

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 20 2006

Federal Communications Commission
Office of Secretary

In the Matter of Applications
for Consent to the Transfer
of Control of Licenses and
Section 214 Authorizations from

BELLSOUTH CORPORATION
Transferor

to

AT&T INC.
Transferee

WC Docket No. 06-74

JOINT OPPOSITION OF AT&T INC. AND BELLSOUTH CORPORATION
TO PETITIONS TO DENY AND REPLY TO COMMENTS

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INTRODUCTION AND EXECUTIVE SUMMARY

The merger of AT&T and BellSouth will take place amid an onslaught of competition in communications markets. Cable companies are aggressively marketing voice service to residential and business customers of all sizes, and are winning upwards of 258,000 new customers every month. Nationwide, there are now more wireless customers than wireline customers (and more wireless long distance calls than wireline long distance calls). Half of all U.S. households are expected to be broadband subscribers by the end of the year. ILECs collectively lost eight million access lines in 2005 and are expected to lose another seven million in 2006.

Against this backdrop of vibrant and growing competition, the proposed merger is overwhelmingly in the public interest. The merger will unify ownership over Cingular Wireless, and thereby increase efficiency and facilitate the development of new products and services that consumers want. It will enable AT&T to speed the deployment of IPTV services to BellSouth's customers and increase the efficiency with which AT&T can deploy those services to all of its customers - thereby providing much needed competition in a market long frustrated by the stranglehold of the dominant cable incumbents. It will improve services to government customers, especially in the increasingly important areas of national security and disaster preparedness. And it will benefit *all* customers - from single-line mass market customers to large multi-location international enterprises - through increased research and development, network integration and substantial cost savings.

Opponents of the merger cannot credibly challenge these benefits. None of them disputes, for example, the benefits that will flow from unifying ownership over Cingular, arguing instead that the same benefits might be achieved absent the merger. But these claims ignore the

reality that the merger will permit the combined company to bring new products to consumers faster and more efficiently than would otherwise be the case. Likewise, opponents do not seriously dispute that the merger will enhance competition for video services or create a combined company that is better prepared to assist the government in fulfilling the vital roles of national security and disaster response and recovery. And, although some opponents question the benefits stemming from network integration and other efficiencies and cost savings as difficult to quantify, the Commission has properly acknowledged similar benefits in approving past mergers. As we have demonstrated in the Public Interest Statement and reinforce here, consumers are *already* realizing such benefits from the SBC/AT&T merger. The combination of AT&T, BellSouth and Cingular promises to provide much more of the same.

These public interest benefits will be achieved without any harm to competition. Opponents' claims to the contrary are rooted in a worldview that is at least a decade old — one in which local markets have changed little since divestiture, in which market-opening procedures have not yet been fully implemented and competition remains fragile, and in which certain classes of competitors require special protection by regulators. But the truth is that, as noted at the outset — and as the Commission recognized last year in approving the SBC/AT&T and Verizon/MCI mergers — competition has never come from as many varied and sustainable sources as it does today. AT&T and BellSouth face aggressive competition from multiple sources in every facet of their businesses, and the merger will do nothing to change that.

For example, although opponents claim that the merger will harm competition in the market for special access services, they do not identify a single location in which that could possibly be the case. The reason for this is simple: out of the more than 200,000 commercial buildings with special access level demand in BellSouth's region, only 32 even arguably involve

a reduction in competition where there are no immediately available substitutes, and all 32 are in the intensely competitive special access markets of Atlanta and Miami/Ft. Lauderdale. In each of those 32 buildings, moreover, other providers could readily provide service, and in none of them does AT&T have a single wholesale access customer. Since any arguable impact on competition stemming from this handful of buildings would be, at most, truly *de minimis*, the merger should be approved without any special access conditions.

Opponents' competitive claims regarding other markets are likewise insubstantial. Although two competitors allege that the merger will lessen competition for retail business services, they do not advance any evidence that would question the Commission's express findings in the *SBC/AT&T* and *Verizon/MCI Merger Orders* that competition in this market is "robust," that historic data do not accurately reflect "the rise in data services, cable and VoIP competition, and the dramatic increase in wireless usage," and that "myriad providers" stand ready to compete aggressively. As shown in the Public Interest Statement and here, competition in the enterprise segment has continued to grow since the Commission made these findings, only further discrediting the largely recycled and previously rejected arguments that this merger will harm competition for retail business services.

Claims that the merger will decrease mass market competition are equally fanciful. As the Commission recognized in the *SBC/AT&T Merger Order*, the former AT&T Corp. stopped competing in this market two years ago. Accordingly, this Commission's holding last year that "SBC's acquisition of AT&T is not likely to result in anticompetitive effects for mass market services due to AT&T's actions to cease marketing and gradually withdraw" from the market applies at least as strongly here.

Some opponents speculate that the efficiency-producing integration of the AT&T and BellSouth networks may have “foreclosure” effects by depriving independent IXCs and CLICs in the BellSouth region of a customer for their long distance and special access services. But none of the parties that these opponents contend might be affected by consolidation of the merging parties’ traffic on their own networks even opposed the merger on those grounds, and for good reason. It is economically inconceivable that the merger will meaningfully affect the ability of any individual long-haul or special access provider to compete – much less have any actual anticompetitive effect in any relevant market – given the many customers that remain to these suppliers (including AT&T for special access services outside its local service areas).

There also will be no loss of competition for broadband services. AT&T and BellSouth do not compete with each other for consumer broadband customers today, so, contrary to commenters’ claims, the merger will not reduce competition for those customers. And there is no basis to conclude that the merger will harm competition for consumer wireless broadband services. The merger will not increase the aggregation of wireless spectrum, and the combined company will hold less than one sixth of the spectrum suitable for consumer wireless broadband. That ownership level is plainly insufficient to threaten harm. Nor will the merger have any effect on Internet backbone competition or do anything to facilitate “de-peering,” for the simple reason that BellSouth has no nationwide backbone.

The merger does not raise any other public policy concerns. Invoking a theoretical argument raised in connection with ILEC mergers that took place in the late 1990s and 2000, opponents argue that, by increasing AT&T’s footprint, the merger will encourage it to discriminate against its competitors. But that argument has no resonance here, for the simple reason that AT&T and BellSouth cannot plausibly be said to possess monopoly control over

inputs that competitors need to provide local and long-distance service. Section 271 authorization has been granted in all states; local markets are fully and irreversibly open to competition; the interconnection requirements of Section 251 have become routine; and incumbents face aggressive inter- and intra-modal competition from multiple sources. Moreover, the conditions imposed by the Commission in the SBC/Ameritech and Bell Atlantic/GTE mergers expired several years ago without incident, and such conditions have no place in today's robustly competitive markets.

For the same reasons, opponents' argument that the merger will result in the loss of BellSouth as a "benchmark" is misplaced. The Commission decisions holding that benchmarking was an important regulatory tool were released during the period when Sections 251 and 271 of the Act had not been fully implemented. Since ILECs now lack the power to discriminate against rivals, there is no need artificially to preserve a certain number of ILECs as benchmarks to detect discrimination that cannot occur. Rather, as the Commission recognized in those decisions, the vibrant competition in today's open markets will prevent discrimination far better than regulatory benchmarks. Furthermore, regulators now have seven additional years of experience in implementing the local competition provisions of the 1996 Act, and they have established comprehensive rules and regulations, including detailed performance metrics, to prevent discrimination. Regulators thus do not need to engage in benchmarking to identify unlawful discrimination.

Finally, opponents recite a number of alleged infractions and disputes that have nothing to do with the merger. These are transparent attempts to use this proceeding to gain leverage in ongoing business negotiations with AT&T and BellSouth, and they have no bearing here. Similarly, opponents have raised a number of issues, such as net neutrality, franchising,

redlining, and alleged disclosure of call records for national security purposes, that do not involve the merger and must be raised, if at all, in other forums.

For the reasons set forth in the Public Interest Statement and this Joint Opposition, the Commission should grant the applications promptly and without any conditions.

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Attachments:

- Reply Declaration of Parley C. Casto
- Reply Declaration of William L. Dysart, Ronald A. Watkins & Brett Kissell
- Reply Declaration of Ronald Pate & Kevin Graulich
- Reply Declaration of Dennis W. Carlton & Hal S. Sider
- Reply Declaration of Marius Schwartz
- Appendix A: Detailed Response to Specific Allegations
- Appendix B: Customer Statements

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I. INTRODUCTION

The merger of AT&T and BellSouth will provide myriad public interest benefits without harming competition in any relevant market. Although merger opponents raise a number of issues, they cannot seriously challenge the public interest benefits of this transaction, and their claims ignore the realities of today's intensely competitive marketplace. For the reasons set forth below and in the Public Interest Statement, none of their claims has any merit. Accordingly, the Commission should grant the transfer applications promptly and without any conditions.

II. THE MERGER WILL PRODUCE NUMEROUS PUBLIC INTEREST BENEFITS

Applicants demonstrated in the Public Interest Statement that the merger will produce numerous, significant public benefits.

- By unifying the ownership of Cingular Wireless, the merger will enable the faster introduction of new, converged services, while allowing the combined company to

produce significant efficiencies and offer a service plan for consumers with a single monthly recurring charge for all access devices.

- The merger will create a more efficient video competitor and enable the faster roll out of IPTV in BellSouth's region, thereby enhancing video competition.
- The merger will improve services provided to government customers, particularly in the areas of national security and disaster preparedness.
- The integration of AT&T and BellSouth will bring the same kinds of efficiencies and public benefits recognized by the Commission in its approval of the SBC/AT&T transaction.
- The merger will foster more efficient research, development and innovation.
- The merger will produce substantial cost savings.

Merger opponents, for the most part, do not even attempt to rebut Applicants' showings on these points, and to the limited extent that they do challenge them, they simply ignore the Commission's dispositive conclusions in the *SBC/AT&T Merger Order* rejecting the very same arguments.

A. Unification of Cingular's Ownership Will Enable a Quicker Roll Out of New Converged Services and Enhance Efficiency

Applicants demonstrated in the Public Interest Statement that unifying the ownership of Cingular would lead to substantial public interest benefits.¹ Merger opponents offer only a few baseless challenges to these showings.

1. The Combined Firm Will Be a More Effective Supplier of Wireless Services to Business Customers

No opponent disputes that the proposed merger will enable the combined firm to integrate Cingular offerings to business customers in ways that are not possible under the current joint venture structure. As just one example, the combined firm will be able to fulfill business

¹ Description of Transaction, Public Interest Showing and Related Demonstrations ("Public Interest Statement") at 6-19.

customers' demand for one monthly recurring charge for a combined bucket of wireless and wireline minutes of usage.² The combined firm also will have significantly more flexibility to combine wireless services in existing package discount programs to business customers.³ And the combined firm will be able to offer business customers a single point of contact for all billing and service issues.⁴ Business customers value these benefits,⁵ and they cannot be fully or timely achieved without the merger.⁶

2. The Proposed Transaction Will Result in Synergies in the Development and Provision of Converged Wireline/Wireless Services

The merged firm also will be able to provide much more effectively the converged services that customers want.⁷ Contrary to merger opponents' assertions,⁸ Applicants never have claimed that the joint venture structure of Cingular prevents the company from providing

² *Id.* at 18-19.

³ *Id.*

⁴ *Id.*

⁵ *See, e.g.*, Statement of Gene Warren, ACT Teleconferencing ("ACT Teleconferencing Stmt.") ¶ 10 ("We like the fact of wireline and wireless services coming together. We believe that wireless connecting with wireline will cut our costs"); Statement of Joe Shea, Los Angeles Times ("LA Times Stmt.") ¶ 7 ("This transaction, by consolidating the ownership of Cingular, should help us achieve our wireless goals. I would expect that we would be able to leverage our wireline purchases with AT&T to negotiate a better rate with Cingular."); Statement of Marie Escoto, Yamaha Motor Corp. ¶ 10 ("we expect to receive benefits from wireless/wireline integration").

⁶ *See* Reply Declaration of Dennis W. Carlton and Hal S. Sider ("Carlton & Sider Reply Decl.") ¶¶ 143-49, 154-68.

⁷ *See, e.g.*, Statement of Michael E. McDevitt, Children's Hospital of Alabama ("Children's Hosp. Stmt.") ¶ 8 ("the AT&T/BellSouth merger could benefit Children's by accelerating the convergence of wireless and wired technologies"); Statement of Terry Dymek, EMC, Inc. ¶ 8 (the merger "will bring wireless into a rationalized set of product offerings for business, and will encourage the convergence of wireless and wireline offerings"); Statement of Howard Hirth, Southern Orthopedic Specialists LLC ("Southern Orthopedic Stmt.") ¶ 5 ("the combined company will be able to offer packaged services which are not currently available from BellSouth, such as integrating Cingular service with our wireline service").

⁸ *See* Petition to Deny of Consumer Fed'n of America, *et al.* ("CFA Pet."), Joint Declaration of Mark M. Cooper and Trevor Roycroft ("Cooper & Roycroft Decl.") at 29-31; Petition to Deny of Access Point, Inc., *et al.* ("Access Point Pet.") at 52.

converged solutions. Rather, Applicants explained and opponents do not refute that a combined AT&T-BellSouth-Cingular will be able to provide the next-generation converged wireless/wireline services *more* quickly, *more* efficiently and *more* economically than they can under the current ownership and management structure.⁹ The DOJ and FTC confirm in their *Commentary on the Horizontal Merger Guidelines* that such efficiencies often can be achieved only by merger and not by contract.¹⁰

Only common ownership of AT&T, BellSouth and Cingular will permit the development of a unified strategy for designing and implementing IMS across multiple networks. One of the key capabilities that is necessary for the provision of such converged services is the ability to track customer data such as location, device capabilities, customer preferences with respect to that device, services purchased, and content requested. If a customer requests the transmission of streaming video from a PC to a mobile phone (or vice versa), the network needs to identify, among other things, where the devices are located, what their capabilities are for transmitting and displaying the data, and how the customer has set up his or her individual preferences for the transmission and display of such data. In the current scenario, where Cingular, AT&T and BellSouth all have separate IMS networks (and customer databases), these data would need to be pulled and integrated from those separate networks to enable the service. Currently, Cingular does not have a system for tracking all of these data components, so for either parent to provide this service, the parties would have to agree that Cingular should change its data schema to track

⁹ Public Interest Statement at 14-18.

¹⁰ U.S. Dep't of Justice and Fed. Trade Comm'n, *Commentary on the Horizontal Merger Guidelines* 50 (Mar. 2006) (emphasis added) ("That an efficiency theoretically could be achieved without a merger - for example, through a joint venture or contract - does not disqualify it from consideration in the analysis. *Many joint venture agreements* or contracts may not be practically feasible or *may impose substantial transaction costs* (including monitoring costs). In their assessment of proffered efficiency claims, the Agencies accord appropriate weight to evidence that alternatives to the merger are likely to be impractical or relatively costly.").

additional data at the same level of priority and in a method compatible with that parent's network. Such decisions are difficult and cumbersome given the different incentives and technology strategies of the parties involved.¹¹

B. The Merger Will Enable Faster Deployment of IPTV and Enhanced Video Competition to the Benefit of Customers of the Combined Company

The Public Interest Statement detailed how the merger will allow the combined company to bring IPTV to BellSouth's customers much more quickly than would occur otherwise.¹² In addition, both BellSouth's and AT&T's customers will reap the substantial benefits of a stronger wireline video entrant because the combined entity will be a more effective video competitor than either company on its own. For example, the efficiencies created by the merger will result in lower per-subscriber costs.¹³ Moreover, the transaction will promote competition in the market for video programming.¹⁴ And the combined company's larger potential subscriber base, along with the switched, interactive IP-based technology used by U-verseSM,¹⁵ should permit it to increase the amount and diversity of programming available to the public at a lower cost than either company could do alone.

There is abundant evidence that consumers benefit from the introduction of another wireline competitor to cable operators.¹⁶ Both this Commission and the GAO have noted the

¹¹ Public Interest Statement at 13-14. In addition, IMS technologies are relatively new and therefore challenging to implement for even a single network. After the merger, the combined firm will be able to design services across a single, unified IMS platform, which will significantly expand the variety of converged services that can be provided, and such services will be provided sooner and more efficiently.

¹² *Id.* at 23-25.

¹³ *Id.* at 24-25; Carlton & Sider Reply Decl. ¶¶ 174-76.

¹⁴ Public Interest Statement at 25.

¹⁵ "U-verseSM" is the brand name of AT&T's IPTV offering.

¹⁶ Just this month, the House Energy and Commerce Committee, in reporting a bill that recently passed the House, stated that a national franchise process for wireline providers would result in "increased competition, lower prices, enhanced service quality, and the deployment of new and

Footnote continued on next page

positive effect of a wireline competitor on rates and services.¹⁷ Moreover, the benefits to BellSouth subscribers of a more rapid roll out of IPTV would be substantial. Drs. Carlton and Sider estimate that the overall consumer welfare benefits as a result of faster video deployment could range from more than \$1 billion up to \$2.9 billion, depending on the price decline, demand elasticity and acceleration period assumed.¹⁸

Unlike AT&T, BellSouth has made no decision to proceed with a broad-scale commercial roll out of IPTV,¹⁹ and BellSouth's development of IPTV lags behind AT&T's.²⁰

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innovative broadband video . . . services over advanced, facilities-based networks.” House Energy and Commerce Comm., Communications Opportunity, Promotion and Enhancement Act of 2006, H.R. Rep. No. 109-470, at 4 (2006).

¹⁷ See Public Interest Statement at 20. See also Carlton & Sider Decl. ¶¶ 176-78; *In re Implementation of Section 621(a)(1) of the Cable Commc'ns Policy Act of 1984, as Amended, Ex Parte Submission of the Department Of Justice*, MB Docket No. 05-311 (May 10, 2006) at 3 (“additional competition, particularly from wireline providers, has the potential to provide lower prices, better quality services, and more innovation to consumers”).

¹⁸ Carlton & Sider Reply Decl. ¶ 180 and Table 6.3. These figures are likely to understate the consumer benefits resulting from an acceleration of IPTV service because they do not take into account, for example, the consumer welfare impact of the increased number of cable channels or improved service that might be provided due to increased competition. *Id.* ¶ 182. On the other hand, these figures do not take into account any delay that may be caused by local franchise requirements.

¹⁹ BellSouth's decision to provide video services on a limited scale to a small number of newly constructed multifamily communities, which may be provided using IPTV technology, will not position it to offer that service broadly. Any IPTV offerings to these communities by BellSouth would not require the investments in infrastructure (such as super hub offices) or back office and other support systems that AT&T has made and that would be required to support a broad-scale commercial launch of IPTV. See Supplemental Declaration of William L. Smith (submitted May 31, 2006).

²⁰ Access Point claims that, because BellSouth is investing \$2.2 billion over a five-year period to upgrade its broadband access network, it has therefore “made a decision to deploy IPTV,” but ignores BellSouth's statements that the upgrade was being made to permit it to provide a “wide range of IP-based interactive services,” with IPTV only “potentially” being provided. Compare Access Point Pet. at 48 with Smith Decl. at 4. BellSouth noted that it would require a “substantial additional investment” in order to provide IPTV over these facilities, and that it was still “evaluating the feasibility of” such an investment. Public Interest Statement at 23.

Similarly, Access Point improperly relies on a paper published by Broadband Everywhere that misconstrued comments BellSouth made to a Louisiana House Committee, when what BellSouth made clear in its testimony was that statewide franchising legislation would “position” BellSouth

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AT&T, on the other hand, has taken concrete steps to commence a large-scale commercial roll out of IPTV and has recently accelerated the pace of that deployment. It now expects to deploy U-verseSM to nearly 19 million households in its 13-state region, including 5.5 million low-income households, by the end of 2008.²¹

The combined company is poised to become a formidable new video competitor that can take advantage of cost savings and economies of scale and scope not otherwise available to AT&T and BellSouth individually. Consumers stand to benefit substantially, not only from lower prices and higher quality of service, but also in terms of more diverse content and greater programming choice.²²

C. The Merger Will Substantially Improve Services to Government Customers and Strengthen National Security and Emergency Preparedness

The Public Interest Statement demonstrated that the merger will create a financially strong, U.S.-owned and U.S.-controlled telecommunications company whose resources and capabilities will improve services to government customers, strengthen national security, and

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to offer IPTV if it decided to do so. *See* Hearing Before the Louisiana House of Representatives, Committee on Commerce, (May 9, 2006), *available at* <http://house.louisiana.gov/rmarchive/2006/May2006.htm>.

²¹ Press Release, AT&T Inc., AT&T Initiatives Expand Availability of Advanced Communications Technologies (May 8, 2006), *available at* <http://att.sbc.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=22272>; Public Interest Statement at 21-22, 24.

²² Access Point mistakenly suggests that AT&T has stated that the pricing for U-verseSM service will be higher than the price for the average cable service subscription, based on its reliance on an article in *XChange* magazine. *See* Access Point Pet. at 48. A review of the audio recording of the remarks cited by Access Point clarifies that AT&T's CFO, Richard Lindner, was discussing the higher prices that AT&T must pay for content compared to cable, and he did not state that U-verseSM subscription prices would be higher than cable subscription prices. *See* Q1 2006 AT&T Earnings Conference Call, <http://phx.corporate-ir.net/phoenix.zhtml?p=iroleventDetails&c=113088&eventID=1258419>.

enhance preparedness for, and the response to, natural disasters and other emergencies.²³ No merger opponent seriously challenges these benefits.

The Public Interest Statement described in detail the specific ways in which the merger will enhance national security and result in better service for government customers, such as greater end-to-end security, increased R&D, faster and more efficient deployment of advanced facilities and networks, and access to the unique resources of both companies.²⁴ The merged company also will provide government customers with a single point of contact to coordinate the delivery of service during normal operations and to accelerate service restoration efforts after a hurricane or other emergency.²⁵ Similarly, the merger will enhance the combined company's ability both to prevent and to manage the scope and severity of any problems affecting the consolidated network for the benefit of government customers of both AT&T and BellSouth.²⁶

D. The Merger Will Bring Vertical Integration Efficiencies

Applicants demonstrated in the Public Interest Statement that the vertical aspects of this merger will yield numerous substantial efficiencies.²⁷ As was the case with the SBC/AT&T merger,²⁸ the AT&T/BellSouth merger will combine the complementary assets of AT&T's global fiber optic long distance network and BellSouth's extensive local fiber network within its nine-state region, resulting in the same vertical integration benefits the FCC has found significant. Consumers already have started to benefit from the similar integration of SBC's and

²³ Public Interest Statement at 28-40.

²⁴ *Id.* at 30-32.

²⁵ *Id.* at 31.

²⁶ *Id.* at 29-31.

²⁷ *Id.* at 40-46.

²⁸ *In re Applications of SBC Commc'ns Inc. & AT&T Corp.*, Memorandum Opinion and Order, 20 FCC Rcd. 18290, 18387-88, ¶¶ 190-192 (Nov. 17, 2005) ("*SBC/AT&T Merger Order*").

AT&T's networks. Although actual network integration activities only began in January, AT&T has made significant progress and integration activities are on track. In May, the domestic AT&T and SBC IP backbones began to peer directly, which means that traffic between legacy SBC and AT&T customers is now exchanged without any intermediary network, resulting in service improvement for all AT&T customers. Once AT&T completes the upgrade of its network core to OC-768 circuits, the IP network cores of AT&T and SBC will be consolidated and network integration completed. AT&T anticipates that it will begin to move to the new network core by the end of 2006.²⁹

As described in detail in the Public Interest Statement, network integration benefits include, among others, (1) improved network efficiency and performance; (2) improved network security; (3) accelerated investment in network upgrades; and (4) increased availability of products and services.³⁰ AT&T's recent record of quickly providing the benefits of integration confirms that Applicants can produce similar network integration benefits after this merger. And customers of both AT&T and BellSouth likewise foresee significant benefits from the integration of the companies' networks.³¹

²⁹ Public Interest Statement, Declaration of Christopher Rice ("Rice Decl.") ¶¶ 7, 9 (discussing plans to connect directly domestic backbones of legacy SBC and AT&T and to upgrade network core in 2006).

³⁰ Public Interest Statement at 42-46.

³¹ See, e.g., Statement of Bob Gilmore, Cal Maine Foods, Inc. ("Cal Maine Foods Stmt.") ¶ 4 ("Combining AT&T's and BellSouth's complementary services and network will undoubtedly provide efficiencies that will reduce costs to customers like Cal Maine Foods. . . I expect the merger will lead to better rates, as well as better network function"); Statement of Patrick O'Brien, ADC Telecommunications ¶ 5 ("mergers like AT&T and BellSouth will encourage investment in networks and infrastructure by the newly combined company"); Statement of Roger Graves, Mississippi Dep't of IT Servs. ¶ 10 ("The combined company might be able to lower long distance costs if the company did not have to purchase these resources from other suppliers. . . I expect that there would be savings and operational advantages from having both the local and long distance services together again under the same roof."); METCO/Milwaukee Electric Tool ¶ 9 ("A merger between AT&T and BellSouth will produce a company able to

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Access Point claims that network integration and other vertical benefits are too speculative or are already being achieved by virtue of the SBC/AT&T merger, and, conversely, if they are in fact realized, will not benefit consumers.³² But the Commission specifically recognized in the *SBC/AT&T Merger Order* “the significant benefits [that] are likely to result from the vertical integration of the largely complementary networks.”³³ Likewise, the Department of Justice credited the “exceptionally large merger-specific efficiencies” in approving the SBC/AT&T and Verizon/MCI transactions.³⁴ Similar benefits will result from this merger and, for reasons discussed here and in the Public Interest Statement, those benefits will reach consumers through more reliable, innovative and flexible services at better prices than either company could offer alone.

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

Applicants also have demonstrated how, as in the SBC/AT&T merger, this merger will permit more efficient research and development and allow BellSouth customers to benefit from innovations developed by AT&T. The Commission found such efficiencies important in the SBC/AT&T merger,³⁵ and the same conclusion should apply here. As described in the Public Interest Statement, AT&T has made significant progress since the consummation of the SBC/AT&T transaction in bringing innovative products and services to a wider set of customers

Footnote continued from previous page
provide complementary services and create an integrated network capable of offering a high quality of service”).

³² Access Point Pet. at 57-60.

³³ *SBC/AT&T Merger Order* ¶¶ 190-192.

³⁴ Press Release, U.S. Dep’t of Justice, Justice Department Requires Divestitures in Verizon’s Acquisition of MCI and SBC’s Acquisition of AT&T (Oct. 27, 2005), *available at* http://www.usdoj.gov/opa/pr/2005/October/05_at_571.html.

³⁵ *SBC/AT&T Merger Order* ¶ 195.

in the SBC region.³⁶ Opponents can offer no legitimate reason why Applicants would not be able to deliver similar innovative products and services to the small business and mass market customers of BellSouth and Cingular. Indeed, the customers of both AT&T and BellSouth anticipate that the proposed transaction may result in enhanced research and development.³⁷

F. The Merger Will Produce Substantial Cost Savings

Applicants showed in the Public Interest Statement that many of the same cost synergies and corresponding savings that the Commission credited in the SBC/AT&T merger will occur in this merger.³⁸ The Commission has squarely held that cost savings are a public benefit and, in the *SBC/AT&T Merger Order*, the Commission expressly credited and relied upon the substantial merger benefits associated with such cost synergies.³⁹

In the wake of the SBC/AT&T merger, the cost savings in this merger are anything but speculative. The estimate of cost savings in the SBC/AT&T merger has, in fact, proven to be conservatively low. As AT&T reported publicly on January 31, the net present value of SBC/AT&T synergies is now estimated at \$18 billion, 20% greater than originally forecast.⁴⁰

³⁶ See Public Interest Statement, Rice Decl. ¶11.

³⁷ See, e.g., Statement of Brett Bidinger, American Bureau of Shipping ¶ 9 (“the merger may better enable AT&T to invest in network systems and research and development.”); ACT Teleconferencing Stmt. ¶ 12 (“It will better enable AT&T to invest in research and development”); Statement of John Leonowich, Mannington Mills (“Mannington Mills Stmt.”) ¶ 7 (“the merger will enable AT&T to invest more in research and development and to bring better products to market faster.”); Statement of Jeffrey Marshall, Transtar Industries (“Transtar Stmt.”) ¶ 5 (the merger “will help spawn new services and lead to the development of more advanced technolog[ies]”).

³⁸ Public Interest Statement at 51-54.

³⁹ *SBC/AT&T Merger Order* ¶¶ 196-204; see also *id.* ¶ 193 (“We find that the merger of SBC and AT&T is likely to give rise to significant economies of scope and scale, as well, although these are difficult to quantify.”). The Commission also acknowledged that certain employment-related cost savings are cognizable public interest benefits.

⁴⁰ See Public Interest Statement at 42; see also AT&T Analyst Conference Presentation, at 51 (Jan. 31, 2006), available at http://library.corporate-ir.net/library/11/113/113088/items/181348/analyst06__b.pdf (noting that synergies are now estimated at \$18 billion vs. \$15 billion).

This demonstrates that the cost savings claimed by AT&T in its merger with SBC were real, and similar cost savings should not be ignored in the AT&T/BellSouth transaction. Customers of both AT&T and BellSouth believe cost savings resulting from the merger will be a benefit and may be passed on to them in the form of lower prices.⁴¹

III. THE MERGER WILL ENHANCE, NOT LESSEN, COMPETITION

A. The Merger Will Not Harm Wholesale Special Access Competition

Merger opponents never come to grips with the truly *de minimis* nature of Applicants' overlapping special access facilities. AT&T has local fiber connections to only a few hundred of the more than 200,000 commercial buildings with special access level demand in BellSouth's territory. After applying the competitive analysis used in prior mergers to eliminate buildings for which there is plainly no competitive concern, only 32 buildings remain in the entire BellSouth region. And there is no basis for concern even as to them.

Nonetheless, some merger opponents take the opportunity to propose a host of expansive "remedies" that go well beyond those that the Commission approved in the SBC/AT&T and

⁴¹ See, e.g., Southern Orthopedic Stmt. ¶ 5 ("I anticipate that the cost savings associated with the merger may be passed on to customers such as our company"); Statement of Allen Van Meter, Dialogic Commc'ns Corp ("Dialogic Stmt.") ¶ 7 ("as a result of the AT&T-BellSouth merger we may in fact see lower access prices for last-mile services due to the economies of scale of the combined entity. I am hopeful that as network costs are reduced, those reductions will be passed along to us."); Statement of Jack Storey, Children's Healthcare of Atlanta ("CHOA Stmt.") ¶ 7 ("I hope it will allow the combined company to achieve back office savings which would benefit us."); Statement of Chris Gruenwald, Affiliated Computer Services, Inc. ("Affiliated Computer Stmt.") ¶ 5 ("The merger will enable AT&T to drive out inefficiencies which will, in turn, lower prices"); Statement of Cathy Abbott, City of Hollywood, FL ¶ 5 ("the merger will provide reduced prices through economies of scale"); Statement of Rick Van Akin, Sanofi-Aventis Group ¶ 5 ("the prices that the combined company charges will no longer need to include the cost of paying a different company for access to that company's lines or equipment"); Statement of Carlos Cabrera, Exide Technologies ¶ 6 (the merger "would create a much stronger player for U.S.-based companies, which should result in lower cost and better service"); Statement of Larry Sanderson, Computer Services Inc. ¶ 4 ("I believe that the proposed AT&T-BellSouth merger can potentially benefit retail business customers like CSI by bringing down prices for telecommunications services").

Verizon/MCI mergers. They advocate theories that either have already been rejected by the Commission or fail on their own terms. These merger opponents: (1) complain that the Commission and the DOJ got it all wrong in the prior mergers and that much broader divestitures are necessary to remedy the loss of AT&T as an independent supplier of “Type I” wholesale special access services in BellSouth’s territory; (2) insist that AT&T has some special status, even with respect to buildings to which its local fiber network is *not* connected, notwithstanding that many other CLECs have deployed fiber in the same areas and the same BellSouth wire centers as AT&T and have equal ability to provide the same “Type II” special access resale arrangements; (3) raise the same coordinated interaction, mutual forbearance and vertical harm theories that the Commission and DOJ rejected last year; and (4) interject generic complaints about special access rates, returns and performance that have nothing to do with the merger and that the Commission has repeatedly held must be raised, if at all, in ongoing industry-wide rulemaking proceedings.

1. Any Type I Special Access Effects Are *De Minimis*

In the SBC/AT&T merger proceeding, the Commission and the DOJ found that the elimination of AT&T as an independent wholesale special access supplier could have potential competitive significance *only* in the subset of AT&T “lit” buildings without actual or potential competition from one or more of SBC’s other facilities-based competitors.⁴² In that case, hundreds of such buildings remained after application of the DOJ’s competitive screens. To obtain swift merger approvals, the merging parties agreed to provide other CLECs ten year

⁴² See generally *SBC/AT&T Merger Order* ¶¶ 24-55; Press Release, U.S. Dep’t of Justice, Justice Department Requires Divestitures in Verizon’s Acquisition of MCI and SBC’s Acquisition of AT&T (Oct. 27, 2005), available at http://www.usdoj.gov/atr/public/press_releases/2005/212407.htm; Plaintiff United States’ Response to Public Comments, *United States v. SBC Commc’ns, Inc.*, Civ. A. No. 1:05CV02102 (EGS) (D.D.C. Mar. 21, 2006) (“DOJ Response to Public Comments”).

indefeasible rights of use (“IRUs”) in AT&T’s local fiber connections to these buildings.⁴³ Here, in contrast, based on the same competitive screens, the number of buildings that raise even potential competitive concern is less than 10% of what it was in each of the prior mergers. No remedy is necessary for this *de minimis* issue.

a. Application of the Competitive Analyses Endorsed in the Prior Mergers and Examination of the Specific Buildings at Issue Confirms That Any Type I Effects Are Far Too Limited in Scope and Magnitude To Justify Merger Conditions

AT&T operates local fiber networks in only 11 BellSouth metropolitan areas. The vast majority of the buildings connected to AT&T’s local fiber in these areas are either currently served by other CLICs or could be served by rivals “given the . . . proximity of competitive fiber to that building, and the capacity required by the building.”⁴⁴ Many buildings are also competitively insignificant for other reasons identified by the DOJ and the Commission, *e.g.*, the buildings are vacant or solely occupied by AT&T or an affiliate.⁴⁵

The only metropolitan areas with buildings remaining after application of the competitive screens used in the prior mergers are Miami/Ft. Lauderdale and Atlanta, two of the most competitive areas in the entire nation.⁴⁶ Applicants reported in the Public Interest Statement that fewer than 50 buildings in those areas might require further review under the competitive screens.⁴⁷ Applicants have continued to collect information on these buildings, and can now report that no more than 32 such buildings actually exist – 18 in Miami and 14 in Atlanta.

⁴³ See, *e.g.*, DOJ Response to Public Comments at 6; *SBC/AT&T Merger Order* ¶ 40.

⁴⁴ DOJ Response to Public Comments at 23; see Carlton & Sider Reply Decl. ¶¶ 20-21 and n.12 (applying these criteria).

⁴⁵ DOJ Response to Public Comments at 22; see Carlton & Sider Reply Decl. ¶ 20 & n.12 (applying these criteria).

⁴⁶ See Carlton & Sider Reply Decl. ¶ 20.

⁴⁷ Public Interest Statement at 59 & n.169.