP).

143. George S. Ford and Thomas M. Koutsky, “In Delay There Is No Plenty: The Consumer Welfare Cost of Franchise Reform Delay,” Phoenix Center Policy Bulletin No. 13, January 2006, p. 13.

144. In evaluating the welfare gain from output expansion, we assume that consumers attracted to the industry due to the lower price realize a welfare gain of half of that realized by other consumers. This assumption is consistent with a linear demand curve and reflects the fact that benefits realized by customers attracted by lower prices reflect only the difference between the price and the amount they were willing to pay, which is less than the pre-merger price.

*d. Other elements of calculation*

- We assume that there are 12.7 million households in BellSouth's territory that subscribe to video services. This is based on National Cable Television Association (NCTA) estimates of the number of households in the United States that subscribe to a video service<sup>145</sup> and BellSouth's share of telephone subscribers in the United States.<sup>146</sup> We assume that the number of cable subscribers will grow by 1.7 percent annually.<sup>147</sup>

180. The results are summarized in Table 6.3 and indicate that acceleration of the IPTV rollout will result in substantial gains in consumer welfare in the BellSouth region. As the table indicates, if the proposed merger accelerates the IPTV rollout by 12 months and results in a 20 percent price decline, then the sum of the consumer benefits over time would be \$1.5 billion (assuming a demand elasticity of 1.5).<sup>148</sup> Even if we ignore the output enhancing impact of the price decline, then benefits to existing consumers are \$1.3 billion. Consumer welfare gains are roughly twice as large if we assume that the transaction accelerates the deployment of IPTV by two years instead of one.

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145. <http://www.ncta.com/ContentView.aspx?contendId=54&model=print>.

146. FCC, Trends in Telephone Service, April 2005, Table 7.3.

147. This is the growth rate assumed in the related study by Ford and Koutsky described below.

148. These calculations in Table 6.3 are not expressed in present value terms. If we use a real discount rate of 5.25 (the rate used by Ford and Koutsky), the present value of benefits from a one year acceleration in the deployment of IPTV assuming a 20 percent price decline and price elasticity of demand of -1.5 would be \$1.3 billion.

**Table 6.3**

**Gain in Consumer Surplus Due to Acceleration in  
IPTV Rollout in BellSouth Region**  
(\$ Billions)

Price Decline	Price Elasticity of Demand	Acceleration in IPTV Rollout	
		12 Months	24 Months
20%	-1.5	\$1.5	\$2.9
	0	\$1.3	\$2.5
15%	-1.5	\$1.1	\$2.1
	0	\$1.0	\$1.9

181. The calculations are likely to understate the consumer welfare benefits of the acceleration of IPTV services. For example, we have not attempted to estimate the additional welfare gain that would be realized by consumers that prefer IPTV services to existing cable services. We also do not attempt to estimate the consumer welfare impact of the increased number of cable channels that might be provided due to increased competition. As noted above, GAO has estimated that eight percent more channels are available in areas in which there are two wireline MVPD services.

182. As a check on our estimates, we have adapted the model reported by George Ford & Thomas Koutsky to estimate the consumer welfare gain from acceleration of IPTV deployment in BellSouth’s territory. The Ford and Koutsky model addresses the closely related question of estimating the consumer welfare loss resulting from delays in the deployment of IPTV service resulting from local franchise requirements. Calculations based on this model yield results that are similar in magnitude to those reported above. The results of this analysis are reported in Appendix 3.

**CONCLUSION -- EFFICIENCIES**

183. Respondents incorrectly claim that the cited efficiencies are speculative and are not merger-specific. Instead, available evidence indicates that projected cost saving are large, credible, merger-specific and will benefit consumers. We also explained that the proposed transaction will enable the merged firm to be a more effective supplier of wireless and “converged” services. And we explained that the expected acceleration of the deployment of IPTV services would be likely to generate significant benefits to consumers in BellSouth’s region.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Signature: *Dennis W Carlton*  
Dennis W. Carlton

Date: 6/19/06

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Signature: Hal Sider  
Hal S. Sider

Date: June 14, 2006

## **Appendix 1**

### **SUMMARY OF RESPONDENTS' CLAIMS REGARDING HARM TO COMPETITION IN THE PROVISION OF SERVICES**

#### **Section II: RESPONDENTS' SPECIAL ACCESS SERVICES CLAIMS**

##### *Sprint Nextel*<sup>1</sup>

1. Sprint Nextel (Sprint) claims that the proposed merger will reduce competition in the provision of Type I special access and will result in increased discrimination by AT&T against downstream rivals.
  - Sprint claims that the merger will harm competition by "...reducing competitive alternatives to BellSouth's services and shrinking the market of potential purchasers of competitive services."<sup>2</sup>
  - Sprint claims that the merger will increase "the incentive to harm national competitors"<sup>3</sup> and will increase the merged firm's "incentive to use its special access pricing flexibility to benefit Cingular."<sup>4</sup>
2. Sprint cites ARMIS data to support its claim that a remedy is required.
  - Sprint claims that "AT&T and BellSouth recently reported returns on special access investment in 2005 of 92 and 98 percent, respectively, the highest returns among the Regional Bell Operating Companies."<sup>5</sup>
3. Sprint requests that the merger be approved not only subject to conditions similar to those imposed in the SBC/AT&T transaction, including divestitures of IRUs to

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1. Comments of Sprint Nextel Corporation, June 5, 2006 (hereafter Sprint Comments).
2. Sprint Comments, p. ii.
3. Sprint Comments, p. ii.
4. Sprint Comments, p. ii.
5. Sprint Comments, p. 2; Sprint Comments, p. 14, footnote 25.

selected buildings, but also that additional restrictions on AT&T's marketing and pricing of special access services be imposed.<sup>6</sup>

*Cbeyond*<sup>7</sup>

4. Cbeyond claims that the merger will harm competition in the provision of Type I and Type II special access services.

- Cbeyond claims that the transaction will result in the “elimination of one of the largest non-incumbent LEC wholesalers (or potential wholesalers) of local transmission capacity in the [BellSouth] region...”<sup>8</sup>
- Cbeyond claims that “the elimination of AT&T as a reseller of BellSouth local transmission inputs would itself likely seriously harm competition in the provision of local transmission wholesale inputs.”<sup>9</sup>
- Cbeyond argues that approval of the proposed merger should be conditioned on price regulation of special access rates, and the divestiture of all of AT&T's local facilities in the BellSouth region.<sup>10</sup>

*Time Warner Telecom*<sup>11</sup>

5. Time Warner Telecom argues that the merger will harm competition in the provision of Type I special access services and will result in increased discrimination by AT&T against its downstream rivals.

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6. Sprint Comments, p. iii-iv.

7. Comments of Cbeyond Communications Grande Communications, New Edge Networks, NuVox Communications, Supra Telecom, Talk America Inc., XO Communications Inc., and Xspedius Communications, June 5, 2006 (hereafter Cbeyond Comments).

8. Cbeyond Comments, p. 65.

9. Cbeyond Comments, p. 66.

10. Cbeyond Comments, pp. 106-9

11. Petition to Deny of Time Warner Telecom (hereafter, TWTC Comments).

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- Time Warner Telecom claims that the proposed transaction will harm competition in the provision of Type I services by “(1) eliminating AT&T as a significant actual competitor in certain geographic areas and as one of the two (along with Verizon) most significant potential competitors in other geographic areas and (2) eliminating BellSouth as a potential competitor in the AT&T ILEC region.”<sup>12</sup>
- Time Warner Telecom further claims that the “ILECs can exploit their market power either by raising the price of or degrading the quality of necessary inputs needed by TWTC and other competitors to provide retail service to business customers.”<sup>13</sup>

6. Time Warner Telecom uses special access’ rate of return to argue that ILECs have market power in the provision of special access services.

- Time Warner Telecom cites a study that found that “while special access provided only a 7.4% rate of return to the ILECs in 1996, this had climbed to 37.1% in 2003.”<sup>14</sup>

*Paetec*<sup>15</sup>

7. Paetec Communications requests the divestiture of special access services.
- Paetec claims that the merging firms shall divest “those transport facilities [...] which are necessary to reach to those central offices or wire

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12. TWTC Comments, p. 7.

13. TWTC Comments, p. 33.

14. TWTC Comments, p. 12.

15. Comments of Paetec Communications, Inc, June 4, 2006. (hereafter Paetec Comments).

centers where AT&T is the only competitive LEC that has a direct wireline connection”.<sup>16</sup>

*Consumer Federation of America et. al.*

8. Mark Cooper and Trevor Roycroft, in their declaration on behalf of the Consumer Federation of America et. al.<sup>17</sup> claim that rates of return calculated from the ARMIS data indicate that there is “inadequate competition” in the provision of special access services.<sup>18</sup>

**Section III: RESPONDENTS’ BROADBAND WIRELESS SERVICES CLAIMS**

*Clearwire*<sup>19</sup>

9. Clearwire claims that the merged firm will “warehouse” unused spectrum.
- Clearwire claims that AT&T “will have the incentive to warehouse or otherwise use spectrum at 2.5 GHz to avoid losing business in the services that would ride on competing independent broadband platforms.”<sup>20</sup>
  - Clearwire claims that AT&T’s post-transaction control of 2.5 GHz BRS spectrum in the southeast would allow AT&T to “impede competitors like Clearwire from becoming *national* providers in competition with the merged company’s enhanced broadband platforms.”<sup>21</sup>

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16. Paetec Comments, Appendix 1, p. 3.

17. Joint Declaration of Mark N. Cooper and Trevor Roycroft on behalf of Consumer Federation of America, Consumers Union, Free Press, and USPIRG, June 5, 2006. (hereafter Cooper/Roycroft Declaration)

18. Cooper/Roycroft Declaration, pp. 42-44.

19. Clearwire Corporation Petition to Deny, or in the Alternative Condition Consent, June 5, 2006 (hereafter Clearwire Comments).

20. Clearwire Comments, p. iii.

21. Clearwire Comments, p. 8.

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- Clearwire requests that the transaction be conditioned on the divestiture of the combined firm's 2.5 GHz spectrum.<sup>22</sup>

*Consumer Federation of America et. al.*

10. Mark Cooper and Trevor Roycroft, in their declaration on behalf of the Consumer Federation of America et. al., claim that the merger will reduce competition for wireless and broadband markets.

- Cooper/Roycroft Declaration claim that “[t]he 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.”<sup>23</sup>
- They argue that approval of the proposed transaction should be conditioned on divestiture of the firms' 2.3 WCS and 2.5 BRS spectrum, because this “would create the possibility for entry of a third, broadband platform into the market that is currently dominated by a duopoly.”<sup>24</sup>

*Cbeyond*

- Cbeyond argues that the Commission should require the divestiture of BellSouth's “wireless assets, including licenses, in the 2.5Ghz band”.<sup>25</sup>

*Center for Digital Democracy*<sup>26</sup>

- Center for Digital Democracy stressed “the importance of requiring the divestiture of Cingular, as well as all licenses that AT&T and BellSouth hold in the 2.3Ghz and 2.5 Ghz bands”.<sup>27</sup>

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22. Clearwire Comments, pp. 17-18.

23. Cooper/Roycroft Declaration, p. 25.

24. Cooper/Roycroft Declaration, p. 67.

25. Cbeyond Comments, pp. 109-110

26. Center for Digital Democracy Petition to Deny, June 5, 2006 (hereafter Center for Digital Democracy Comments).

**Section IV: RESPONDENTS' SBC/AMERITECH CLAIMS**

*Access Point*<sup>28</sup>

- Access Point claims that the “Commission correctly recognized in the *SBC-Ameritech Order* that the larger the combined entity, the more incentive it would have to discriminate because of gains from external effects.”<sup>29</sup>
- Access Point claims that “the proposed AT&T-BellSouth merger would patently erode still further – and probably wash away altogether – the ability of regulators to monitor the practices of the incumbents for purposes of adopting pro-competitive approaches to regulation.”<sup>30</sup>
- Access Point claims that the merger would result in the “fundamental loss of one of three significant potential competitors in both the AT&T and BellSouth territories.”<sup>31</sup>

*Cbeyond*

- Cbeyond claims that if “AT&T and BellSouth are permitted to merge they will have a greater incentive to discriminate because the effects of any such discrimination will be felt throughout the combined entity's 22 state incumbent operating territory.”<sup>32</sup>

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27. Center for Digital Democracy Comments, p. 1.

28. Petition to Deny of Access Point, Inc. CAN Communications Services, Inc., DeltaCom, Inc., Florida Digital Network, Inc. D/B/A FDN Communications, Globalcom Communications, Inc., Lightyear Network Solutions, Inc., McLeodUSA Telecommunications Services, Inc., Pac-West Telecomm, Inc., Smart City Networks, Inc., and US LEC Corp., June 5, 2006 (hereafter Access Point Comments.).

29. Access Point Comments, p. 21.

30. Access Point Comments, p. 15.

31. Access Point Comments, p. 8.

32. Cbeyond Comments, pp. 89-90.

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- Cbeyond claims that the “benchmark analysis tool is dependent on the existence of similarly-situated firms to which an incumbent LEC's practices can be compared and as the number of firms decrease, so too does the effectiveness of benchmarking analysis.”<sup>33</sup>
- Cbeyond claims that the merger would “eliminate existing and/or potential competition throughout the BellSouth incumbent local operating territory by one of the very few remaining and most significant market participants in the highly-concentrated mass market for local voice services.”<sup>34</sup>

*Time Warner Telecom*

- Time Warner Telecom claims that the “larger is an ILEC’s footprint, the more fully it is able to appropriate the gains from discrimination and the greater, therefore, its incentive to discriminate. A merger that results in an ILEC with a large footprint increases the rewards from discrimination and thus makes such discrimination more likely.”<sup>35</sup>
- Time Warner Telecom claims that “the proposed merger will diminish or eliminate entirely regulators’ ability to rely on benchmarking to regulate RBOCs’ conduct.”<sup>36</sup>
- Time Warner Telecom argues that the merger would harm competition for special access services by eliminating “AT&T as a significant actual and potential competitor in the BellSouth region, and it would eliminate BellSouth as a potential competitor in the AT&T ILEC region. As ILECs

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33. Cbeyond Comments, p. 82.

34. Cbeyond Comments, p. 35.

35. TWTC Comments, p. 44.

36. TWTC Comments, p. 50.

with adjacent territories, these companies have special advantages over other types of competitors . . .”<sup>37</sup>

**Section V: RESPONDENTS’ RETAIL MASS MARKET AND BUSINESS SERVICES CLAIMS**

*Cbeyond*

- Cbeyond claims that by assuming “complete control over Cingular in a single organization for the first time,” AT&T “would eliminate the wireless leader, undercutting to a significant extent the claim that wireless services, as a whole, provide effective competition” with wireline services.<sup>38</sup>
- Cbeyond claims that “intermodal competitors do not qualify as significant participants in business markets,” and, more specifically, that “most VoIP services . . . ride incumbent LEC facilities and do not qualify as an independent source of competition.”<sup>39</sup>

*Access Point*

- Access Point claims that “if wireless could provide an alternative to Applicants’ services, it could not be counted as a competitor to them since a significant portion of that competition would come from Cingular, the country’s largest wireless company, which they own.”<sup>40</sup>
- Access Point also claims “[n]or is VoIP a significant competitor to the traditional wireline residential or business market... Thus, VoIP does not

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37. TWTC Comments, p. 16.

38. Cbeyond Comments, p. 76.

39. Cbeyond Comments, pp. 57-58.

40. Access Point Comments, p. 45.

eliminate the dependence of competitors on ILEC or cable last mile facilities.”<sup>41</sup>

## **Section VI: RESPONDENTS’ EFFICIENCIES CLAIMS**

### ***Access Point***

Access Point claims that “the proposed merger would not produce significant public interest benefits.”<sup>42</sup> More specifically, it argues that:

- “the benefits of video competition are not merger-specific;”<sup>43</sup>
- the “claimed benefits concerning unified ownership of Cingular are unconvincing and not, in any event, merger specific;”<sup>44</sup>
- the claimed efficiencies reflect “benefits merely to the merger partners not to the public interest;”<sup>45</sup> and
- the benefits of integration of Cingular can be achieved by “intercarrier agreements between Cingular and AT&T and between Cingular and BellSouth.”<sup>46</sup>

### ***Earthlink***<sup>47</sup>

11. Earthlink argues that the claimed synergies are not credible because “real-world mergers have demonstrated that such claims are often little more than self-serving and hypothetical.” Earthlink further suggests that “the FCC should reject [efficiency] claims as speculative.”<sup>48</sup>

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41. Access Point Comments, p. 45.

42. Access Point Comments, p. 48.

43. Access Point Comments, p. 48.

44. Access Point Comments, p. 51.

45. Access Point Comments, p. i.

46. Access Point Comments, p. 53.

47. Petition to Deny of Earthlink, June 5, 2006 (hereafter Earthlink Comments).

48. Earthlink Comments, pp. 31 – 32.

## **Appendix 2**

### **CALCULATION OF APPROXIMATE SPECTRUM SHARES**

12. This appendix summarizes our methodology for calculating AT&T's post-transaction share of spectrum identified as suitable for mobile and/or fixed broadband services. The estimates in Table 3.2 of our declaration summarize our calculation for the areas in which AT&T or BellSouth hold WCS or BRS/EBS spectrum.

13. The FCC's Universal Licensing System (ULS) databases are a principal source of information for this calculation.<sup>1</sup> Lexecon obtained from the FCC the ULS databases for "Market Based Services"<sup>2</sup> and "Cellular - 47 CFR Part 22." These databases contain information on for each spectrum band used in the analysis with the exception of BRS-EBS spectrum. We have used the ULS data to identify for each spectrum and band geographic area (i) the identity of licensees and (ii) bandwidth per licensee. We use this information for the following currently-licensed spectrum bands:

700 MHz Lower Band (radio service code ("WZ"))  
700 MHz Upper (or Guard) Band ("WX")  
2.3 WCS Band ("WS")  
1.6 WCS Band ("BC")  
1.9 GHz Broadband PCS Band ("CW")  
850 MHz Cellular ("CL")

14. For BRS-EBS spectrum, we rely on the coverage of BellSouth's BRS-EBS holdings prepared by Wiley, Rein and Fielding (WRF). BRS-EBS spectrum is licensed primarily on the basis of Protected Service Areas (PSAs), which grants the

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1. The FCC's ULS database is available at <http://wireless.fcc.gov/cgi-bin/wtb-datadump.pl>.
  2. The Market Based Services data includes information for the 700 MHz Lower Band (radio service code "WZ"), the 700 MHz Upper (or Guard) Band ("WX"), the 2.3 WCS Band ("WS"), the 1.6 WCS Band ("BC") and the 1.9 GHz Broadband PCS Band ("CW").

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licensee the protected use of spectrum within a 35 mile radius of the licensee’s transmitter.<sup>3</sup> WRF identified BellSouth’s BRS-EBS licensed holdings and estimated the population each area in which BellSouth holds spectrum.<sup>4</sup> WRF then calculated on a BTA basis the total number of “MHz pops” covered by the licensed. This figure reflects the product of (i) the population in the license area; and (ii) the bandwidth (in MHz) licensed by BellSouth.

15. As shown in Table 1, different spectrum bands (and sometimes different spectrum blocks within a band) are licensed on different geographic bases.

**Appendix Table 2.1**

Spectrum Band	Block	License Area	Number of Areas
Cellular	A/B	CMA	722
PCS	A/B	MTA	48
	C/D/E/F	BTA	487
1.6 GHz – WCS		NWA	1
2.3 GHz – WCS	A/B	MEA	48
	C/D	REA	8
2.5 GHz – BRS/EBS <sup>5</sup>		PSA	3,921
		BTA	487
700 MHz / Lower	C	CMA	722
	D	EAG	6
700 MHz / Upper	A/B	MEA	48

Source: FCC ULS database.  
 Definitions: NWA Nationwide Area  
 EAG Economic Area Group  
 REA Regional Area Group  
 MEA Major Economic Area  
 MTA Major Trading Area  
 BTA Basic Trading Area  
 CMA Cellular Market Area

3. Certain portions of the BRS/EBS spectrum are also licensed on a BTA basis but exclude PSAs held by other firms in that BTA. See Maravedis, “BRS, EBS and WCS Regulatory and Licensing Analysis,” December 2005, p. 27.
4. We understand that portions of the EBS spectrum held by educational institutions are often leased to commercial providers. WRF’s analysis attempts to account for EBS spectrum held by BellSouth by means of such leases.
5. Reflects the count of unique PSAs in the ULS database.

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16. We have attempted to identify spectrum shares at the BTA level. BTAs are the standard geographic license area for market based BRS/EBS licenses and the predominant geographic area for PCS licenses. We have utilized a “cross-walk” maintained by the FCC to attempt to map different geographic areas to BTAs.<sup>6</sup> In some cases the geographic units do not map cleanly to a BTA. In such cases we have attempted to assign the geographic area to the predominant BTA.

- For geographic areas that encompass multiple BTAs, such as MTAs, we recognize that spectrum holdings are identical in each BTA.
- For areas, such as CMAs that are smaller than a BTA, we assign each to the appropriate BTA. In these cases, we calculate a BTA average bandwidth based on population weighted average of the spectrum holdings for a firm within the BTA.
- We identify spectrum held by AT&T, BellSouth and Cingular based in part on information from MapInfo identifies corporate parents for various license holders.
- In some instances, the ULS data reports that multiple firms hold identical spectrum blocks (or channels) in the same geographic areas. In many instances, the FCC data indicate that spectrum holders have “partitioned” the spectrum, in which case their holdings may be smaller than the geographic areas covered by the license.

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6. These data are available at [http://wireless.fcc.gov/auctions/data/maps/cntysv2000\\_census.xls](http://wireless.fcc.gov/auctions/data/maps/cntysv2000_census.xls).

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- In some cases, the ULS data report separate information for the partitioned areas. An example includes WCS spectrum licenses at the REA level but partitioned to (smaller) MEA areas.
- In other circumstances, the FCC data report multiple holders for a particular license. In such cases, we assigned each licensee a pro-rata share of overall bandwidth.
- As noted above, WRF has identified the “MHz pops” covered by BellSouth BRS-EBS licenses in a BTA. We use this information along with estimates of population by BTA to calculate BellSouth’s average bandwidth in the BTA. AT&T does not hold any BRS-EBS spectrum.
- For certain of our calculations we also included 198 MHz of unauctioned spectrum in each BTA, which includes 130 MHz of AWS spectrum, 30 MHz of Lower 700 MHz spectrum, 30 MHz of Upper 700 MHz spectrum and 8 MHz of 1.4 GHz WCS spectrum.
- In other calculations we include 638.5 MHz of unlicensed spectrum, which included 83.5 MHz of 2.4 IMS spectrum and 555 MHz of 5 GHz U-NII spectrum.
- BellSouth’s share of bandwidth is calculated based on BTA-specific measures of (i) aggregate bandwidth in the spectrum bands included in the calculation and (ii) estimates of bandwidth of the combined spectrum holdings of BellSouth, AT&T and Cingular. National calculations reflect population weighted averages of the BTA-specific measures.

### **Appendix 3**

#### **CALCULATIONS ON CONSUMER WELFARE GAINS FROM ACCELERATION OF IPTV DEPLOYMENT BASED ON FORD / KOUTSKY MODEL**

1. In a recent paper, George Ford & Thomas Koutsky estimate the consumer welfare loss from the delay in IPTV deployment due to local franchising regulations.<sup>7</sup>

They develop a model to estimate the resulting loss in consumer welfare due to delay in the realization of lower prices for video programming services. Ford and Koutsky also account for the expected increase in the number of MVPD subscribers from the price reduction expected due to competition.

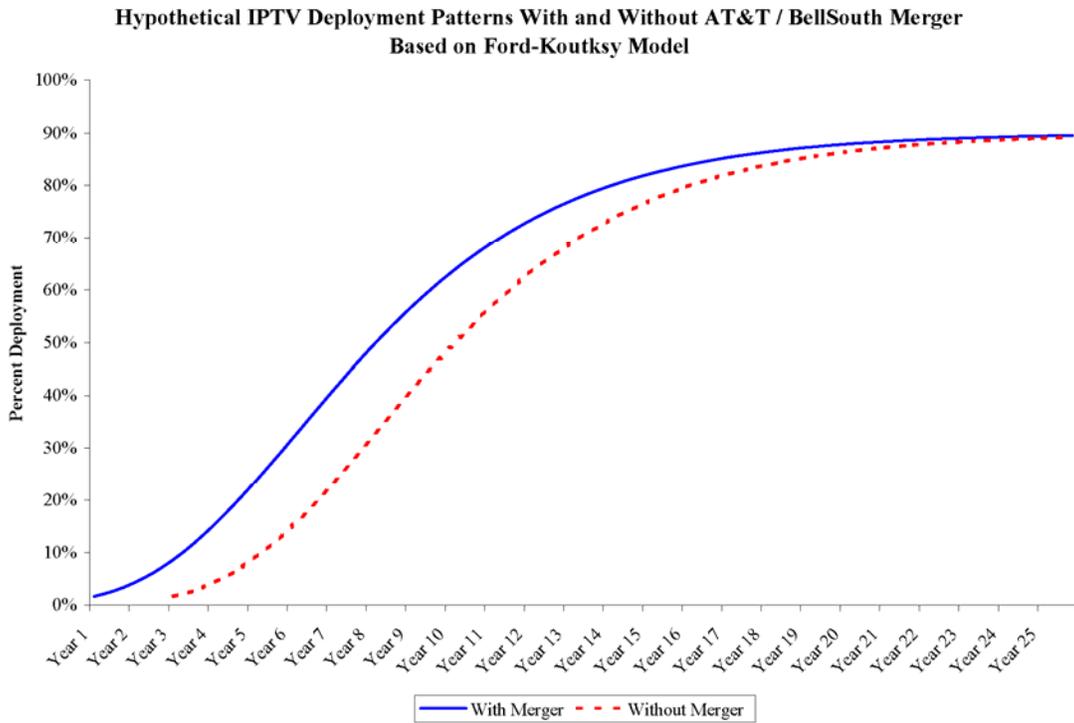
2. Our model is similar to theirs but uses alternative assumptions regarding expected deployment patterns and pricing. More specifically, Ford and Koutsky assume:

- The introduction of a competitive service will reduce prices faced by consumers (including those that remain cable consumers) by 15 percent. Ford and Koutsky assume average cable expenditures of \$50 per month.
- They assume that 90 percent of cable customers will eventually have access to IPTV services and that this deployment will be achieved after 25 years. They assume that deployment follows an “S-curve” pattern and calculate loss under alternative assumptions about the average delay.

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7. George S. Ford and Thomas M. Koutsky, “In Delay There Is No Plenty: The Consumer Welfare Cost of Franchise Reform Delay,” Phoenix Center Policy Bulletin No. 13, January 2006, p. 13.

Appendix Figure 1



- They assume that the price elasticity of demand for MVPD services is -1.5 and discount losses from deployment delays to present value terms based on an annual rate of 5.25 percent.
  - 5 and discount losses from deployment delays to present value terms based on an annual rate of 5.25 percent.
3. Assuming that the proposed transaction accelerates the deployment of IPTV in the BellSouth region by services by 12 months, the Ford and Koutsky model implies that consumers in BellSouth’s region would realize a benefit with a present value of \$900 million. The corresponding figure assuming a 24-month acceleration is \$1.8 billion.