

**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.

- 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.

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 I.

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.

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.

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).

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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&cdvn=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

*Redacted Version  
For Public Inspection*

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.