likely that cellular networks will be extended into the home using local-area wireless technologies."[33]

The Commission also confirmed in the *SBC-AT&T Merger Order* that wireless service is now a substitute, not only for wireline long distance service, but for traditional wireline *local* services as well. As the Commission put it, "growing numbers of subscribers in particular segments of the mass market are choosing mobile wireless service in lieu of local wireline service. . . . SBC considers this growing substitution in developing its marketing, research and development, and corporate strategies for its local service offerings."[34] According to recent data, "[t]en percent of wireless users have decided not to have a landline phone at all"[35] and in households using wireless, "36% of local calls are now displaced by wireless."[36] Further, as the Commission recognized in the *SBC-AT&T Merger Order*, such competition can only be expected to increase.[37] Industry analysts estimate that by 2010, 18% of households will be wireless-only.[38]

*Cable Telephony.* Cable companies are also major providers of mass market long distance services through their all-distance offerings. Cable companies have nearly ubiquitous network facilities and established mass market customer relationships. With the development of

---

[33] *Id.* at 10.

[34] *SBC-AT&T Merger Order* ¶ 90.

[35] Yankee Group Report, *Personal Wireless Calling Surpasses Wireline Calling: A Wireless Substitution Update* (Aug. 2005), at 5.

[36] *Id.*

[37] *SBC-AT&T Merger Order* ¶ 90 ("[a]ccordingly, our expectation is that intermodal competition between wireless and wireline services will increase in the near term"); *see also Cingular-AT&T Wireless Merger Order*, 19 FCC Rcd. 21522, ¶ 241 (2004) (citing evidence that ILECs consider customers' subscription to wireless services in pricing and marketing local service offerings).

[38] JPMorgan, *Telecom Services/Wireline* (Jan. 13, 2006), at 1; *see also id.* at 4 (predicting that "wireless substitution will claim 20.3 million primary lines (18% of telephony households) by 2010").

VoIP technologies, cable companies nationwide have added all-distance voice services to the *broadband and video programming services they already offer. Cable-based VoIP telephone* services offer the same local and long distance voice calling capabilities as traditional wireline services as well as novel enhanced features. For these reasons, the Commission has found both that cable-based VoIP services are "reasonably interchangeable" with traditional wireline services and that they are in the "relevant services market."[39]

These cable competitors are winning mass market customers rapidly. Already, analysts estimate, cable companies have won approximately 5.5 million telephony customers (including cable companies' switched telephony offerings).[40] In 2005 alone, cable VoIP providers added "1.7 million new VoIP subscribers for an annualized growth rate of 301%, ending the year with 2.3 million [VoIP] subscribers."[41] And cable companies are still in the process of expanding their VoIP footprints, so as more communities gain access to this service, cable subscription rates will dramatically increase.[42] Indeed, analysts predict that the "cable VoIP subscriber base [will] grow *even faster* in 2006" than in 2005 and that cable companies will "end 2006 with 5.9M VoIP subscribers"[43] in addition to their existing base of approximately 3 million circuit-switched

---

[39] *SBC-AT&T Merger Order* ¶ 87.

[40] *Id.* at 9.

[41] Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* (Jan. 17, 2006), at 1.

[42] *Id.* at 8. Comcast, which had been the most conservative of the major cable MSOs in deploying VoIP, has a goal of "2M phone customers by end of '06." Jim Barthold, *Comcast Targets Phone in 2006*, Telecommunications Online (Jan. 10, 2006) ("Comcast's network now passes about 16 million homes 'that we're ready to market and close to 20 million that are now ready but not yet marketed,'" quoting Brian Roberts); *see also* UBS, *Wireline Telecom Play Book* (Jan. 3, 2006), at 3 ("We believe [AT&T] has the most exposure to Comcast with roughly 30% of its service territory also served by the cable MSO").

[43] Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* (Jan. 17, 2006), at 1; *see also* UBS, *Wireline Telecom Play Book* (Jan. 3, 2006), at 3 (predicting even greater increases in cable subscribership).

telephony subscribers.[44] The evidence so far bears that out. Comcast just announced that it added 211,000 new VoIP subscribers in the first quarter of 2006. Cable VoIP subscribers are expected "to exceed 18% penetration of homes passed" within four years[45] with about 22 million telephone subscribers by that time.[46] It is no wonder, then, that in the *SBC-AT&T Merger Order*, the Commission found that "there is documentary evidence that SBC [now AT&T] views cable-based VoIP as its primary competitive threat in mass market, and considers the prospect of consumer substitution to cable-based VoIP when devising its strategies and service offers."[47] Moreover, cable incumbents today have significant regulatory advantages in trying to win local and bundled service customers from incumbent LECs such as AT&T. Wholly apart from the dominant carrier and other regulations that are the subject of this petition, incumbent LECs, such as AT&T, face potentially crippling obstacles as they strive to match cable's bundled service packages because of regulatory hurdles they currently face as they seek to deploy video services. Although AT&T believes that its IP video service is not a "cable service" subject to Title VI local franchising requirements, local franchising authorities have taken a different view. And, as the record in the Commission's section 621 proceeding starkly confirms, the local franchising process, undisciplined by Commission rules, has caused protracted, crippling delays and unreasonable requirements that threaten to thwart competitive video entry (and investment

---

[44] Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* (Jan. 17, 2006), at 9.

[45] *Id.* at 1.

[46] *Id.* at 8; *see also* "NCTA: Cable Confident of Its Competitive Position," Telephony Online, April 10, 2006 (quoting Time Warner CEO Richard Parsons saying "We are seeing a real uptick in subscriber acquisitions," and "telcos are way off the pace").

[47] *SBC-AT&T Merger Order* ¶ 87.

altogether) in many areas.[48] As a result, cable incumbents are making net gains in the bundled service market at a very rapid pace.[49]

*Over The Top VoIP.* VoIP has enabled new competition not just from "facilities-based" providers, but also "over the top" VoIP providers like Vonage, Skype, and 8 x 8. Skype offers VoIP services at no charge, and makes its money through advertising.[50] Other VoIP providers are offering high-quality telephone services at prices below what traditional IXCs offer.[51] Further, these services provide a host of additional features not available with POTS.

Consumers increasingly view over-the-top VoIP services as a substitute for traditional telephony. One noted analyst estimates "that U.S. VoIP subscriber base grew by 2.8 million subscribers in 2005, or 254%, to more than 4 million subscribers," of which 1.7 million are customers of over-the-top VoIP providers.[52] Vonage alone boasts 1 million customers and 1.5 million subscriber lines.[53] For the most part, these VoIP gains are coming at the expense of incumbent telephone carriers such as AT&T, which are responding by reducing prices:

---

[48] AT&T remains hopeful that the Commission will take prompt action to eliminate these barriers to competition; however, until the Commission acts, AT&T's roll-out of its video service will be subject to questions and obstacles that the cable companies do not face in their deployment of telephony.

[49] *See, e.g.*, Bloomberg News, "Comcast Chief Predicts 8 Million Phone Customers in 3 to 5 Years," April 11, 2006 (quoting Comcast CEO Brian Roberts saying "Comcast is now big time in the phone business, rolling out very well," and experiencing "tremendous growth").

[50] Skype was recently acquired by eBay. *See* Press Release, "eBay to acquire Skype," http://www.skype.com/company/news/2005/skype_ebay.html (Sept. 10, 2005).

[51] *See* 10/29/04 SBC Ex Parte, WC Docket No. 02-112, at 3-6; 12/16/03 SBC Ex Parte, WC Docket No. 02-112, at 22-23; *see also* 2/13/04 Verizon Ex Parte, WC Docket No. 02-112, at 7.

[52] Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* (Jan. 17, 2006), at 1, 3.

[53] *Id.* at 3. *See* Vonage Press Release, March 2, 2006, available at http://www.vonage.com/media/pdf/pr_03_01_06_mil.pdf; Vonage Hits One Million Paying Customers, NetworkWorld.Com, Sep. 12, 2005, available at http://www.networkworld.com/weblogs/convergence/009961.html.

> As expected, telecom carriers suffered high access line losses at the hands of VoIP growth in 2005, with the rate of line loss expected to have increased 150 basis points from 2004 to 5.7% for the full year. . . . Under pressure from VoIP, the two largest telecom carriers, AT&T and Verizon, responded with significant price cuts to their premium, all-you-can-eat circuit-switched phone services late in 2005.[54]

Moreover, with the explosion of broadband penetration, market penetration by VoIP providers is expected to increase.[55] Indeed, analysts expect over-the-top VoIP carriers to gain 4 million customers by 2008.[56] These estimates may be conservative, as computer-based services like Skype, which offer local and long distance calling for free, have the potential to become much bigger players in the market as a result of recent technological advances. "A number of vendors are working to produce portable handsets that can support the Skype client and connect to the Internet through WiFi connections. Such a device, often called a WiFi phone, would enable a user to access the Skype service without a computer anywhere a WiFi signal could be obtained. This would significantly increase the ease of use and add mobility to the equation, making the service much more attractive to residential customers."[57]

---

[54] Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* (Jan. 17, 2006), at 2. *See also id.* at 5 (concluding that "after [incumbent] line losses stabilized at 6.5M – 6.7M per year . . . in 2003 and 2004, they accelerated to more than 8.6M in 2005 (5.7% of total lines)").

[55] JPMorgan, *Telecom Services/Wireline* (Jan. 13, 2006), at 19 (predicting that "broadband penetration will increase from 31% in 2004 to 63% in 2010").

[56] The Buckingham Research Group, *Competitive Telecom Carriers Industry Primer: Selectivity is Key*, at 10 (Sept. 28, 2005).

[57] UBS, *Skype Hype Becomes Reality* (Sept. 13, 2005), at 5; *see id.* at 4 ("A larger long-term risk to basic wired voice, however, comes from the next phase of Internet-based competitors whose economics could radically change the dynamics of the market. Microsoft, Yahoo, Google and AOL are well-financed Internet companies making a push into the voice market").

All told, analysts expect incumbent telephone carriers to lose about 7.1 million access lines in 2006.[58] They further expect that "cable and other VoIP providers [will] increase [their] share of primary lines to 28% by 2010."[59]

**Enterprise Services.** The Commission recognized more than fifteen years ago that competition for enterprise customers was particularly intense.[60] In the *SBC-AT&T Merger Order*, the Commission reaffirmed this conclusion and, indeed, noted multiple new sources of competition that did not exist at the time of its earlier findings. It thus found not only that "for all groups of business customers, there are multiple services and multiple providers that can meet demand,"[61] but that "there are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors."[62] These "multiple competitors ensure that there is sufficient competition" in the retail enterprise market to preclude AT&T (and any other carrier) from acquiring market power.[63]

*Traditional IXCs.* AT&T faces significant competition from the traditional long distance providers such as Verizon-MCI, Sprint-Nextel and Qwest, each of which is enhancing its

---

[58] Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* (Jan. 17, 2006), at 10.

[59] JPMorgan, *Telecom Services/Wireline* (Jan. 13, 2006), at 4. Analysts also predict that "wireless substitution will claim 20.3 million primary lines (18% of telephony households) by 2010." *Id.* Thus, the best available evidence suggests that intermodal competitors will capture 46% of the mass market by 2010.

[60] *See AT&T Streamlining Order*, 6 FCC Rcd. 5880, ¶¶ 8-9 (1991).

[61] *SBC-AT&T Merger Order* ¶ 77; *see id.* ¶¶ ¶ 57, 73 & n.223 ("we find that myriad providers are prepared to make competitive offers" to enterprise customers); *Verizon-MCI Merger Order* ¶¶ 74, 75 n.229.

[62] *See, e.g., SBC-AT&T Merger Order* ¶ 63; *id.* ¶¶ 73 & nn.220, 223; *MCI-WorldCom Merger Order*, 13 FCC Rcd. 18025, ¶¶ 35, 65, 73 n.230 (1998) (discussing enterprise competition from non-facilities-based providers).

[63] *SBC-AT&T Merger Order* ¶ 73.

national and global networks and fulfilling the diverse needs of business customers.[64] In addition to increasing their coverage territories, these three nationwide providers continue to broaden their product portfolios, targeting both large and small businesses with improved voice and data services, including new VoIP offerings.[65]

*Data/IP Providers.* Data/IP network providers have become significant competitors for enterprise customers, particularly as the demand for sophisticated data services, such as those that combine IP data and voice services, continues to increase. These carriers – which include Global Crossing, Level 3 Communications, XO, Broadwing, and SAVVIS – offer nationwide networks that can be used to offer a broad array of next-generation services. For example, Global Crossing is serving customers with its large worldwide network, directly connecting more than 300 cities in 30 countries, with about 800 POPs in 200 major cities throughout the world. In March 2006, Global Crossing "announced that the number of customers utilizing two or more converged IP services on its global fiber-optic network more than tripled in 2005, highlighting the company's success in attracting enterprises and carriers to its high-performance, robust suite of IP solutions, ... [and] that its Internet Protocol Virtual Private Network (IP VPN) traffic grew 300 percent in 2005."[66] Similarly, Level 3 provides wholesale, enterprise and mass market VoIP services and reports that it carries over 30 billion minutes of traffic per month and can offer VoIP

[64] For example, Verizon Business has surpassed 20,000 miles of Ultra Long Haul ("ULH") deployment on its network to give Verizon Business "the largest ULH network footprint for government and large business customers in the United States." *See* News Release, Verizon Business Marks Milestone in Ultra Long Haul Network Strategy (March 7, 2006) (http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=93299).

[65] *See, e.g.*, "Sprint Nextel Gets 1 Million VoIP Customers via Cable Partnerships," Teleclick.com (Apr. 12, 2006) (Sprint announced that it "now offers VoIP phone service to more than 1 million customers, through partnerships with cable TV operators. This number quadrupled in 2005 alone, generating a total of $100 million in revenue").

[66] *See* Press Release, Global Crossing Triples Converged IP Customers in 2005 (March 8, 2006) (available at http://www.globalcrossing.com/xml/news/2006/march/08.xml).

to over 300 markets worldwide. Level 3 recently completed its acquisition of WilTel, creating a service provider that is significantly "broadening [its] network capabilities [to] facilitate *increased network reach by adding 3000 additional route miles, access to 50 new markets and* improved responsiveness on high demand routes."[67]

*Competitive LECs.* A variety of national and regional CLECs also compete in providing voice and data services for businesses, particularly for smaller and medium-sized companies. According to a recent report, "[c]ompetitive carriers have announced a spate of expansions to their metro and regional fiber networks of late."[68] The Commission has found that CLECs compete vigorously at all levels of the enterprise market.[69] Numerous CLECs – including multiple CLECs in the major metropolitan areas in the states AT&T serves – have deployed local voice and data facilities in the metropolitan areas throughout the nation where enterprise customers are concentrated.

*Wireless/VoIP Providers.* Wireless and VoIP providers have also become significant competitors for enterprise business customers. A recent survey found that 30% of enterprise telecommunications consumers had already deployed VoIP across their entire business.[70] Another study found that a full 100% of the businesses surveyed plan to install VoIP in the next

---

[67] Press Release, Level 3 Completes WilTel Acquisition (December 23, 2005) (available at http://www.level3.com/press/6650.html).

[68] "CLECs Build Out Metro Fiber," TelephonyOnline.com (Apr. 12, 2006) (noting expansion by a number of CLECs and stating that these expansion plans are "consistent with reports from equipment vendors last year of an increase in demand for overhauling metro and long-haul networks").

[69] *SBC-AT&T Merger Order* ¶ 73 & n.220.

[70] Goldman Sachs Global Investment Research, *Enterprise Survey: Wireless May Determine Carriers' Seat at the Table* at 17 (March 2, 2005).

five years.[71] And market research suggests that wireless services will "account[] for the bulk of the enterprise telecom markets' growth over the next five years."[72]

*Systems Integrators.* Systems integrators – large IT services firms such as EDS, IBM Global Services, Accenture, and Computer Sciences Corporation that have in-depth application and managed service expertise – likewise are rapidly expanding their enterprise offerings. As one observer put it in January 2006, "[t]he managed services trend is currently sweeping through every sector of the telecom industry."[73] The Yankee Group concluded that systems integrators "are increasingly circumventing traditional providers of voice and data services and strengthening relationships with enterprise decision-makers. SIs use their powerful enterprise relationships to push carriers downstream, relegating them to a role of commoditized transport

---

[71] *Survey Shows That Businesses Expect 40 Percent Savings with VoIP; 100 Percent of Businesses Surveyed Plan to Install VoIP in the Next Year*, Business Editors, Oct. 25, 2005. *See also Businesses Look to VoIP Solutions*, Newsfactor, Oct. 24, 2005 (*available at* http://www.newsfactor.com/story.xhtml?story_id=12000002RVK0) (discussing estimates that half of new business installations in 2005 will contain VoIP technology); Al Senia, *5 Tough Challenges for '05 – Discovering VoIP Profitability*, AMERICA'S NETWORK, Jan. 15, 2005, at 16 (noting that a third of enterprises have already deployed VoIP, with more than half expected to deploy it by 2006).

[72] Bernstein Research, *U.S. Telecom: Wireless Plays Small But Growing Role in Enterprise Market*, July 1, 2005; Dell'Oro Group, *Enterprise Wireless LAN Sales Continue to Surge in 3Q05*, Nov. 16, 2005 (claiming that the enterprise wireless LAN market grew 9% sequentially in 3Q-05 to $249 million), *available at* http://www.delloro.com/news/2005/WL111605.shtml; *see also* Press Release, *Nokia to Extend Leadership in Enterprise Mobility with Acquisition of Intellisync*, Nov. 16, 2005 (discussing the "fast growing" mobile enterprise market), *available at* http://press.nokia.com/PR/200511/1021663_5.html; Lynnette Luna, *5 Tough Challenges for '05 – Sorting Through the Wireless Broadband Maze*, AMERICA'S NETWORK, Jan. 15, 2005, at 16 (noting surveys finding that enterprise spending for wireless and mobility will increase 36% in 2005, and 55% of large U.S. businesses will deploy a wireless wide-area data solution by mid-2006).

[73] *See* Dan O'Shea, *The Next New Economy is Someone Else's Responsibility*, Telephony Online, Jan. 23, 2006.

provider."[74] After reviewing this evidence, the Commission concluded that "system integrators and the use of emerging technologies are likely to make th[e enterprise] market more competitive, and . . . this trend is likely to continue in the future."[75]

*International Carriers.* International carriers also are expanding their offerings and upgrading their data networks to provide voice and data services to medium and large business customers in the United States. British Telecom, NTT Communications and the France Telecom Group have led this charge. For example, British Telecom, along with its subsidiary, Infonet, continued its success over the last few months, including winning a major contract with a company headquartered in Atlanta.[76] In January, BT Infonet was named Frost & Sullivan's Business Services Communications Company of the Year.[77] Similarly, Equant, which is part of the France Telecom Group and a leading telecom provider in Europe, continues to compete successfully for retail business services customers in the United States, and is positioned in Gartner's "Magic Quadrant" for network providers in 2005.[78] Equant advertises a "market-leading" IP VPN solution, recently delivering an IP VPN solution to connect the 264 retail stores of the U.S.-based Stride Rite Corporation in August 2005.[79]

*Equipment Vendors and Value-Added Resellers.* In the months since the SBC/AT&T merger, equipment manufacturers have pursued the demand for business telecommunications

---

[74] Yankee Group, *Network Service Providers Alter Their Business Models To Capture a Greater Share of Increasing Enterprise Budgets* (Jan. 2005)

[75] *SBC-AT&T Merger Order* ¶ 74.

[76] *See* Press Release, BT Group, plc, BT to Deliver and Manage Global IP Network for Infonet (Feb. 7, 2006).

[77] *See* Press Release, BT Group, plc, BT Infonet Named Frost & Sullivan's Business Services Communications Company of the Year (Jan. 26, 2006).

[78] *See* Press Release, Equant, Equant Positioned In Leaders Quadrant (Jan. 4, 2006).

[79] *See* Press Release, Equant, Stride Rite To Deliver Superior In-Store Customer Service With Equant and GoRemote Small Office Solution (Aug. 29, 2005).

systems and services, both directly and through resellers, with increased vigor.[80] IP and IP-enabled PBX telephone systems have been rapidly displacing traditional systems in large and smaller businesses alike, and this trend will continue to intensify.[81] For example, according to IDC, "managed services opportunities are growing and Lucent has been able to capitalize on the opportunity."[82] Likewise, Cisco announced an "expansion of its product lineup for small businesses with an offering that features hosted voice, video, data networking and applications via Internet service providers."[83]

*Cable Providers.* Cable providers continue to utilize their extensive fiber optic networks to provide new services such as VoIP and traditional data and Internet transport to retail business customers.[84] IDC has noted that "[i]ncumbents face increasing competition from cable MSOs in

---

[80] As the Yankee Group comments, "Premises-based solution vendors such as Cisco, Nortel, Samsung and Toshiba have been most successful in painting the future of VoIP as a premise-based-only world." "2005 SMB State of the Market," The Yankee Group, November 2005.

[81] IDC, "Predictions for the Telecoms Market 2006" at 20 (January 2006) ("Total enterprise IP PBX lines are expected to surpass 2 million in APEJ in 2006, representing a growth of 26%. Total IP phones will likewise enjoy a similar growth trend of 26.9% to reach 1.6 million in 2006."); *see also* Frost and Sullivan, "North American Enterprise TDM-Based Wireline Voice Services Markets at 1-15 (2005) ("The decline in switched access lines is expected to gain pace over the next 24-36 months as a growing number of enterprise customers implement VoIP services including IP PBXs, IP Centrex, and hosted IP telephony services.").

[82] IDC, "Lucent Update: IMS, Mobility, and Services," at 1 (March 2006) ("IP network convergence and IMS adoption in the service provider market will accelerate Lucent Worldwide Services' ('LWS') professional services revenue growth well beyond 2005 levels. Strategically, LWS' growth and investment in multivendor professional and managed services capabilities leverage Lucent's strength in the network core and provide the opportunity for Lucent to transform the current trusted vendor relationship with service providers to one of trusted business partner and solutions provider").

[83] "Cisco Continues Small Business Push," ZDNet.com News (November 14, 2005).

[84] *See, e.g.*, Press Release, *Comcast Extends National Fiber Infrastructure* (Dec. 7, 2004)); Ellen Sheng, *Cable Companies Seek a Boost from Service*, Wall Street Journal, April 7, 2004 (noting that Cox has launched a $4 million advertising campaign to attract business customers and is now serving MGM Mirage Resorts and Chesapeake Energy Corp; Time Warner Cable is serving the hotel industry and major retailers; Cablevision is serving the health care, financial services, and government sectors); Press Release, *Time Warner Cable of New York and New Jersey Offers*

both the consumer and small and medium business segments. This will become even more prevalent over the forecast period."[85] The Yankee Group estimated that cable providers sold $1.2 billion dollars in phone, data and video services to companies in 2004, and expected revenues for such services to reach $2 billion dollars in 2005.[86] Notably, a very recent report states that "[c]able executives see explosive growth in sales to businesses."[87] According to these providers, for example, "[b]usiness service is the next big thing" for cable, and cable has a "tremendous advantage" over telephone providers because of the dominant carrier and other regulations that are the subject of AT&T's Petition: "The cable industry can [offer service] without regulatory approval or tariffs" and have an "upper hand since they face less regulation than telcos."[88]

* * * * *

In short, neither the BOCs nor any other interstate interexchange carrier has market power in any long distance market.[89]

---

*Optical Ethernet and Storage Services Using Nortel Solutions* (Feb. 7, 2005) (noting Time Warner rollout of new Ethernet-based business services in New York City); Multichannel News, *Business: Cable's 'Sweet Spot'* (May 9, 2005) (noting cable companies' drive to market to large business, including investment of $95 billion for advanced hybrid fiber infrastructure capable of delivering advanced voice, data, and video to business).

[85] IDC, U.S. Landline 2005-2009 Forecast and Analysis, December 2005 at 13.

[86] Ken Belson, *Not Just TV: Cable Competes for the Office Domain*, N.Y. Times, Aug. 3, 2005, at C1, available at 2005 WLNR 12179832 (citing Yankee Group Report).

[87] "New Cable Initiatives Target Enterprise Market," Comm. Daily, at 7 (Apr. 13, 2006).

[88] *Id.*; *see also* "Cable Wants Your Office, Comcast, Others Seek To Lure Business Customers," Rocky Mountain News (Apr. 12, 2006) (quoting Cablevision executive as saying "We have the opportunity to sell to the whole business marketplace").

[89] The Commission already has concluded that the new, post-merger AT&T would have no ability to "raise and maintain prices above competitive levels." *SBC-AT&T Merger Order* ¶ 75 (enterprise customers); *see id.* ¶ 101 (mass market).

### B. Elimination Of BOC Structural Separation Could Not Change These Competitive Realities.

Given these competitive realities, the elimination of AT&T's separate affiliate structure would not result in any material marketplace changes that could justify the imposition of dominant carrier regulations. Structural separation was imposed on BOCs to address two very specific concerns – the possibility of either cross-subsidization or discrimination. Given the enormous regulatory, competitive, and technological changes over the last two decades, neither of those concerns has any continuing validity. Indeed, the advent of intermodal competition in itself precludes any possibility that an integrated AT&T could engage in either cross-subsidization or discrimination to gain market power in today's long distance market.

In all events, there would be no reason to apply dominant carrier regulation to AT&T's *retail* long distance services even if there were any lingering (if misguided) concerns that AT&T might have market power in the provision of in-region *wholesale* local access services. AT&T could not possibly have any ability to leverage its last-mile facilities to impede interexchange competition because it faces substantial facilities-based competition for both mass market and enterprise local services.[90] Equally important, the Commission has explained that "[d]ominant carrier regulation" is *not* intended "to prevent other harmful types of anti-competitive activity, such as cost misallocation, access discrimination, and attempts to engage in a price squeeze," that a BOC could potentially engage in if it controlled bottleneck facilities.[91] If any legitimate last mile market power concerns existed – and in today's robustly competitive environment, none do – those concerns are appropriately addressed directly in the Commission's ongoing special access and intercarrier compensation proceedings. In contrast, dominant carrier regulations are

---

[90] *See, e.g., SBC-AT&T Merger Order* ¶¶ 44-45.

[91] *LEC Classification Order* ¶ 8.