

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Inc. and BellSouth Corporation)	WC Docket No. 06-74
Applications for Approval of)	
Transfer of Control)	

**REDACTED VERSION
SUBJECT TO PROTECTIVE ORDER
IN WC DOCKET No. 06-74**

DECLARATION OF

SUSAN M. BALDWIN

and

SARAH M. BOSLEY

and

TIMOTHY E. HOWINGTON

on behalf of the

New Jersey Division of Rate Counsel

October 3, 2006

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I. INTRODUCTION

Introduction and qualifications

1. My name is Susan M. Baldwin. I am a consultant, and my business address is 17 Arlington Street, Newburyport, Massachusetts, 01950. I provide consulting services to public sector agencies on telecommunications economics, regulation, and public policy.

My statement of qualifications is included as Appendix A.

2. My name is Sarah M. Bosley. I am a consultant, and my business address is 107 Oxpens Road, Cary, NC 27513. I provide consulting services to public sector agencies on telecommunications economics, regulation, and public policy. My statement of qualifications is included as Appendix B.

3. My name is Timothy E. Howington. I am a consultant, and my business address is 46 Princeton Street, Boston, Massachusetts, 02128. I provide consulting services to public sector agencies on telecommunications economics, regulation, and public policy. My statement of qualifications is included as Appendix C.

4. Ms. Baldwin and Ms. Bosley co-sponsored a declaration, which was filed in this proceeding on June 5, 2006.¹ The declaration supplemented and provided further factual support to the New Jersey Division of Rate Counsel's comments in the instant

¹ / *In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, FCC WC Docket No. 06-74, Declaration of Susan M. Baldwin and Sarah M. Bosley on behalf of the New Jersey Division of the Ratepayer Advocate, June 5, 2006 ("Baldwin/Bosley Declaration").

proceeding.² Ms. Baldwin and Ms. Bosley addressed the impact of the proposed transaction on the overall structure of the national telecommunications industry with a particular focus on the mass market.

5. Ms. Baldwin, Ms. Bosley, and Mr. Howington assisted the New Jersey Division of Rate Counsel in the preparation of initial and reply comments in WC Docket No. 05-65, the investigation by the Federal Communications Commission (“FCC” or “Commission”) of the proposed merger of SBC Communications Inc. (“SBC”) and AT&T Corp. (“AT&T”).³ Ms. Baldwin and Ms. Bosley also co-sponsored a declaration on behalf of the Rate Counsel in WC Docket No. 05-75, regarding the proposed merger of Verizon Communications Inc. (“Verizon”) and MCI, Inc. (“MCI”) and Ms. Baldwin, Ms. Bosley, and Mr. Howington assisted with the preparation of initial and reply comments in that proceeding.⁴

² *In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, FCC WC Docket No. 06-74, Comments of the New Jersey Division of the Ratepayer Advocate, June 5, 2006. *See, also, In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, FCC WC Docket No. 06-74, Reply Comments of the New Jersey Division of the Ratepayer Advocate, June 20, 2006. Effective July 1, 2006, the New Jersey Division of Ratepayer Advocate is now the New Jersey Division of Rate Counsel. The Rate Counsel, formerly known as the New Jersey Ratepayer Advocate, is a Division within the Department of the Public Advocate.

³ *In the Matter of Transfer of Control Filed by SBC Communications Inc. and AT&T Corp.*, FCC WC Docket No. 05-65, Comments on behalf of the New Jersey Division of the Ratepayer Advocate, April 25, 2005 and May 10, 2005. Ms. Baldwin also submitted testimony before the New Jersey Board of Public Utilities (“New Jersey Board” or “Board”) in its review of the proposed SBC/AT&T merger. *Joint Petition of SBC Communications Inc. and AT&T Corp., Together with its Certificated Subsidiaries for Approval of Merger*, New Jersey Board of Public Utilities Docket No. TM05020168, on behalf of the New Jersey Division of the Ratepayer Advocate, May 4, 2005, and June 1, 2005.

⁴ *In the Matter of Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, WC Docket No. 05-75, May 9, 2005. The Rate Counsel submitted initial and reply comments on May 9, 2005, and May 24, 2005, respectively. Ms. Baldwin also submitted direct and rebuttal testimony before the New Jersey Board on behalf of the Rate Counsel regarding the proposed Verizon/MCI merger. *Joint Verified Petition of Verizon Communications Inc. and MCI, Inc. For Approval of Agreement and Plan of Merger*, New Jersey Board of Public Utilities Docket No. TM05030189, July 8, 2005 and August 19, 2005.

6. As evidenced by our statements of qualifications, we have analyzed numerous other mergers between telecommunications carriers on behalf of consumer advocates. Ms. Baldwin has filed testimony on behalf of the Nevada Bureau of Consumer Protection on the proposed merger of Sprint Corporation (“Sprint”) and MCI WorldCom Inc. (“WorldCom”); the California Office of Ratepayer Advocate and Washington Office of Attorney General in their respective state public utility commissions’ review of the merger of Bell Atlantic Corporation (“Bell Atlantic”) and GTE Corporation (“GTE”); the Ohio Consumers’ Counsel and the Indiana Office of Utility Consumer Counselor with respect to the SBC Communications, Inc.’s (“SBC”) acquisition of Ameritech Corporation (“Ameritech”); the Connecticut Office of Consumer Counsel regarding SBC’s acquisition of Southern New England Telecommunications Corporation (“SNET”) and filed Affidavits with the Commission in its review of the SBC/Ameritech and Bell Atlantic/GTE mergers on behalf of consumer coalitions. Ms. Baldwin also provided assistance to the Hawaii Division of Consumer Advocacy in its analysis of the Bell Atlantic/GTE merger and the California Office of the Ratepayer Advocate’s review of the SBC’s acquisition of Pacific Telesis Group. Ms. Bosley contributed to the investigations of the Bell Atlantic/GTE merger on behalf of the California Office of Ratepayer Advocate, the Washington Attorney General and Hawaii Division of Consumer Advocacy, and the SBC/Ameritech merger on behalf of the Indiana Office of Utility Consumer Counselor.

7. Ms. Baldwin, Ms. Bosley, and Mr. Howington have substantial experience evaluating the status of local competition; incumbent local exchange carriers’ (“ILECs”)

proposals for deregulation; and the consumer impact of changes in telecommunications markets.

8. Ms. Baldwin has been actively involved in public policy for twenty-eight years, twenty-two of which have been in telecommunications policy and regulation. Ms. Baldwin received her Master of Economics from Boston University, her Master of Public Policy from Harvard University's John F. Kennedy School of Government, and her Bachelor of Arts degree in Mathematics and English from Wellesley College. Ms. Baldwin has extensive experience both in government and in the private sector. Ms. Baldwin has testified before sixteen state public utility commissions and submitted numerous affidavits and comments to the Federal Communications Commission on behalf of consumer advocates, the National Association of State Utility Consumer Advocates ("NASUCA"), users, and competitive local exchange carriers ("CLEC"). Ms. Baldwin also served four years as the Director of the Telecommunications Division for the Massachusetts Department of Public Utilities (now the Department of Telecommunications and Energy).

9. Sarah M. Bosley has over six years of experience in telecommunications economics, regulation, and public policy. Ms. Bosley earned her Master of Science in Agricultural and Applied Economics from Virginia Tech, her Master of Arts in International Affairs from American University, and her Bachelor of Arts in Political Science from McGill University. She has contributed to and co-authored reports for state commissions and comments and affidavits filed in Federal Communications Commission proceedings.

10. Mr. Howington has three years of experience in telecommunications policy and regulation. Mr. Howington earned a Master of Arts in Economics from Boston University, and a Bachelor of Arts from the University of Chicago. He has conducted detailed analyses of market share and product pricing for numerous proceedings, including mergers and spin-offs, requests for alternative regulation, and other regulatory proceedings. Prior to his career in telecommunications, Mr. Howington worked in economic development in Massachusetts.

11. Our statements of qualifications provide further detail.

Purposes of Declaration

12. The Rate Counsel asked us to prepare this Declaration to supplement and to provide further factual support for its comments in the instant proceeding regarding the application of AT&T and BellSouth (collectively, the “Joint Applicants”) for approval of transfer of control,⁵ based on our review of confidential and highly confidential information that the Joint Applicants submitted in response to the Commission’s

⁵/ *In the Matter of BellSouth Corporation and AT&T Inc. Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission’s Rules for Consent to the Transfer of Control of Bellsouth Corporation to AT&T Inc*, WC Docket No. 06-74, Application for Consent of Transfer of Control, filed March 31, 2006 (“Application”). See, www.fcc.gov/transaction/att-bellsouth.html.

Information and Document Request.⁶ This information includes numerous internal documents that substantiate and corroborate the concerns raised by the Rate Counsel in initial and reply comments, filed in this merger proceeding, as well as in other proceedings pending before the Commission.⁷ The additional review has raised new concerns with the effect of the merger on mid-sized and enterprise business customers. Based on our review of these documents, we urge the Commission to consider certain portions of this voluminous information as it deliberates on the impact of the proposed multi-billion dollar transaction on the prospects for competition in the consumer, mid-sized and enterprise business markets and on the public interest.

13. Our declaration identifies documents that bear directly on the issues and concerns that the Rate Counsel raised in previous filings in this proceeding, as well as our additional concerns for the mid-size and enterprise business markets. Our declaration

⁶ / Letter from Thomas J. Navin, Chief, Wireline Competition Bureau to Wayne Watts, Senior Vice President & Associate General Counsel, AT&T Inc. and James G. Harralson, Vice President & Associate General Counsel, BellSouth Corporation, Re: AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control (WC Docket No. 06-74), June 23, 2006, Attachment: Initial Information and Document Request (“FCC Information and Document Request”). On July 11, 2006 AT&T submitted more than 400,000 pages of documents, including documents associated with 23 custodians and BellSouth submitted more than 300,000 pages, including documents associated with 25 custodians. However, because the Joint Applicants submitted multiple copies of the same documents, there are significantly fewer unique pages of information. The Rate Counsel reviewed many but by no means all of these documents, and focused primarily on those documents identified as relating to mass market services and public interest benefits, and secondarily on documents identified as relating to enterprise and wholesale customers, special access services, wireless broadband services, and Internet services. *See* FCC Information and Document Request, Appendix A: Document Custodians.

⁷ / *In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, Federal Communications Commission WC Docket No. 06-74, Initial Comments of the New Jersey Division of Rate Counsel (including declaration of Susan M. Baldwin and Sarah M. Bosley) and Reply Comments on behalf of the New Jersey Division of the Ratepayer Advocate, June 5, 2006; Reply Comments of the New Jersey Division of the Ratepayer Advocate, June 20, 2006. *See, also, In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate (including Affidavit of Susan M. Baldwin on behalf of the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel, filed August 22, 2006).

identifies particular portions of the Joint Applicants' voluminous response to the Commission's data and information request that we recommend inform the Commission's judgment and decision-making in this proceeding.

Summary of Major Findings and Recommendations.

14. This declaration supplements but does not replace the Baldwin/Bosley Declaration. Among the major findings and recommendations discussed herein are the following:

- The Commission should not approve the proposed merger unless and until AT&T demonstrates its compliance with the conditions on the AT&T/SBC merger, especially AT&T's provision of stand-alone digital subscriber line ("DSL").
- In its assessment of whether the proposed transaction is in the public interest, the Commission should review carefully the strategic and planning documents that the Joint Applicants have designated as highly confidential because, among other things, they are not available to the general public, yet contain important information about the Joint Applicants' market power and sales strategies. The Commission, therefore, has a unique responsibility to consider these documents.
- The Commission should determine a procedural mechanism whereby the Commission can consider the evidence in this proceeding in its deliberations in the Separations proceeding. The Joint Applicants' marketing and sales plans, which are described in highly confidential documents submitted in this proceeding, bear directly on the flaws in the existing separations process, and the concern that basic service customers are cross-subsidizing Bells' unregulated lines of business.
- If, despite evidence that the merger is not in the public interest, the Commission approves the merger, its approval should be contingent upon enforceable conditions that mitigate risks for consumers and mid-sized and enterprise businesses with strong incentives for compliance and clear standards for enforcement.
- A review of the evidence contained in the materials provided to the FCC by the Joint Applicants underscore the critical importance of the adoption

of the conditions outlined in the Baldwin/Bosley declaration.⁸ We reiterate these conditions in Section IV of this declaration.

⁸ / See Baldwin/Bosley Declaration, at paras. 264-285.

II. MARKET CONCENTRATION AND THE STATUS OF LOCAL COMPETITION.

The UNE-P Remand decision and the RBOC/IXC mergers have entrenched RBOC market power.

15. The status of local, long distance, data, and video competition should inform the Commission's assessment of the proposed merger of two Bell operating companies ("Bell"). The information that the Joint Applicants submitted in response to the Commission's information and document request provides compelling evidence of the Joint Applicants' market power based on their present "stand-alone" position. This declaration demonstrates that the proposed merger would enhance their market power, harming consumers and competitors.

The UNE Remand Order⁹ diminished competition in BellSouth's territory. Competition, as measured by the quantity of unbundled network element platform ("UNE-P") purchased from BellSouth by rivals, is <<<**BEGIN HIGHLY CONFIDENTIAL** **END HIGHLY CONFIDENTIAL**>>> When one removes AT&T as a UNE-P buyer from the analysis (due to its proposed acquisition of BellSouth), the situation <<<**BEGIN HIGHLY CONFIDENTIAL**

⁹ / *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC WC Docket No. 04-313; CC Docket No. 01-338, *Order on Remand*, rel. February 4, 2005 ("UNE Remand Order" or "TRRO").

¹⁰ / BellSouth Exhibit 36.C.1 and 36.C.2.

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17. Internal e-mails show the change in focus of legacy AT&T resulting from the UNE Remand Order. Internal e-mails show that <<<**BEGIN HIGHLY CONFIDENTIAL**

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18. In April, 2005 legacy SBC internal documents reported a winback rate of

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MCI and legacy AT&T, CLEC competitors that no longer exist.

19. The hyperbolic statements of telecommunications executives regarding the purportedly growing competition obscure the continuing market dominance of the Bells.

A report on access line loss, dated March 2005, estimates legacy SBC's residential market share in January 2005 to be **<<<BEGIN HIGHLY CONFIDENTIAL**

¹¹ / AT&T-CD-5 (Clayton Lockhart): e-mail from Tom Dagger, AT&T Corp. L&GA VP, to Clayton Lockhart, Regina Egea, Stephen Huels, et al., Subject: ICA High Cap Loop/Transport UNE vs. Special Access tradeoffs, February 24, 2005, ATT-FCC-00022562.pdf.

¹² / See ATT-CD-43 (Susan Johnson): "Consumer Marketing Plan," May 12, 2005, v.6.1. (SBC), ATT-FCC-00232499.pdf, at ATT-FCC-00232500.

¹³ / ATT-CD-43 (Susan Johnson): "Consumer Marketing Plan," May 12, 2005, v.6.1. (SBC), ATT-FCC-00232499.pdf, at ATT-FCC-00232502.

¹⁴ / ATT-CD-43 (Susan Johnson): "Consumer Access Line Loss: 4th Qtr 2004," March 5, 2005, Customer Analytics & Research, SBC, 00234057.pdf, at 00234059.

¹⁵ / ATT-CD-43 (Susan Johnson): "Consumer Access Line Loss: 4th Qtr 2004," March 5, 2005, Customer Analytics & Research, SBC, 00234057.pdf, at 00234061.

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Similarly, a July 2005 BellSouth report estimates market share in the local and wireless-only market across BellSouth's nine states of <<<**BEGIN HIGHLY CONFIDENTIAL**

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20. As we discuss further in the subsequent section, the documents that the Joint Applicants submitted to the Commission demonstrate their market power and the fact that the merger would further concentrate telecommunications markets.

The Joint Applicants dominate telecommunications markets and the proposed merger would entrench further their market power.

21. Numerous documents demonstrate the Joint Applicants' market power. Some examples of the evidence include: <<<**BEGIN HIGHLY CONFIDENTIAL**

¹⁶ / ATT-CD-43 (Susan Johnson): "Non-FTTX Wire Center Line Losses: Interim Strategies," April, 2005, Kieran P. Nolan, SBC, 00234239.pdf, at 00234241.

¹⁷ / ATT-CD-43 (Susan Johnson): "Non-FTTX Wire Center Line Losses: Interim Strategies," April, 2005, Kieran P. Nolan, SBC, 00234239.pdf, at 00234246.

¹⁸ / BellSouth, Laura Reid Disk 1 of 5, "In-Region Product Penetration & Market Share Overview," In\$ite, July 19, 2005, BLS-FCC-00282445.pdf, at BLS-FCC-00282453. The MSO category appears to primarily consist of cable companies.

¹⁹ / ATT-CD-23 (Champion), "Wireline Results Investor Relations Package, 1st Quarter 2005," ATT-FCC-00123207, at ATT-FCC-00123210.

²⁰ / ATT-CD-23 (Champion), “Wireline Results Investor Relations Package, 1st Quarter 2005,” ATT-FCC-00123207, at ATT-FCC-00123214.

²¹ / ATT-CD-23 (Champion), “Wireline Results Investor Relations Package, 1st Quarter 2005,” ATT-FCC-00123207.pdf, at ATT-FCC-00123214.

²² / ATT-CD-23 (Champion), “Wireline Results Investor Relations Package, 1st Quarter 2005,” ATT-FCC-00123207.pdf, at ATT-FCC-00123215.

²³ / ATT-CD-23 (Champion), “Wireline Results Investor Relations Package, 1st Quarter 2005,” ATT-FCC-00123207.pdf, at ATT-FCC-00123216.

²⁴ / ATT-CD-59 (Helbing), “Project Lightspeed Services and Bundles: A Quantitative Study of Demand from Consumer Customers: Findings from Web-Based Interviews with Consumers in Project Lightspeed Green Areas,” Alex Larson, Consumer Analytics and Research, July 2005, ATT-FCC-00318206.pdf, at ATT-FCC-00318225.

²⁵ / ATT-CD-59 (Helbing), “Project Lightspeed Services and Bundles: A Quantitative Study of Demand from Consumer Customers: Findings from Web-Based Interviews with Consumers in Project Lightspeed Green Areas,” Alex Larson, Consumer Analytics and Research, July 2005, ATT-FCC-00318206.pdf, at ATT-FCC-00318270.

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Internal documents and e-mails discussing municipal broadband plans illustrate the degree to which legacy SBC possesses power in communications markets and intends to use that power to move its business from the wireline business to adjacent telecommunications markets. <<<**BEGIN HIGHLY CONFIDENTIAL**

²⁶ / BLS Exhibit 36.b.1.

²⁷ / *See, e.g.*, BLS CD (Competitive Intelligence Shared Server), BLS-FCC-00265373; BLS-FCC-00265892.

²⁸ / BLS Exhibit 36.c.1.

²⁹ / BLS Exhibit 36.b.1.

³⁰ / AT&T CD 62 (Helbing), "AT&T Southwest 2006 Business Plan," January 16, 2006, ATT-FCC-00342254.pdf, at ATT-FCC-00342274.

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24. The proposed merger would increase AT&T's market share and market power, with no offsetting benefit to consumers and the public interest.

³¹ / ATT-CD-43 (Susan Johnson): Memo from Don to Susan (ATT-FCC-00235311.pdf) attached to e-mail from Don Hardesty to Susan A. Johnson dated May 5, 2005 (ATT-FCC-00235310.pdf), at ATT-FCC-00235312.

³² / *Id.*, at ATT-FCC-00235311 (emphasis added).

³³ / ATT-CD-55 (Christopher T. Rice): Memo to Mr. Stankey, date not available, author not available, ATT-FCC-00301523.pdf, at ATT-FCC-00301523.

The merger would diminish competition in the small, mid-sized, and enterprise business markets.

25. The Joint Applicants possess market power in the small, mid-sized, and enterprise business markets, which the merger would further enhance. AT&T also purchases special access from CLECs, and the merger will likely diminish CLECs' opportunities to sell special access to BellSouth.

An internal document detailing AT&T's special access expenditures from January through December 2005 indicates that <<<BEGIN HIGHLY

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³⁴ / AT&T-CD-5 (Clayton Lockhart): ATT-FCC-00020253.

³⁵ / BLS CD (Barry Boniface Disk 1), at BLS-FCC-00189995.pdf. *See also*, BLS CD (Kenneth Hawkins), BLS-FCC-00205575.

³⁶ / AT&T-CD-5 (Clayton Lockhart): ATT-FCC-00020264.pdf, sequence of e-mails dated from March 14, 2006 through March 17, 2006.

³⁷ / AT&T-CD-5 (Clayton Lockhart): ATT-FCC-00020431.pdf, at ATT-FCC-00020448.

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28. The Joint Applicants' internal documents provide substantial evidence of their market power in business markets: <<<**BEGIN HIGHLY CONFIDENTIAL**

³⁸ / ATT-CD-47 (Susan Johnson), "Back up," undated, ATT-FCC-00261970.pdf, at ATT-FCC-00261974-ATT-FCC-00261975.

³⁹ / ATT CD2 (Christine Urbanek), "Business Marketing Leadership Team Meeting," February 15, 2006, BLS-ATT-00003869.pdf, at ATT-00003903.

⁴⁰ / BLS CD (Keith Milner Disk 1), "Business Markets Launch," January 24, 2006, BLS-FCC-00167597.pdf, at BLS-FCC-00167601. *See also*, BLS CD (Barry Boniface Disk 1), "2005-2014 Planning View," BellSouth Communications Group, March 31, 2005.

⁴¹ / BLS CD (Barry Boniface Disk 1), "BLS Company Plan," BLS-FCC-00187427.pdf. *See also*, BLS CD (John Irwin), Version 4.0, May 1, 2006, BLS-FCC-00087399.pdf.

⁴² / ATT CD-47 (Johnson), "SBC Business Plan 2006-2008, ATT-FCC-00261645.pdf, at ATT-FCC-002601663 and ATT-FCC-00261664.

⁴³ / ATT-CD-47 (Johnson), “Back up,” undated, ATT-FCC-00261970.pdf, at ATT-FCC-00261971 (emphasis in original). *See also*, ATT-CD-18 (Rooney), “Business Services 2005 Outlook Next Steps,” May 2, 2005, ATT-FCC-00098957.pdf

⁴⁴ / BLS-CD-7, Exhibit 5.14.

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30. The Joint Applicants' response to the Commission's information and document request shows that AT&T serves significant portions of the private line market in the BellSouth region. <<<**BEGIN HIGHLY CONFIDENTIAL**

END HIGHLY CONFIDENTIAL>>> The merger would irrevocably eliminate one of BellSouth's major private line competitors, thus harming mid-sized and enterprise business customers.

⁴⁵ / Exhibit BLS 12.1, sum of cells h7 through h1728.

The Long Distance market is very concentrated in BellSouth's territory.

31. The proposed combination of BellSouth and AT&T would significantly increase concentration in the long distance market. <<<BEGIN HIGHLY CONFIDENTIAL

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32. Data provided in BellSouth Exhibit 36.I.001 show that the market for long distance services grew <<<BEGIN HIGHLY CONFIDENTIAL

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When this data is used to calculate the HHI for each BellSouth state, BellSouth's market dominance is clear.⁴⁷ The HHI <<<BEGIN HIGHLY CONFIDENTIAL

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33. Taking BellSouth's region as a whole, and calculating the HHI with AT&T and BellSouth as separate companies, the HHI <<<BEGIN HIGHLY CONFIDENTIAL

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⁴⁶ / BLS CD (Doug O'Neill), BLS-FCC-00220973.pdf, at BLS-FCC-00220975.

⁴⁷ / The Herfindahl Hirschman Index (HHI) is a tool used to assess market concentration. The HHI is calculated by finding the sum of the squares of the market share of each company offering service in a given market. For example, if a single firm offers service to a market, then the HHI is 10,000. If two firms share a market equally, then the HHI is 5,000. A larger HHI signifies greater market concentration. Markets with HHI below 1,000 are considered to be unconcentrated. Markets with HHI between 1,000 and 1,800 are considered to be moderately concentrated. Those with HHI higher than 1,800 are highly concentrated.

HIGHLY CONFIDENTIAL>>> This means that the change in concentration in the long distance market due to the merger, as measured by the HHI, is <<<**BEGIN HIGHLY CONFIDENTIAL** **END HIGHLY CONFIDENTIAL>>>** points, well above the acceptable increase set forth in the Department of Justice's *Horizontal Merger Guidelines*.⁴⁸

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⁴⁸ / HHI numbers were calculated based on data provided in BellSouth Exhibit 36.A.I.001. The *Guidelines* state, "Mergers producing an increase in the HHI of more than 50 points in highly concentrated markets post-merger potentially raise significant competitive concerns... Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise." U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines*, Issued: April 2, 1992, Revised: April 8, 1997, at 16.

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Data provided by BellSouth show that nearly <<<**BEGIN HIGHLY CONFIDENTIAL**

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⁴⁹ / Market shares were calculated based on data provided in BellSouth Exhibit 36.A.I.001.

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The Joint Applicants exaggerate the role of intermodal alternatives in providing substitutes to basic local exchange service.

Wireless:

While many consumers utilize wireless phones, most continue to subscribe to wireline service as well. BellSouth documents indicate an estimated penetration rate (*i.e.* percentage of consumers subscribing to wireless phones) in BellSouth's nine-state region of <<<**BEGIN HIGHLY CONFIDENTIAL** **END HIGHLY CONFIDENTIAL**>>> Furthermore, a large segment of those customers subscribe to BellSouth's affiliate, Cingular. A July 2005 report indicates that <<<**BEGIN HIGHLY CONFIDENTIAL**

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36. BellSouth documents contain projections from consulting firms In-STAT MDR and Yankee Group, as well as the “BellSouth Base View,” showing that wireless substitution for landline telephones will **<<<BEGIN HIGHLY CONFIDENTIAL**

⁵⁰ / BLS CD (Laura Reid Disk 1), “In-Region Product Penetration & Market Share Overview,” In\$ite, July 19, 2005, BLS-FCC-00282445.pdf, at BLS-FCC-00282455. It is not entirely clear from the document whether the penetration rate is calculated as a percentage of all local exchange consumers or local and wireless only consumers.

⁵¹ / BLS CD (Callaghan Disk), “Wireless Substitution Consumer Marketing Strategy 1 – 5 Years,” June 2005, BLS-FCC-00190480.pdf, at BLS-FCC-00190481.pdf.

⁵² / BLS CD (Callaghan Disk 1), “Wireless Substitution Consumer Marketing Strategy 1 – 5 Years,” June 2005, BLS-FCC-00190480.pdf, at BLS-FCC-00190481 (emphasis in original).

⁵³ / BLS CD (Callaghan Disk 1), “Wireless Substitution Consumer Marketing Strategy 1 – 5 Years,” June 2005, BLS-FCC-00190480.pdf, at BLS-FCC-00190485.

⁵⁴ / BLS CD (Callaghan Disk 1), “I-SAFA Review,” March 23, 2006, BLS-FCC-00194747.pdf, at BLS-FCC-00194766.

⁵⁵ / BLS CD (Callaghan Disk), “Wireless Substitution Consumer Marketing Strategy 1 – 5 Years,” June 2005, BLS-FCC-00190480.pdf, at BLS-FCC-00190493.

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37. One report prepared on behalf of AT&T notes that wireless growth has

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In a discussion of a focus group of wireless only and wireline consumers AT&T indicates that **<<<BEGIN HIGHLY CONFIDENTIAL**

⁵⁶ / BLS CD (Robert McCarthy Disk 1), "Base View Scenario Document," May 19, 2005, BLS-FCC-00138192.pdf, at BLS-FCC-00138200.

⁵⁷ / BLS CD (Robert McCarthy Disk 1), "Base View Scenario Document," May 19, 2005, BLS-FCC-00138192.pdf, at BLS-FCC-00138200.

⁵⁸ / ATT-CD-49 (Christopher T. Rice): "Triple Play – Bundling Strategies in the U.S. Residential Market," July 2005, by In-STAT, ATT-FCC-00265968.pdf, at ATT-FCC-00265982.

⁵⁹ / ATT-CD-43 (Susan Johnson): "Consumer Value Migration," Week 2 Update, Draft, Prepared for AT&T, Nov. 22, 2005 by Altman Vilandrie & Company, ATT-FCC-00232277.pdf (ATT-FCC-00232277 through ATT-FCC-00232325), at ATT-FCC-00232302.

⁶⁰ / BLS CD (Michael Bowling), "IDC Tele briefing," November 30, 2005, BLS-FCC-00183252.

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AT&T documents show that <<<**BEGIN HIGHLY CONFIDENTIAL**

⁶¹ / ATT-CD-70 (Eric Shepcaro): “Wireline Revitalization Research: Focus Groups with Wireless-Only and Wireline Consumers in Dallas and San Francisco,” AT&T, December 16, 2005, ATT-FCC-00388190.pdf, at ATT-FCC-00388203, ATT-FCC-00388208.

⁶² / BLS-CD (Douglas O’Neil): “BellSouth Wireless Strategy Discussion,” by inCODE, June 8, 2005, at BLS-FCC-00258724.pdf, at BLS-FCC-00258764.

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VoIP:

41. While consultants to AT&T describe cable companies as <<<**BEGIN HIGHLY CONFIDENTIAL**

⁶³ / ATT-CD-43 (Susan Johnson): "Consumer Value Migration," Week 2 Update, Draft, Prepared for AT&T, Nov. 22, 2005 by Altman Vilandrie & Company, ATT-FCC-00232277.pdf (ATT-FCC-00232277 through ATT-FCC-00232325), at ATT-FCC-00232303, ATT-FCC-00232318.

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42. Another report cited by AT&T states, <<<**BEGIN HIGHLY CONFIDENTIAL**

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43. An internal AT&T document <<<**BEGIN HIGHLY CONFIDENTIAL**

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One BellSouth discussion of the consumer market noted that <<<**BEGIN
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⁶⁴ / ATT-CD-43 (Susan Johnson): “Consumer Value Migration,” Week 2 Update, Draft, Prepared for AT&T, Nov. 22, 2005 by Altman Vilandrie & Company, ATT-FCC-00232277.pdf (ATT-FCC-00232277 through ATT-FCC-00232325), at ATT-FCC-00232318.

⁶⁵ / ATT-CD-49 (Christopher T. Rice): “Triple Play – Bundling Strategies in the U.S. Residential Market,” July 2005, by In-STAT, ATT-FCC-00265968.pdf, at ATT-FCC-00265981.

⁶⁶ / ATT-CD-7 (Michael Bowling): Retail Sales and Marketing,” April 2005, ATT-FCC-00340522.pdf, at ATT-FCC-00340530.

⁶⁷ / BellSouth, Laura Reid Disk 1 of 5: “Consumer Summary,” BellSouth, Undated, BLS-FCC-00280969, at BLS-FCC-00280969.

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46. When discussing the business case for a consumer voice over network product,

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WiFi:

⁶⁸ / ATT-CD-69 (Eric Shepcaro): “2006 Investment Planning, Project Reviews: Converged Solutions (Acorn SMB),” prepared February 15, 2006 (AT&T), ATT-FCC-00385266 (through 00385353), at ATT-FCC-00385268.

⁶⁹ / Bell South, Laura Reid, Disk 1 of 5: untitled slide presentation, v.1.0, BellSouth, October 7, 2005, BLS-FCC-00280299.pdf, at BLS-FCC-00280310.

⁷⁰ / BellSouth, Laura Reid, Disk 1 of 5: “BellSouth Network Concept: Wholesale VON,” Issue 2.3, July 8, 2005, BLS-FCC-00280482.pdf, at BLS-FCC-00280487.

⁷¹ / BellSouth, Laura Reid, Disk 1 of 5: “BellSouth Network Concept: Wholesale VON,” Issue 2.3, July 8, 2005, BLS-FCC-00280482.pdf, at BLS-FCC-00280567.

47. Similar concerns exist regarding WiFi networks. Results of a survey conducted by an AT&T consultant found that business customers had the following concerns regarding WiFi networks: <<<**BEGIN HIGHLY CONFIDENTIAL**

⁷² / ATT-CD-69 (Eric Shepcaro): “WiMax Customer Research: Summary of Cross-Segment Findings,” prepared by Hawk Partners LLC, February 7, 2006, ATT-FCC-00385719.pdf (through 00385775), at ATT-FCC-00385729.

⁷³ / ATT-CD-72 (Eric Shepcaro): “Competitive Overview: Municipal Mesh Networking – New Breed of Competitors Challenge Wireline Carriers,” Customer Analytics & Research, January 16, 2005, ATT-FCC-00395433.pdf, at ATT-FCC-0039543441.

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The Joint Applicants are themselves benefiting from intermodal competition: the loss of an access line often translates into the gain of a DSL or wireless subscriber, which further entrenches their market power.

Numerous documents confirm that wireline services are not obsolete and that the carriers are not losing money in the provision of these services. A study prepared by consultants to AT&T in November, 2005 concludes that <<<**BEGIN HIGHLY CONFIDENTIAL**

⁷⁴ / AT&T-CD-5 (Clayton Lockhart): "WiMax Access Overview," Lou Delery, May 10th, 2006, ATT-FCC-00020472.pdf (ATT-FCC-00020472 through ATT-FCC-00020507), at ATT-FCC-00020479.

⁷⁵ / ATT-CD-43 (Susan Johnson): "Fixed Wireless Update," SBC Corporate Planning, October 7, 2005, ATT-FCC-00232378.pdf, at ATT-FCC-00232379 and ATT-FCC-00232380.

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HIGHLY CONFIDENTIAL>>>⁷⁸ Legacy SBC's own analysis of consumer access line loss includes an analysis of losses categorized by <<<**BEGIN HIGHLY CONFIDENTIAL**

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53. As support for their efforts to obtain deregulation, incumbent local exchange carriers typically refer to their declining number of retail local access lines as purported evidence of competition. In documents submitted in this proceeding, however, the Joint Applicants state, among other things:

⁷⁶ / ATT-CD-43 (Susan Johnson): "Consumer Value Migration," Week 2 Update, Draft, Prepared for AT&T, Nov. 22, 2005 by Altman Vilandrie & Company, ATT-FCC-00232277.pdf (ATT-FCC-00232277 through ATT-FCC-00232325), at ATT-FCC-00232289.

⁷⁷ / ATT-CD-43 (Susan Johnson): "Consumer Value Migration," Week 2 Update, Draft, Prepared for AT&T, Nov. 22, 2005 by Altman Vilandrie & Company, ATT-FCC-00232277.pdf (ATT-FCC-00232277 through ATT-FCC-00232325), at ATT-FCC-00232302.

⁷⁸ / BLS CD (Laura Reid Disk 1), "Consumer Internet Briefing," In\$ite, Jan – Feb 2005, BLS-FCC-00282387.pdf, at BLS-FCC-00282390.

⁷⁹ / ATT-CD-43 (Susan Johnson): "Consumer Access Line Loss: 4th Qtr 2004," March 5, 2005, Customer Analytics & Research, SBC, 00234057.pdf, at 00234063.

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⁸⁰ / ATT-CD-59 (Scott Helbing), “Industry Overview: Significant Areas of Opportunity,” Lehman Brothers Worldwide Wireless and Wireline Conference, June 1, 2005, ATT-FCC-00316485.pdf, at ATT-FCC-00316535.

⁸¹ / ATT-CD-60 (Helbing), Scott C. Helbing, Chief Marketing Officer – Consumer, AT&T Operations, Inc., '06 Analyst Conference, ATT-FCC-00329375.pdf, at ATT-FCC-00329393 (emphasis in original).

⁸² / ATT-CD-23 (Champion), “Wireline Results Investor Relations Package, 1st Quarter 2005,” ATT-FCC-00123207, at ATT-FCC-00123210.

⁸³ / ATT-CD-23 (Champion), “Wireline Results Investor Relations Package, 1st Quarter 2005,” ATT-FCC-00123207, at ATT-FCC-00123214.

⁸⁴ / ATT-CD-23 (Champion), “Wireline Results Investor Relations Package, 1st Quarter 2005,” ATT-FCC-00123207.pdf, at ATT-FCC-00123214.

⁸⁵ / ATT-CD-23 (Champion), “Wireline Results Investor Relations Package, 1st Quarter 2005,” ATT-FCC-00123207.pdf, at ATT-FCC-00123215.

54. With respect to intermodal services, industry trends and predictions show that the wireline carriers dominate many of the new markets and also, that new services are often complementary.⁸⁶ For example, a report prepared for AT&T made the following industry predictions: <<<**BEGIN HIGHLY CONFIDENTIAL**

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55. AT&T documents indicate that it is successful in the wholesale long distance market. <<<**BEGIN HIGHLY CONFIDENTIAL**

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⁸⁶ / The use of the term “complementary” here is within the more general meaning of complement, *i.e.* a good or service that a consumer may use together with another good or service. A complement or complementary good is defined in economics as a good that should be consumed with another good. This means that, if goods A and B are complements, when more of good A is bought more of good B will also be bought. An example of complement goods is hamburgers and hamburger buns. If consumers stop eating hamburgers, they will also presumably stop buying hamburger buns. The use of complement above is simply to provide a contrast to the idea put forth by the Joint Applicants that these services are always consumed as substitutes. In fact, many consumers subscribe to both wireline and wireless telephone service. While the use of one does not require the other, the use of one does not preclude the other either.

⁸⁷ / ATT-CD-43 (Susan Johnson): “Consumer Value Migration,” Week 2 Update, Draft, Prepared for AT&T, Nov. 22, 2005 by Altman Vilandrie & Company, ATT-FCC-00232277.pdf (ATT-FCC-00232277 through ATT-FCC-00232325), at ATT-FCC-00232320.

⁸⁸ / ATT-CD-73 (Eric Shepcaro): “AT&T Wholesale Strategy,” AT&T, January 18, 2006, ATT-FCC-00399085.pdf.

markets, the Commission should examine not only the retail market but also the wholesale market.

56. Furthermore, it is not evident that wireline loss will continue at the same pace.

For instance, a BellSouth analysis of line loss suggests that: <<<**BEGIN HIGHLY CONFIDENTIAL**

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A cable-telco duopoly will not protect mass market consumers from the Joint Applicants' market power.

57. As the Baldwin/Bosley Declaration demonstrates,⁹⁰ the Commission should not rely on the emerging cable-telco duopoly to yield just and reasonable rates for services offered at acceptable levels of service quality. The documents provided by the Joint Applicants in this proceeding include frequent references to the cable industry and thoroughly substantiate the concerns that the Baldwin/Bosley Declaration raise. Some examples of the evidence regarding the emerging cable-telco duopoly include:

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⁸⁹ / BLS CD (Laura Reid Disk 2), "Initiatives to Stem Line Loss," BellSouth, Draft for Discussion September 9, 2005, BLS-FCC-00284692.pdf, at BLS-FCC-00284695.

⁹⁰ / See, e.g., Baldwin/Bosley Declaration, at paras. 139 - 147.

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58. These documents show (1) the need to impose structural separation on telecommunications and cable companies that compete outside of their core business; and (2) that the Commission cannot simply rely on the presence of cable companies and the

⁹¹ / “Project Lightspeed Update,” Lea Ann Champion, February 1, 2006, ATT-FCC-00118414.pdf, at ATT-FCC-00118416, ATT-FCC-00118421, ATT-FCC-00118441, and ATT-FCC-00118442.

⁹² / ATT-CD-23 (Champion), “Notes from the Executive Summit/Marketing Advisory Forum,” April 27-28 (year not specified), Plano Texas, ATT-FCC-00120038.pdf, at ATT-FCC-00120038.

⁹³ / ATT-CD-59 (Helbing), “Competitive Analysis: Consumer,” Scott Helbing, undated, ATT-FCC-00316654.pdf, at ATT-FCC-00316665.

⁹⁴ / ATT-CD-59 (Helbing), e-mail from William Blase, SBC-OPS to Scott Helbing, ATT-FCC-00322491.

⁹⁵ / ATT-CD-43 (Susan Johnson): “Improving Consumer Profitability,” May 10, 2005, Draft, Deloitte, ATT-FCC-00234534.pdf, at 00234541.

⁹⁶ / BLS CD (Michael Bowling Disk 2), “Consumer Battle Plan,” date not available, BLS-FCC-00310864.pdf, at BLS-FCC-00310864.

cable company bundled offerings to discipline the merged company. As shown throughout this declaration, the carriers are countering competition on a geographically disaggregated basis and only for the tech-savvy (or marginal) and high-value consumers. Cable bundled offerings simply do not represent an option for the basic POTs consumer. Although these concerns exist regardless of whether AT&T acquires BellSouth, the proposed transaction would exacerbate the harms to consumers and competitors.

The proposed merger would eliminate actual and potential competition.

Two potential competitors are merging rather than competing. <<<BEGIN
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61. Therefore, the merger would eliminate actual and potential competition in these areas. The Commission should either deny the merger or require the Joint Applicants to divest the overlapping facilities to remedy the competitive harm. Absent such divestiture,

⁹⁷ / ATT-CD-23 (Champion), "2nd Quarter Peer Benchmarking Report," July 27, 2005, ATT-FCC-00133473.pdf, at ATT-FCC-00133473- ATT-FCC-00133479.

⁹⁸ / ATT Exhibit 14.a.3.

⁹⁹ / ATT Exhibit 14.a.4.

the Joint Applicants should commit to compete out of region, particularly for mass market consumers.

62. As noted by the September 27, 2006 letter from congressional representatives Sensenbrenner and Conyers of the House Judiciary Committee sent to the Attorney General (on which Chairman Martin was copied): “The SBC/AT&T and Verizon/MCI mergers combined the two largest Regional Bell Operating Companies (RBOCs) with their two largest competitors, producing a degree of concentration in this marketplace unseen since the breakup of MA Bell a quarter century ago.”¹⁰⁰

The carriers are also beginning to compete against one another in the intermodal market. <<<**BEGIN HIGHLY CONFIDENTIAL**

¹⁰⁰ / Letter from F. James Sensenbrenner, Jr. (Chairman) and John Conyers, Jr. (Ranking Member) of the U.S. House of Representatives Committee on the Judiciary to Alberto Gonzales, Attorney General of the United States, U.S. Department of Justice, September 27, 2006. *See, also*, Siobhan Hughes, “Lawmakers Seek Delay in AT&T-BellSouth Merger,” *The Wall Street Journal Online*, September 29, 2006, in which it is reported that Senators DeWine and Kohl (Chairman and Ranking Democrat) of the Senate Judiciary Committee’s antitrust subcommittee sent a similar letter asking the Justice Department and the FCC to consider imposing conditions on the merger and to examine a condition to divest facilities in BellSouth’s territory in the Southeast.

¹⁰¹ / AT&T-CD-5 (Clayton Lockhart): “WiMax Program Update,” March 30, 2006, AT&T, ATT-FCC-00020203.pdf (ATT-FCC-00020203 through ATT-FCC-00020238).

¹⁰² / AT&T-CD-5 (Clayton Lockhart): “WiMax Program Update,” March 30, 2006, AT&T, ATT-FCC-00020203.pdf, at ATT-FCC-00020209.

¹⁰³ / AT&T-CD-5 (Clayton Lockhart): “WiMax Program Update,” March 30, 2006, AT&T, ATT-FCC-00020203.pdf, at 00020211.

¹⁰⁴ / AT&T-CD-5 (Clayton Lockhart): “WiMax Program Update,” March 30, 2006, AT&T, ATT-FCC-00020203.pdf, at 00020214.

¹⁰⁵ / AT&T-CD-5 (Clayton Lockhart): “WiMax Program Update,” March 30, 2006, AT&T, ATT-FCC-00020203.pdf, at 00020214.

¹⁰⁶ / BLS CD (Laura Reid Disk 1), “VoIP Deployment & Strategy Update: The IXCs,” Communications Media Analysis Group, Pike & Fischer, February 2005, BLS-FCC-00282554.pdf, at BLS-FCC-00282555.

¹⁰⁷ / BLS CD (Laura Reid Disk 1), “VoIP Deployment & Strategy Update: The IXCs,” Communications Media Analysis Group, Pike & Fischer, February 2005, BLS-FCC-00282554.pdf, at BLS-FCC-00282555.

¹⁰⁸ / BLS CD (Laura Reid Disk 1), “VoIP Deployment & Strategy Update: The IXCs,” Communications Media Analysis Group, Pike & Fischer, February 2005, BLS-FCC-00282554.pdf, at BLS-FCC-00282555.

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66. We urge the Commission to consider carefully the anticompetitive consequences of the proposed merger, and, should the Commission decide to approve the merger, to adopt mitigating conditions.

III. THE PROPOSED MERGER IS NOT IN THE PUBLIC INTEREST

Mass market consumers, particularly low-revenue customers seeking plain old telephone service, are most vulnerable to the Joint Applicants' market power.

67. The proposed merger would increase the vulnerability of some segments of the mass market to the Joint Applicants' market power. The Joint Applicants carefully research and analyze their consumers' spending patterns. For example, <<<**BEGIN**

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68. Any out-of-region competition that AT&T may provide in Verizon's territory, likely is for high-end customers. One bundle plan <<<**BEGIN HIGHLY**

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AT&T is currently <<<**BEGIN HIGHLY CONFIDENTIAL**

¹⁰⁹ / ATT-CD-23 (Champion), "Wireline Results Investor Relations Package, 1st Quarter 2005," ATT-FCC-00123207.pdf, at ATT-FCC-00123218.

¹¹⁰ / ATT-CD-69 (Eric Shepcaro): "STARMAX Project Integrated DBS Satellite & WiMax" Out-of-Region Triple-Play Access Network," Irwin Gerszberg (AT&T), March 16, 2006, ATT-FCC-00385511 (through 00385540), at ATT-FCC-00385513.

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A legacy SBC document discusses strategies for addressing less profitable wire centers, referring to these wire centers as <<<**BEGIN HIGHLY CONFIDENTIAL**

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Clearly, the competition that exists in a portion of wire centers for high-value customers is not translating into increased service quality and new technology deployment for consumers in all wire centers. The internal analysis was echoed by outside consultants as well. <<<**BEGIN HIGHLY**

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¹¹¹ / ATT-CD-73 (Eric Shepcaro): "AT&T Business Development," Jim Callaway, prepared March 2006, ATT-FCC-00401047.pdf, at ATT-FCC-00401053, ATT-FCC-00401065.

¹¹² / ATT-CD-43 (Susan Johnson): "Non-FTTX Wire Center Line Losses: Interim Strategies," April, 2005, Kieran P. Nolan, SBC, 00234239.pdf, at 00234242 (emphasis added).

¹¹³ / ATT-CD-43 (Susan Johnson): "Improving Non-FTTX Wire Center Profitability," Draft Recommendations for Susan Johnson, July 1, 2005, Deloitte, 00234302.pdf (ATT-FCC-00234302 through ATT-FCC-00234383).

The Joint Applicants' strategic planning and marketing materials provide compelling evidence of their market power, and the particular vulnerability of low-use mass market customers to this market power.

70. The Joint Applicants' responses to the Commission's information and document request include numerous company documents that demonstrate the market power they already possess, which the proposed transaction would further enhance.

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¹¹⁴ / ATT-CD-59 (Helbing), "3Q Consumer Marketing Plan, V. 7.0, Scott Helbing, May 25, 2006, ATT-FCC-00315743.pdf, at ATT-FCC-00315771.

¹¹⁵ / ATT-CD-59 (Helbing), "3Q Consumer Marketing Plan, V. 7.0, Scott Helbing, May 25, 2006, ATT-FCC-00315743.pdf, at ATT-FCC-00315792.

¹¹⁶ / ATT-CD-60 (Helbing), "2006 Consumer Marketing Plan – AT&T Continued Revenue Growth through Improved Service/Services and by Becoming a Communications And Entertainment Leader," ATT-FC-00330101.pdf, at ATT-FC-00330104.

¹¹⁷ / ATT-CD-60 (Helbing), “2006 Consumer Marketing Plan – AT&T Continued Revenue Growth through Improved Service/Services and by Becoming a Communications And Entertainment Leader,” ATT-FC-00330101.pdf, at ATT-FC-00330113.

¹¹⁸ / BLS CD Callaghan Disk, “Project Double Dutch Consumer Voice Pricing Strategy,” April 12, 2005, BLS-FCC-00190351.pdf, at BLS-FCC-00190354.

¹¹⁹ / BLS CD Callaghan Disk, <<<**BEGIN HIGHLY CONFIDENTIAL**“Inside Wire Price Increase Proposal, Strategic Pricing,”**END HIGHLY CONFIDENTIAL**, March 2005, BLS-FCC-0091645.pdf, at BLS-FCC-0091646.

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The Joint Applicants' strategic efforts to segment the mass market raise public policy concerns.

77. Internal company documents demonstrate clearly that the Joint Applicants tailor their marketing efforts to specific market segments. This is not *per se* harmful, but as it is now occurring the market segmentation (conducted by a supplier of both competitive and noncompetitive and regulated and nonregulated services) raises several concerns: (1) a widening of the digital divide resulting from some customers being connected to state-of-the-art technology and others not; (2) cross-subsidization of unregulated offerings by

¹²⁰ / BLS-CD (Douglas O'Neil): Email from Kent Davis to Douglas O'Neil and Steve Goetz, October 31, 2005, BLS-FCC-00238569.pdf, at BLS-FCC-00238570.

regulated offerings and cross-subsidization of more price-elastic customers by less price-elastic customers:

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¹²¹ / As explained on AT&T's website: "Through its Project Lightspeed deployment, AT&T will deliver a whole new portfolio of integrated, digital TV, high speed Internet and voice services — all under the AT&T U-verse brand. The company's new network platform, based on Internet Protocol (IP) technology, will enable a new level of service integration and features for its new U-verse communications and entertainment services." And "AT&T is starting to deploy a next-generation IP-based network to deliver AT&T U-verse TV, our U-verse Enabled AT&T Yahoo! High Speed Internet and, in the future, voice over IP services using fiber-to-the-neighborhood and fiber-to-the-premises technologies." Available at <http://att.sbc.com/gen/press-room?pid=5838> (accessed September 29, 2006).

¹²² / ATT-CD-23(Champion), "Project Lightspeed Ten Year View – Version 3," June 17, 2005, authored by Strategic Finance, Roger Sloan, Scot Barenblat, Basile Goungetas, Bryan Sprinkle, Sam Zhu, ATT-FCC-00119046.pdf, at ATT-FCC-00119050.

¹²³ / ATT-CD-23(Champion), "Project Lightspeed Ten Year View – Version 3," June 17, 2005, authored by Strategic Finance, Roger Sloan, Scot Barenblat, Basile Goungetas, Bryan Sprinkle, Sam Zhu, ATT-FCC-00119046.pdf, at ATT-FCC-00119050.

¹²⁴ / ATT-CD-59 (Helbing), "Access Lines Update, 08.14.05, Version 2.2," ATT-FCC-00319786.pdf, at ATT-FCC-00319817.

¹²⁵ / ATT-CD-59 (Helbing), "SBC Consumer Channel Strategy," September 2005, ATT-FCC-00321834.pdf, at ATT-FCC-00321839.

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79. The Commission should examine carefully the Joint Applicants' strategy for rolling out new technology. In one document, legacy SBC describes its marketing plans for its DISH (video service). <<<**BEGIN HIGHLY CONFIDENTIAL**

¹²⁶ / ATT-CD-59 (Helbing), "Industry Overview: Significant Areas of Opportunity," Lehman Brothers Worldwide Wireless and Wireline Conference, June 1, 2005, ATT-FCC-00316485.pdf, at ATT-FCC-00316534.

¹²⁷ / ATT-CD-62 (Helbing), "'AT&T Opportunity Overview: March 2006,'" ATT-FCC-00340291.pdf, at ATT-FCC-00340295.

¹²⁸ / BLS CD (Callaghan Disk 1), "Appendices," undated, BLS-FCC-00193781.pdf, at BLS-FCC-00193811.

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80. One danger that should not be overlooked by the Commission is that the change in where the competition is coming from changes customer focus. Because competition is coming from the cable companies and primarily in the bundled services market, POTS customers do not receive the type of protection they did when competition came from wireline CLECs using UNE-P. In discussing its consumer marketing plan, legacy SBC cites <<<**BEGIN HIGHLY CONFIDENTIAL**

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81. Certainly, the telecommunications companies are aware of this dynamic and have adopted a strategy of responding to competition from the cable companies on an "as needed" basis (*i.e.* by targeting particular subsets of customers or geographic regions).

¹²⁹ / ATT-CD-59 (Helbing), "SBC/DISH network, Strategic Assessment," May 6, 2005, ATT-FCC-00316558.pdf, at ATT-FCC-00316563.

¹³⁰ / ATT-CD-43 (Susan Johnson): "Consumer Marketing Plan," May 12, 2005, v.6.1. (SBC), ATT-FCC-00232499.pdf, at ATT-FCC-00232501.

¹³¹ / BLS CD (Laura Reid Disk 1), "CVoN Marketing Plan," March 27, 2005, BLS-FCC-00281488.pdf, at BLS-FCC-00281506.

Legacy SBC's marketing plans include references to cable competitors and the use of

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82. One legacy SBC report contains the following analysis: **<<<BEGIN HIGHLY CONFIDENTIAL**

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END HIGHLY CONFIDENTIAL>>>¹³⁵ The Commission should seriously consider the implications of this strategy. Such evidence suggests that competition for some customers in some geographic regions does not protect all consumers.

¹³² / ATT-CD-43 (Susan Johnson): "Consumer Marketing Plan," May 12, 2005, v.6.1. (SBC), ATT-FCC-00232499.pdf, at ATT-FCC-00232505.

¹³³ / AT&T-CD-5 (Clayton Lockhart): "WiMax Program Update," March 30, 2006, AT&T, ATT-FCC-00020203.pdf, at 00020215.

¹³⁴ / ATT-CD-43 (Susan Johnson): "Consumer Access Line Loss: 4th Qtr 2004," March 5, 2005, Customer Analytics & Research, SBC, 00234057.pdf, at 00234064.

¹³⁵ / ATT-CD-43 (Susan Johnson): ATT-FCC-00236256.pdf.

83. A BellSouth document details similar disaggregated response to competition, both in terms of customer segment and geographic market. One marketing plan for BellSouth's VoIP product discusses the strategy to: <<<BEGIN HIGHLY CONFIDENTIAL

END HIGHLY CONFIDENTIAL>>>¹³⁶ BellSouth's consumer VoIP plan also includes the characterization of the company as <<<BEGIN HIGHLY CONFIDENTIAL

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84. Additional evidence of BellSouth's focus includes: <<<BEGIN HIGHLY CONFIDENTIAL

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¹³⁶ / BLS CD (Laura Reid Disk 1), "CVoN Marketing Plan," March 27, 2005, BLS-FCC-00281488.pdf, at BLS-FCC-00281503, BLS-FCC-00281505.

¹³⁷ / BLS CD (Laura Reid Disk 1), "CVoN Marketing Plan," March 27, 2005, BLS-FCC-00281488.pdf, at BLS-FCC-00281506.

¹³⁸ / BLS CD (Laura Reid Disk 2), "Think Big: Create Tomorrow Today," March, 24, 2006, BLS-FCC-00284223.pdf, at BLS-FCC-00284224.

¹³⁹ / BellSouth, Laura Reid Disk 1 of 5: "Broadband NorthStar," BellSouth, March 1, 2005, at BLS-FCC-00280674.pdf, at BLS-FCC-00280676.

85. These documents validate concerns regarding the digital divide and the vulnerability of POTS mass market consumers to the Joint Applicants' market power. Also these documents demonstrate that the Commission should impose structural separations and affiliate transaction rules on RBOCs and cable companies. Telephone and cable Internet operations must be structurally separate from one another. Therefore, it is of paramount importance that the Commission examine these internal documents and consider the implications of the Joint Applicants' marketing of its bundles, new services, and stand-alone DSL on consumers and competitors.

The Commission should investigate whether bundles are priced in an anticompetitive manner; AT&T's and BellSouth's market power enables the companies to offer bundles in an anticompetitive manner, while neglecting those customers who seek only basic services and over-pricing those services.

86. According to documents reviewed, BellSouth's contract strategy aimed at reducing line loss includes the following directives: <<<**BEGIN HIGHLY CONFIDENTIAL**

¹⁴⁰ / BLS CD (Laura Reid Disk 2), "Initiatives to Stem Line Loss," BellSouth, Draft for Discussion September 9, 2005, BLS-FCC-00284692.pdf, at BLS-FCC-00284724.

87.

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Bells' bundling of regulated and non-regulated and intrastate and interstate services raises significant anticompetitive concerns. As the Bells increasingly focus on selling bundles as a way to deter customer churn and to increase revenue from mass market consumers, those customers who do not seek bundles become increasingly vulnerable to the Bells' exercise of their market power. The proposed AT&T/BellSouth merger would increase the vulnerability of these customers. <<<**BEGIN HIGHLY CONFIDENTIAL**

¹⁴¹ / BLS CD (Callaghan Disk 1), e-mail from Elizabeth Stockdale to Maryrose Sirianna, cc ti Susan Callaghan, December 16, 2005, BLS-FCC-00192696.

¹⁴² / AT&T CD 3 (Judi Hand), "AT&T Enterprise Marketing - 2006 Local Voice Plan and Initiatives," March 8, 2006, ATT-FCC-00006747.pdf, at ATT-FCC-00006748.

¹⁴³ / AT&T CD 24 (Lea Ann Champion), Email from Denise Koenig to Lea Ann Champion, October, 5, 2005, ATT-FCC-00128424.pdf, at ATT-FCC-00128424.

¹⁴⁴ / *See, e.g.*, ATT-CD-23 (Champion), untitled, undated, ATT-FCC-00118656.pdf, and 138-page spreadsheet, at ATT-CD-23 (Champion), untitled, undated, ATT-FCC-00118691.pdf.

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89. This blatant market segmentation, whereby AT&T uses stand-alone DSL (which it can uniquely offer) to further its own marketing plan and also raises rates for the less profitable customers, provides compelling evidence of its market power and abuse of that market power. Unless and until the Commission remedies the existing market distortions, it should not approve the proposed AT&T/BellSouth merger.

The Joint Applicants, *even before they merge*, dominate the long distance market. Between the first quarter of 2005 and May 2006, the number of residential lines that

¹⁴⁵ / ATT-CD-23 (Champion), untitled, undated, ATT-FCC-00118829.pdf

¹⁴⁶ / ATT-CD-23(Champion), 2005 Leadership Planning Conference, Project Lightspeed, Lea Ann Champion, ATT-FCC-00118464.pdf, at ATT-FCC-00118493.

¹⁴⁷ / ATT-CD-23 (Champion), 2005 Leadership Planning Conference, Horseshoe Bay, Lea Ann Champion, October, ATT-FCC-00118498.pdf, at ATT-FCC-00118527.

¹⁴⁸ / ATT-CD-60 (Helbing), “2006 Consumer Marketing Plan – AT&T Continued Revenue Growth through Improved Service/Services and by Becoming a Communications And Entertainment Leader,” ATT-FC-00330101.pdf, at ATT-FC-00330132 (emphasis in original).

¹⁴⁹ / ATT-CD-60 (Helbing), “2006 Consumer Marketing Plan – AT&T Continued Revenue Growth through Improved Service/Services and by Becoming a Communications and Entertainment Leader,” ATT-FC-00330101.pdf, at ATT-FC-00330132 (emphasis added).

presubscribed to BellSouth's long distance service <<<**BEGIN HIGHLY CONFIDENTIAL**

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92. The new trend in the consumer market seems to be to offer tiers of service. From the companies' perspective, they are offering greater choice. However, from a regulator or consumer advocate perspective, the "tiers" may entail service degradation for the lowest price level. A November 2005 report from consultants to AT&T suggested

¹⁵⁰ / BLS Exhibit 38.

¹⁵¹ / BLS Exhibit 36 (a)(i-ii).

¹⁵² / BLS Exhibit 6.c.

optimizing existing assets by <<<**BEGIN HIGHLY CONFIDENTIAL**

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The Commission should assess whether regulated services are cross-subsidizing Lightspeed, and impose conditions as necessary to prevent such cross-subsidization.

93. AT&T's proposed acquisition of BellSouth will facilitate its ability to cross-subsidize its unregulated lines of business such as its deployment of Lightspeed. The Commission should consider carefully the Joint Applicants' internal planning documents in its deliberations.

<<<**BEGIN HIGHLY CONFIDENTIAL**

¹⁵³ / ATT-CD-43 (Susan Johnson): "Consumer Value Migration," Week 2 Update, Draft, Prepared for AT&T, Nov. 22, 2005 by Altman Vilandrie & Company, ATT-FCC-00232277.pdf (ATT-FCC-00232277 through ATT-FCC-00232325), at ATT-FCC-00232292.

¹⁵⁴ / ATT CD 62 (Helbing), 00342252.pdf, "AT&T Southwest 2006 Business Plan," January 19, 2006. See especially pages ATT-FCC-00342256- ATT-FCC-00342257.

¹⁵⁵ / ATT CD 62 (Helbing), 00342252.pdf, "AT&T Southwest 2006 Business Plan," January 19, 2006, at ATT-FCC-00342256- ATT-FCC-00342257.

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97. The Joint Applicants' response to the Commission's information and document request includes significant evidence of the Joint Applicants' emphasis on DSL marketing and also on the value that the Joint Applicants attribute to successful acquisition and retention of DSL customers. The Joint Applicants' marketing and deployment of DSL raise numerous concerns, which the proposed merger would heighten, including such issues as:

¹⁵⁶ / AT&T CD 62 (Helbing), "AT&T Southwest 2006 Business Plan," January 16, 2006, ATT-FCC-00342254.pdf, at ATT-FCC-00342264.

¹⁵⁷ / AT&T CD 62 (Helbing), "AT&T Southwest 2006 Business Plan," January 16, 2006, ATT-FCC-00342254.pdf, at ATT-FCC-00342273.

- DSL is “free-riding” over the public switched network.¹⁵⁸ The Joint Applicants’ unique ability to parlay their nearly ubiquitous home region local loops to sell DSL is indisputably valuable, yet there is no evidence that DSL line of business bears any of the common loop cost.
- The Joint Applicants have failed to demonstrate their commitment to deploy broadband in very rural areas.
- The Joint Applicants fail to demonstrate that they are compensating voice customers for the cost-less acquisition of a valuable high-tech customer base to whom Joint Applicants can market video. The Joint Applicants possess extremely valuable detailed information about customers’ billing usage and patterns.
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98. The Joint Applicants recognize the value of selling DSL to customers:

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¹⁵⁸ / See, e.g., *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate (including Affidavit of Susan M. Baldwin on behalf of the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel) filed August 22, 2006.

¹⁵⁹ / Earthlink, Inc., *ex parte* presentation, September 21, 2006, at 9.

¹⁶⁰ / ATT-CD-59 (Helbing), “Competitive Analysis: Consumer,” Scott Helbing, undated, ATT-FCC-00316654.pdf, at ATT-FCC-00316658.

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HIGHLYCONFIDENTIAL>>> The Joint Applicants' ability to sell DSL to its large base of customers is a direct consequence of (1) its historic monopoly status and (2) its ability to cross-subsidize its DSL with basic local exchange service. The Commission should condition its approval of the transaction on the Joint Applicants' assignment and allocation of a fair share of the public switched telephone network away from regulated services to unregulated services.

The Joint Applicants also describe their strategy: <<<**BEGIN HIGHLY CONFIDENTIAL**

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¹⁶¹ / ATT-CD-60 (Helbing), Scott C. Helbing, Chief Marketing Officer – Consumer, AT&T Operations, Inc., '06 Analyst Conference, ATT-FCC-00329375.pdf, at ATT-FCC-00329392 (emphasis in original).

¹⁶² / ATT-CD-59 (Helbing), "Selling DSL 2006 Plan and Direction," Kieran P. Nolan, September 2005, ATT-FCC-00322206, at ATT-FCC-00322214.

¹⁶³ / ATT-CD-60 (Helbing), ATT-FCC-00322599.pdf, at 00322602 (emphasis in original).

¹⁶⁴ / ATT-CD-47 (Johnson), “Back up,” undated, ATT-FCC-00261970.pdf, at ATT-FCC-00261971 (emphasis in original).

¹⁶⁵ / ATT-CD-61 (Helbing), “AT&T Consumer Marketing Strategic Pillars: 2006,” ATT-FCC-00331412.pdf, at 00331414.

¹⁶⁶ / AT&T CD 62 (Helbing), “Selling DSL, 2006 Plan and Direction,” Kieran P. Nolan, September 2005, ATT-FCC-00342163.pdf, at ATT-FCC-00342164, ATT-FCC-00342172.

¹⁶⁷ / BLS-CD-Callaghan Disk 1, “FastAccess DSL Product, Marketing Service Description, Version 1.3,” Last Updated: December 13, 2005, Prepared by Glenn Cooper, Mike Teper, Brett Chyatte, BLS-FCC-00190076.pdf, at BLS-FCC-00190091.

¹⁶⁸ / BLS CD (Callaghan Disk 1), “BellSouth Broadband Marketing, Marketing Service Descriptions, Circuit Based DSL Transports, undated, BLS-FCC-00190671.pdf, at BLS-FCC-00190674.

¹⁶⁹ / BLS CD (Callaghan Disk 1), “Interim Stand Alone FastAccess (ISAFa) Business Requirements,” prepared by Sherrie Parrish-Booker, Business Analyst, Version 1.0, BLS-FCC-00192807.pdf, at BLS-FCC-00192814.

¹⁷⁰ / BLS CD (Callaghan Disk 1), “Interim Stand Alone FastAccess (ISAFa) Business Requirements,” prepared by Sherrie Parrish-Booker, Business Analyst, Version 1.0, BLS-FCC-00192807.pdf, at BLS-FCC-00192817.

¹⁷¹ / BLS CD (Callaghan Disk 1), “Interim Stand Alone FastAccess (ISAFa) Business Requirements,” prepared by Sherrie Parrish-Booker, Business Analyst, Version 1.0, BLS-FCC-00192807.pdf, at BLS-FCC-00192818 (emphasis added).

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104. In order to stem the tide of consumer migration to cable suppliers' offerings, AT&T and BellSouth are engaging in strategic deployment of DSL – a service which

¹⁷² / ATT-CD-43 (Susan Johnson): ATT-FCC-00236250.pdf, attached to e-mail from Matthew Albrecht to Susan Johnson, April 11, 2005, ATT-FCC-00236249.pdf.

¹⁷³ / BellSouth, Laura Reid Disk 1 of 5: "Broadband NorthStar," BellSouth, March 1, 2005, at BLS-FCC-00280674.pdf, at BLS-FCC-00280678.

¹⁷⁴ / BellSouth, Laura Reid Disk 1 of 5: "Broadband NorthStar," BellSouth, March 1, 2005, at BLS-FCC-00280674.pdf, at BLS-FCC-00280675.

¹⁷⁵ / BellSouth, Laura Reid Disk 1 of 5: "Broadband NorthStar," BellSouth, March 1, 2005, at BLS-FCC-00280674.pdf, at BLS-FCC-00280682.

they can offer at negligible incremental cost directly as a result of their historic deployment of a ubiquitous public switched telephone network. We urge the Commission to compare the Joint Applicants' plans for deploying stand alone DSL in order to establish conditions and compliance plans to prevent anticompetitive behavior in the way that they make stand alone DSL available to their competitors. Absent such regulatory oversight, competitors and consumers will be harmed.

105. These documents underscore the Joint Applicants' unique and extremely valuable ability to dictate the availability of technology, including its timing, pricing, and geographic scope. The Joint Applicants should be required to structurally separate their DSL operations to ensure that the network capability is available to all on comparable terms and conditions. Neither the existing marketplace nor the existing regulatory framework prevents the Joint Applicants from favoring their own operations in the use of DSL to attract and to retain customers.

106. <<<**BEGIN HIGHLY CONFIDENTIAL**

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¹⁷⁶ / AT&T CD 24 (Lea Ann Champion), "Broadband Penetration Rates," November 8, 2005, ATT-FCC-00124451.pdf, at ATT-FCC-00124584 – ATT-FCC-00124589.

Market concentration not only of the information pipe but of the information that travels over the pipe raises unique concerns.

The Joint Applicants' materials, submitted to the FCC, encompass documents created before legacy SBC acquired legacy AT&T and after the SBC/AT&T merger.¹⁷⁷

Among other things, legacy SBC stresses frequently in its strategic documents that it seeks to <<<**BEGIN HIGHLY CONFIDENTIAL**

108.

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¹⁷⁷ / SBC and AT&T submitted their merger application on February 22, 2005, and the Commission issued an order on October 31, 2005 (rel. Nov. 17th). *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, FCC WC Docket No. 05-65, *Memorandum Opinion and Order*, Rel. November 17, 2005 ("SBC/AT&T Merger Order"). SBC closed its acquisition of AT&T on November 18, 2005. "New AT&T Launches," AT&T News Release, November 18, 2005. The transaction is presently under review by the federal district court. *United States of America v. SBC Communications Inc. et al*, 1:05-cv-2102. The New Jersey Rate Counsel is participating in the case now pending before the United States District Court for the District of Columbia as an *amicus curiae*.

¹⁷⁸ / ATT-CD-23 (Champion), 2 Lea Ann Champion, Senior Executive President, SBC Communications, Inc., "Project Lightspeed," undated, ATT-FCC-00118903.pdf, at ATT-FCC-00118904.

¹⁷⁹ / ATT-CD-23 (Champion), "Project Lightspeed," "Amdocs and Project Lightspeed," John Stankey, Senior Executive Vice President and Chief Technology Officer, SBC Communications, Inc. undated, ATT-FCC-00118903.pdf, at ATT-FCC-00118936.

¹⁸⁰ / ATT-CD-23 (Champion), "Project Lightspeed," "Amdocs and Project Lightspeed," John Stankey, Senior Executive Vice President and Chief Technology Officer, SBC Communications, Inc. undated, ATT-FCC-00118903.pdf, at ATT-FCC-00118933.

AT&T buying BellSouth enlarges the footprint of the dominant provider. AT&T has the incentive and ability to leverage its unique access to the household. One document discusses AT&T plans for <<<**BEGIN HIGHLY CONFIDENTIAL**

¹⁸¹ / ATT-CD-69 (Eric Shepcaro): “Business Development Priorities Overview,” February 16, 2006 (AT&T), ATT-FCC-00385990 (through 00386049), at ATT-FCC-003856002.

¹⁸² / BLS CD (Boniface), BLS-FCC-00189995.pdf, e-mail from Rex Adams to, among others, Boniface, November 21, 2005.

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¹⁸³ / ATT-CD-45 (Susan Johnson): ATT-FCC-00246635.pdf, at ATT-FCC-00246637.

¹⁸⁴ / ATT-CD-69 (Eric Shepcaro): “Network Neutrality and Value Added IP Services,” Rose Klimovich (AT&T), February 28, 2006, ATT-FCC-00384763.pdf (ATT-FCC-00384763 through ATT-FCC-00384792), at ATT-FCC-00384792 (emphasis in original).

¹⁸⁵ / ATT-CD-69 (Eric Shepcaro): “Network Neutrality and Value Added IP Services,” Rose Klimovich (AT&T), February 28, 2006, ATT-FCC-00384763.pdf (ATT-FCC-00384763 through ATT-FCC-00384792), at ATT-FCC-00384773 (emphasis added).

The Joint Applicants should make any bundled video services that they offer available on an à la carte basis.

113. As the Bells increasingly enter the video market, the purchase of video content will become increasingly concentrated among telco and cable firms. Although not yet a monopsony (*i.e.*, a market in which all demand comes from a single customer), the growing strength of the cable and telco firms as major customers of programming could lead to a lack of programming diversity. We urge the Commission to monitor the extent to which the control of both the “pipe” to the home and the content provided over that pipe by a duopoly will diminish customer choice and raise customer prices.

114. At a minimum, the Commission should require any companies that offer bundled video services to offer them on an à la carte basis as well. The internal documents provide evidence of the Joint Applicants’ emerging market power in video markets. Among other things, they include the following:

AT&T refers to a <<<**BEGIN HIGHLY CONFIDENTIAL**

¹⁸⁶ / ATT-CD-23 (Champion), “Project Lightspeed Overview,” January 13, 2006, ATT-FCC-00119836.pdf, at ATT-FCC-00119839.

¹⁸⁷ / BLS CD (Barry Boniface), “Video Efforts-11-03-05,” BLS-FCC-00183419.pdf, at BLS-FCC-00183420.

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117. The Joint Applicants' simultaneous pursuit of telco and video lines of business raises significant opportunities and incentives for anticompetitive cross-subsidization, which the proposed merger would further enhance. Therefore, the Commission should impose structural separations between the telco and cable lines of business.

¹⁸⁸ / AT&T CD 24 (Lea Ann Champion), Email from Ernie Carey to Eric Boyer et al., May 23, 2005, ATT-FCC-00128321.pdf, at ATT-FCC-00128321.

¹⁸⁹ / BLS CD (Robert McCarthy Disk 1), "IPTV Overview Version 1," date not available, BLS-FCC-00139935.pdf, at BLS-FCC-00139936.

118. Also, the Commission should monitor carefully the implications of the increasing concentration in the video market for diversity in programming and for consumer prices. The merger of two Bells will jeopardize the quality and rates for video services.

AT&T and BellSouth seek to shift product focus to avoid regulation and maintain monopoly power; the Commission should resist the Joint Applicants' efforts to deregulate their offerings.

119. <<<BEGIN HIGHLY CONFIDENTIAL

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¹⁹⁰ / AT&T-CD-5 (Clayton Lockhart): "Regulatory Planning & Policy," AT&T, January 4, 2006, ATT-FCC-00022637.pdf.

¹⁹¹ / *Id.*, at ATT-FCC-00022642.

¹⁹² / AT&T-CD-5 (Clayton Lockhart): "Regulatory Planning & Policy," ATT-FCC-00022637.pdf, at ATT-FCC-00022644.

120. AT&T is clearly modifying its product offering in such a way as to avoid regulation and secure and maintain monopoly power. <<<BEGIN HIGHLY CONFIDENTIAL

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121. A document intended to provide talking points encourages executives to remain <<<BEGIN HIGHLY CONFIDENTIAL

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Clearly, AT&T intends to use its Lightspeed facilities to solidify market power.

122. Several documents explain the strategy of transforming the existing base of customers into a base of customers of unregulated services. Concerning its retail marketing strategy, BellSouth states, <<<BEGIN HIGHLY CONFIDENTIAL

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¹⁹³ / AT&T CD 24 (Lea Ann Champion), Email from Christopher J Boyer to Lea Ann Champion, April 27, 2005, ATT-FCC-00127898.pdf, at ATT-FCC-00127898.

¹⁹⁴ / AT&T CD 24 (Lea Ann Champion), "Talking points for Dallas Morning News Industry Roundtable - Key Messages and Q&A," Oct. 6, 2005, ATT-FCC-00128395.pdf, at ATT-FCC-00128401.

¹⁹⁵ / BLS CD (Michael Bowling Disk 1), "BellSouth Integrated Product Management Operating Plan - January 2006," BLS-FCC-00304992.pdf, at BLS-FCC-00304996.

123. BellSouth intends to replace revenues from regulated services with much higher revenues from unregulated services.<<<**BEGIN HIGHLY CONFIDENTIAL**

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124. The Joint Applicants' internal documents demonstrate clearly their efforts to obtain regulatory relief. In one document,¹⁹⁸ <<<**BEGIN HIGHLY CONFIDENTIAL**

¹⁹⁶ / BLS CD (Michael Bowling Disk 1), "BellSouth Integrated Product Management Operating Plan - January 2006," BLS-FCC-00304992.pdf, at BLS-FCC-00305015.

¹⁹⁷ / BLS CD (Hawkin Disk 1), BellSouth IP Solutions BIPS Product and Pricing, BLS-FCC-00213747.

¹⁹⁸ / BLS CD (Callaghan Disk 1), "Deregulation Overview Executive Update," Strategic Marketing Series, March 6, 2006, BLS-FCC-00193931.pdf, at BLS-FCC-00193932, BLS-FCC-00193935.

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IV. CONDITIONS

The FCC should ensure that AT&T abides by its stand-alone DSL commitments.

126. The concerns that the Joint Applicants' response raise are further corroborated by competing providers' experiences in the marketplace. EarthLink raises serious concerns about AT&T's anticompetitive pricing of its DSL: "By charging consumers more for a stand-alone ADSL-based information service than for the voice bundle, AT&T is clearly impeding consumers' right to decide which information, VoIP and advanced services they prefer."¹⁹⁹ In internal documents, BellSouth states: <<<**BEGIN HIGHLY CONFIDENTIAL**

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If, despite evidence that the merger is not in the public interest, the Commission approves the proposed merger, the Commission should adopt conditions to mitigate the risks to consumers.

127. After review of the confidential and highly confidential documents provided by AT&T and BellSouth in response to the Commission's information and document request, we continue to support the adoption of conditions if the merger is approved.²⁰¹

128. We recommend the following:

- The Joint Applicants should commit to the deployment of broadband throughout their operating territory as part of basic service with no increase in POTs prices;

¹⁹⁹ / Earthlink, Inc., *ex parte* presentation, September 21, 2006, at 9.

²⁰⁰ / BLS CD (Michael Bowling Disk 2), "Standalone Fast Access (SAFA) Business Case Review," Oct. 28, 2005, BLS-FCC-00311425.pdf, at BLS-FCC-00311426.

²⁰¹ / *See*, Baldwin/Bosley Declaration, at paras. 264-285.

- Market concentration among relatively few carriers means that net neutrality conditions are essential to protect consumers and competitors from undue control of access to the Internet;
- The Joint Applicants should commit to unbundled DSL until such time as AT&T demonstrates to the Commission that the market has evolved to a point where the commitment is no longer necessary;
- The Joint Applicants should offer UNE-P at TELRIC rates until local market are sufficiently competitive;
- The Commission should require an audit of AT&T's interaffiliate transactions and sales practices;
- The Commission should require Applicants to offer video, DSL, and other non-telecommunications services through structural separate entities with compliance with affiliate transaction rules;
- The Commission should require AT&T and BellSouth to submit service quality data and adopt sanctions for reductions in service quality;
- The Commission should impose a condition that the Joint Applicants must offer an à la carte option for any video offering in addition to various bundles;
- The FCC should impose conditions to ensure consumers benefit from merger synergies. The FCC should establish an adequate X-factor and reinitialize rate caps to reflect all the exogenous events that have occurred and the distortion due to the separations freeze. Furthermore, the FCC should take account of estimated merger synergies in its forthcoming decisions in the intercarrier compensation and separations proceedings;
- The Commission should eliminate the non-rural high cost support from the universal service fund for the Joint Applicants;
- The Commission should condition its approval of the transaction on the Joint Applicants' assignment and allocation of a fair share of the public switched telephone network away from regulated services to unregulated services, which, in turn, would require a re-initialization of regulated rates;
- The Commission should ensure that legacy AT&T customers in BellSouth's territory are not harmed by the proposed merger;

- The Joint Applicants should be required to submit quarterly reports that provide data regarding competition; and
- The Commission should either deny the merger or require the Joint Applicants to divest the overlapping facilities in the mass, mid-sized business, and enterprise market to remedy the competitive harm. Absent such divestiture, the Joint Applicants should commit to compete out of region in the mass market.

Conclusion

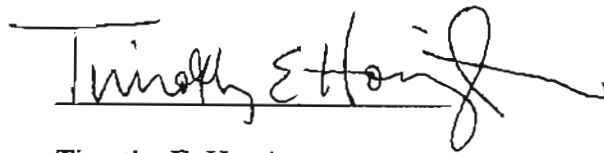
129. The Joint Applicants each, separately, possess the ability, incentive and opportunity to discriminate against rivals and to exercise their market power to the detriment of mass market, mid-sized, and enterprise consumers. The proposed transaction would enhance the Joint Applicants' ability and incentive to engage in anticompetitive conduct and to set supracompetitive rates for non-competitive services. For the reasons set forth in the Baldwin/Bosley Declaration, the initial comments of the Rate Counsel, and this declaration, we urge the Commission to reject the proposed merger. If, contrary to our recommendation, the Commission approves the proposed transaction, we urge the Commission to adopt conditions that mitigate the harms and that increase the possibility of benefits to the public interest.

FCC CC Docket No. 06-74

**DECLARATION OF SUSAN M. BALDWIN, SARAH M. BOSLEY AND
TIMOTHY E. HOWINGTON**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 3, 2006

A handwritten signature in black ink, appearing to read "Timothy E. Howington", written over a horizontal line. The signature is stylized with a large, looping flourish at the end.


Timothy E. Howington

FCC CC Docket No. 06-74

**DECLARATION OF SUSAN M. BALDWIN, SARAH M. BOSLEY AND
TIMOTHY E. HOWINGTON**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 3, 2006



Susan M Baldwin

FCC CC Docket No. 06-74

**DECLARATION OF SUSAN M. BALDWIN, SARAH M. BOSLEY AND
TIMOTHY E. HOWINGTON**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 3, 2006

A handwritten signature in blue ink, appearing to read "Sarah M. Bosley", written over a light blue horizontal line.

Sarah M. Bosley