October 24, 2006

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-325
445 12th Street, S.W.
Washington, D.C. 20054

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

Dear Ms. Dortch:

Time Warner Telecom, Inc. ("TWTC") largely rehashes arguments presented by other merger opponents in making what are essentially two points: BellSouth already has made, or in TWTC's view must ultimately make, the decision to roll out IPTV service on a broad-scale commercial basis, and there are no merger-related benefits to AT&T deployment of IPTV service in BellSouth's region.[1] TWTC's arguments not only are an attempt to substitute TWTC's judgment for the experienced management team at BellSouth, who have stated in sworn declarations that no such decision has been made, but are factually inaccurate and ignore clear Commission precedent, as Applicants have explained previously on this record.[2]

TWTC's claim that BellSouth committed to roll out IPTV service was previously raised by Access Point[3] and BellSouth previously refuted it, making crystal clear in its response that it has not made such a commitment.[4] Among other things, TWTC repeats Access Point's incorrect hypothesis that BellSouth's $2.2 billion network upgrade is

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[1] *See* Letter from Thomas Jones and Jonathan Lechter, Willkie Farr & Gallagher LLP, to Secretary Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-74 (Oct. 6, 2006) ("*TWTC Letter*").

[2] *See In re Applications For Consent to the Transfer of Control of Licenses and Section 214 Authorization from BellSouth Corporation, Transferor, to AT&T Inc., Transferee,* Joint Opposition of AT&T Inc. and BellSouth Corporation to Petitions to Deny and Reply to Comments, WC Docket No. 06-74, at 5-7 (Jun. 20, 2006) ("*Joint Opposition*").

[3] *TWTC Letter* at 2 & 4.

[4] *Joint Opposition* at n. 20.

primarily for the purpose of carrying IPTV signals.[5] As made clear in the sworn declaration of William Smith attached to the *Joint Opposition*, the upgrade will permit BellSouth to provide a wide range of IP-based interactive services, with IPTV being only one type that *potentially* could be offered, subject to further decisionmaking and investment.[6]

TWTC also raises general and specific challenges to the merger-related benefits of AT&T's roll-out of IPTV service in BellSouth's region. In general, TWTC incorrectly interprets Commission precedent to prohibit the Commission from considering as a benefit the positive impact of the merger's cost savings and economies of scale on the roll-out of IPTV service in BellSouth's territory.[7] To the contrary, the Commission has

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[5] *TWTC Letter* at 2-3. TWTC also misrepresents statements by Applicants' consultants to suggest that BellSouth has decided to roll out IPTV. *TWTC Letter* at 4-5 ("Applicants' own economists admit that 'in the absence of the merger BellSouth would have started to deploy IPTV services either 12 or 24 months later than the start date that would be realized following approval of the merger."). Drs. Carlton and Sider simply assumed for purposes of calculating the consumer benefits of the merger that if BellSouth were to decide to deploy IPTV service, it would be able to do so 12 or 24 months later than the start date that would be realized following the merger. Reply Declaration of Dennis W. Carlton and Hal S. Sider at ¶ 179 ("*Carlton & Sider Reply Decl.*"). The economists never claimed that BellSouth had made the decision to do so.

[6] Declaration of William L. Smith, Chief Technology Officer, BellSouth Corporation at ¶ 8 ("*Smith Decl.*"); *Joint Opposition* at n. 20 ("Access Point claims that, because BellSouth is investing $2.2 billion over a five-year period to upgrade its broadband access network, it has therefore 'made a decision to deploy IPTV,' but ignores BellSouth's statements that the upgrade was being made to permit it to provide a 'wide range of IP-based interactive services,' with IPTV only 'potentially' being provided" at a later date if at all).

TWTC also makes much of the fact that BellSouth recently decided to provide video services on a limited scale to a small number of newly-constructed multifamily homes and alleges that BellSouth has been able to secure programming contracts for a limited IPTV trial to such communities. *TWTC Letter at 4.* TWTC does not mention that BellSouth has already made clear in this proceeding that if it decides to use IPTV technology in these communities, it still will not be in a position to deploy IPTV technology broadly since such a large scale roll-out of IPTV would require a substantial additional investment. *Joint Opposition* at n. 19. Moreover, BellSouth also made clear that although it has begun programming negotiations for this limited video service offering, the resulting agreements may not support a generally available commercial offering of IPTV. Supplemental Declaration of William L. Smith, Chief, Technology Officer, BellSouth Corporation at ¶ 4 (May 31, 2006).

[7] *TWTC Letter* at 2-3. While TWTC correctly notes that BellSouth identified the "the cost disadvantage it would face as a distributor that has a small geographically limited subscriber base" as one of the factors that would impact its decision whether to launch an IPTV service, BellSouth made clear that the mere cost of rolling out the service will

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repeatedly recognized the benefits and efficiencies arising from an increased geographic reach or customer base as a result of a merger or acquisition.[8]

TWTC also misrepresents and understates the specific cost savings and efficiencies that will result from the merged entity's roll-out of IPTV service in BellSouth's territory. Among other things, TWTC asserts that BellSouth will only experience $50 million in savings in the roll out of IPTV service.[9] TWTC knows better. BellSouth specifically stated on the record that the merger will result in savings "in excess" of $50 million with respect to just pre-launch costs, and that "[a]dditional avoided costs after launch would be in the tens of millions of dollars."[10]

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significantly impact its "decision to commit the resources necessary to undertake the project." *Smith Decl*. at ¶¶ 14, 20.

[8] *See, e.g,. In re Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations,* Memorandum Opinion and Order, 19 FCC Rcd. 21522, 21605, ¶219 (2004) ("This increase in current (and potential future) service coverage should directly benefit both existing and new customers and is not likely to be attained as quickly absent the merger."); *In re SBC Communications and AT&T Corp., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18290, 18387, ¶ 193 (2005) (noting that the "merger not only gives the combined company a larger total customer base, but also significant shares of customers across a wider range of communications markets than either carrier had before the merger"); *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighth Annual Report, 17 FCC Rcd. 1244, 1252, ¶ 14 ("By clustering their systems, cable operators may be able to achieve efficiencies that facilitate the provision of cable and other services, such as telephony."). The *SBC/Ameritech Merger Order* relied on by TWTC is inapposite since it addresses the ability of a party to more effectively compete out-of-region as a result of a merger. In this proceeding, BellSouth only discussed the anticipated costs of rolling out IPTV in its region; it did not raise as an issue any plan to provide IPTV service out of its region and the associated cost of such plan. *In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd. 14712, 14826-14828, ¶¶ 259-262 (1999) ("*SBC/Ameritech Order*").

[9] *TWTC Letter* at 3.

[10] *Smith Decl.* at ¶ 24. TWTC incorrectly tries to analogize these cost savings to certain cost savings at issue in the *SBC/Ameritech* merger. *TWTC Letter* at 3. In the *SBC/Ameritech Order*, the Commission rejected the applicants' claim that the cost of implementing the national-local strategy would be offset by, among other things, the cost savings the merged entity would experience by not having to enter certain other markets. *SBC/Ameritech Order* at ¶ 293. The *SBC/Ameritech Order* is inapposite. The Applicants in this proceeding have not presented a plan similar to the national-local strategy plan at issue in the *SBC/Ameritech* proceeding; therefore, they have not requested that the
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TWTC next asserts that there is no basis for the Commission to conclude that accelerated deployment of IPTV services in BellSouth's territory would benefit consumers, and states instead it is "possible" that a stand-alone BellSouth "would have ultimately delivered" an IPTV product offering greater consumer benefits than AT&T's U-verse^{sm} service.[11] Essentially, TWTC is inviting the Commission to reject the sworn, unrebutted statements by BellSouth management that no decision has been made, and then ignore established Commission precedent recognizing accelerated roll out of services as a public benefit of a merger.[12] Yet, to repeat, the record here admits of only one conclusion, that BellSouth has not made and might not make a decision to roll out IPTV service on a widespread commercial basis as a stand alone entity.

Moreover, TWTC does not dispute that BellSouth's development of IPTV lags behind AT&T's. AT&T has commenced a large-scale commercial roll out of IPTV service and thus would be in a position to deploy IPTV service in BellSouth's region sooner than BellSouth.[13] TWTC is simply incorrect in asserting that the Commission

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Commission offset potential merger benefits against the cost of such plan in determining whether the merger is in the public interest. *Id.* at ¶ 257.

[11] *TWTC Letter* at 3.

[12] *See, e.g., In re Applications for Consent to the Assignment and/or Transfer of Control of Licenses of Adelphia Communications Corporation, Assignors to Time Warner Cable Inc., Assignees; and Adelphia Communications Corporation, Assignors and Transferors to Comcast Corporation, Transferor to Time Warner Inc., Transferee; and Time Warner Inc. Transferor to Comcast Corporation, Transferee*, Memorandum Opinion and Order, 21 FCC Rcd. 8203, 8312-8313, ¶¶ 256-259 (2006) (finding public interest benefits of accelerated deployment of VoIP service in Adelphia service areas and accelerated upgrades of Adelphia's cable systems); *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd. 9816, 9892, ¶ 178 (2000) (finding merger would accelerate deployment of telephony and broadband Internet services that would yield public interest benefits for consumers); *In re Application of WorldCom, Inc. and MCI Communications Corp. for the Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 18025, 18138, ¶ 199 (1998) (concluding that merger would result in expanded operations and entry into new markets more quickly than either party alone could absent the merger, including accelerated deployment of local city network in secondary markets by 1-2 years).

[13] Description of Transaction, Public Interest Showing and Related Demonstration at 21-25 (Mar. 31, 2006) ("*Public Interest Statement*"); Declaration of James S. Kahan, Senior Executive Vice President – Corporate Development, AT&T Inc. at ¶¶ 13-16 ("*Kahan Decl.*"); *Smith Decl.* ¶¶ 8-22, 25; *Joint Opposition* at 5-7. Relying on a claim made by Access Point, TWTC states that the merger will require the renegotiation of AT&T's programming contracts and therefore no benefits will accrue to BellSouth because of AT&T's "head start." *TWTC Letter* at 4. TWTC ignores the fact that the Applicants have submitted sufficient evidence to refute this contention. Specifically, in describing

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has no information to determine that AT&T's faster rollout of IPTV service would benefit consumers. Drs. Carlton and Sider estimated that acceleration in the deployment of IPTV service as a result of the merger could result in consumer benefits ranging from $ 1 billion to $ 2.9 billion.[14]

TWTC also underestimates the significant programming cost savings the merged entity may experience. TWTC asserts that the combined company will not realize short-term benefits in programming costs because neither company has many video subscribers and, in the long term, BellSouth's customer base alone would permit it to achieve "competitive" programming costs, absent the merger.[15] TWTC simply ignores the Applicants' showing that, as a combined company with a larger geographic scope and potential subscriber base, the Applicants will be in a position to take advantage of cost savings and economies of scale and scope not otherwise available to AT&T or BellSouth individually.[16] Such cost savings plainly will allow the combined company to be more competitive more quickly with incumbent cable operators who have large regional clusters and a national reach than either AT&T or BellSouth could be alone.

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the extensive progress AT&T has made in negotiating content agreements, AT&T's Senior Executive Vice President -- Corporate Development, James S. Kahan, explained that "AT&T can bring its IPTV product to the BellSouth region, and BellSouth can avoid the lengthy process of negotiating IPTV rights from programmers." *Kahan Decl.* ¶ 36; *see also Smith Decl.*¶ 19 ("I understand that AT&T already has a substantial head start in negotiating these types of [programming] arrangements. The combined company would be able to utilize these existing and pending agreements to provide service in the BellSouth territory before BellSouth, standing alone, could conclude the requisite content agreements.").

[14] *Carlton & Sider Reply Decl.* ¶ 180 and Table 6.3.

[15] TWTC relies on Verizon's rollout plans and projections regarding video penetration in order to speculate how many customers BellSouth could serve, and thus, the lower programming costs a stand-alone BellSouth might achieve. *TWTC Letter* at 5. TWTC's argument rests entirely on the baseless assumption that, absent the merger, BellSouth would be capable of and would elect to roll out a commercial IPTV product at the pace targeted by Verizon. As shown above, however, BellSouth is still evaluating whether to invest the substantial additional resources that would be required to launch a commercial IPTV service. Moreover, even if one were to assume that BellSouth could roll out service throughout its region at the levels projected by TWTC, TWTC cannot dispute the fact that the merged entity would be entitled to even greater volume discounts from programmers due to the fact that the subscriber bases of BellSouth and AT&T would be combined.

[16] *Public Interest Statement at 25-28; Kahan Decl.* ¶ 37; *Joint Opposition* at 7. For support, TWTC cites to a statement made by AT&T's CFO, Richard Lindner in April 2006. *See TWTC Letter* at 6. However, Mr. Lindner's statement demonstrates – as TWTC concedes – that AT&T presently pays higher programming costs per subscriber than cable operators.

Finally, TWTC claims that the merger will not permit the merged entity to attract more national advertisers, and it challenges the claim that MVPD advertising is an important source of revenue for MVPDs and programmers.[17] The only support offered by TWTC for this claim are comments filed by Comcast in the Commission's "a la carte" proceeding.[18] However, Comcast has taken a different view in other statements, commenting that larger regional and national footprints have a positive impact on advertising revenues, and that such advertising dollars are significant. For example, in the Comcast/AT&T merger proceeding, Comcast stated that "the potential increase in advertising revenues will help AT&T Comcast offset the costs involved in operating and improving its broadband services to customers," and claimed that "even if the merged entity captures only 1 to 2% of the broadcast industry's current revenue for national advertising, it should be able to generate $100-200 million in increased EBITDA annually within one to three years after the merger by combining their national advertising sales efforts."[19] Just last year, Comcast noted an increase in its revenues as a result of its regional/national advertising strategy: "Advertising revenue for the second quarter of 2005 increased 9.9% to $362 million, reflecting growth of 6.5% in local advertising and *growth of 16.7% in regional/national advertising as a result of the continuing success of our regional interconnect strategy*."[20] Contrary to TWTC's claims, these dollar amounts are not insignificant, and, thus, the Applicants have a reasonable basis to assume that a larger geographical footprint will increase the merged entity's attractiveness to national advertisers.

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[17] TWTC also rebuts claims the Applicants did not make. TWTC suggests that the Applicants claim that "spot" advertising revenue for commercials placed by MVPDs goes, in part, to advertisers. *TWTC Letter* at 6. The Applicants did not make such a claim; they only claimed that "[a]dvertising is an important source of revenue both for AT&T and for the programmers it carries." *Public Interest Statement* at 25. The Applicants made no suggestion that such programmers share in spot advertising. Indeed, the Applicants do not disagree with TWTC's statement that, with respect to non-spot advertising, "the programming network, not the MVPD, receives the revenue from these commercials." TWTC's confusion may result from the fact that this portion of the ex parte seems directed to Verizon rather than the Applicants. *TWTC Letter* at 6 ("There is also little basis for the Applicant's arguments that the merger will permit Verizon to attract more national advertisers to its service . . . .").

[18] *In re a La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, Comments of Comcast Corp. at 20 (Jul. 15, 2005).

[19] *In re Applications for Consent to Transfer Control of Licenses of Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Description of the Transactions, Public Interest Showing, and Related Demonstrations at 46 (Feb. 28, 2002).

[20] Press Release, Comcast Corporation, *Comcast Reports Second Quarter 2005 Results* (Aug. 2, 2005).

The record in this proceeding clearly demonstrates that consumers stand to benefit in the form of higher quality of service, more diverse content and greater programming choice as a result of the cost savings and economies of scale created by the merger that would not otherwise be available to AT&T and BellSouth customers.

Sincerely,

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