52. Commenters claim that AT&T has two unique advantages, and a third significant advantage, in supplying Type II special access services to other competing carriers in BellSouth's in-region territory: (1) AT&T obtains greater special access discounts from BellSouth for the loop portion of the circuit;'" (2) AT&T has **a** more extensive fiber network and therefore can reach more commercial buildings;'" and (3) AT&T, **as** an incumbent LEC that provides service in **a** contiguous territory, is better situated than most competitive LECs to serve business customers with multiple locations.[139] We do not find these arguments persuasive.[140]

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(providing maps of competitive fiber deployment in BellSouth's territory). As we have found in both the special access and UNE contexts, the presence of fiber-based collocators is **a** good proxy for sunk investment in fiber rings, which we find competitors are able to use in conjunction with special access or, where available. UNEs in the provision of Type II offerings. ***See, e.g., Triennial Review Remand Order,*** 20 FCC Rcd at 2589-95, 2625-26, paras. 96-105, 167 (discussing the inferences drawn from fiber-based collocations for purposes of our UNE rules); ***Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers,*** CC Docket Nos. 96-262, 94-1, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14265-69, paras. 81-86 (1999) ***(Pricing Flexibility Order)*** (describing the correlation between fiber-based collocation and sunk investment in competitive transport facilities). We note, consistent with the ***SBC/AT&T Order*** and the ***Verizon/MCI Order,*** we recognize that one must take care in interpreting such maps, and here we simply use the maps to supplement the quantifiable collocation data and to identify the existence of competitive LEC facilities in the MSA. ***See SBC/AT&T Order,*** 20 FCC Rcd **at** 18313 n.127; ***Verizon/MCI Order,*** 20 FCC Rcd at 18455-56 n.123. The Ad Hoc Telecommunications Users Committee submitted into the record a GAO study which, it argues, demonstrates that there is a lack of competition in the special access market and that prices for special access services in MSAs where pricing flexibility has been granted are higher than prices in other areas. *See* Letter from Colleen Boothby, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene **H.** Dortch, Secretary, FCC, WC Docket No. 06-74 at 2, Attach. (tiled Dec. 1, 2006); U.S. General Accountability Office, FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services, CAO-07-80 (Nov. 2006), ***available at*** http://www.gao.gov/new.items/d078O.pdf; ***bur*** **see** Letter from Gary L. Phillips, AT&T Inc. and Bennett L. Ross, BellSouth Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket 06-74 (filed Dec. 7, 2006) (arguing that the Ad Hoc Telecommunications Users Committee has misinterpreted the GAO study). The issue under consideration here, however, **is** whether the merger between AT&T and BellSouth is likely to result in anticompetitive effects in the special access market in BellSouth's in-region territory. In this regard, after analyzing the record, we conclude that this merger may reduce from two to one the number of competitors with direct connections to a handful of buildings where other competitive entry **is** unlikely. We further find, however, that AT&T's voluntary commitment to divest **at** least eight fiber strands in the form ***of*** ten-year IRUs for these two-to-one buildings where entry **is** unlikely adequately remedies these potential merger-specific harms.

[137] ***See, e.g.,*** Cbeyond ***et al.*** Comments at 65-66, 75-76.

[138] **See,** *e.g.*, Ad Hoc Telecom Users Reply **at** 21-22 (arguing that "AT&T stands out as having, by **a** wide margin, the most broadly deployed alternative special access capabilities, hoth nationwide and in the BellSouth region"); Cbeyond ***et al.*** Comments at 63-65; MSV LLC Reply at 6 ("Even if AT&T's facilities are not nearly **as** extensive **as** BellSouth's within the latter's territory, its size and resources make it a meaningful check on the rates charged by BellSouth.").

[139] ***See,*** *e.g.*, TWTC Comments at 17-19 ("As the largest telecommunications company in the nation with ILEC territories adjacent to BellSouth. AT&T is the competitor that is best-positioned (or one of the two best-positioned along with Verizon) to overcome the substantial entry harriers associated with deploying local transmission facilities in the BellSouth region. AT&T can take advantage of its enormous scale and scope economies to extend its existing local transmission facilities in the BellSouth region. AT&T also is almost uniquely positioned to win business customers in the BellSouth territory because of the combination of its (1) significant existing network assets **in** that territory, (2) position **as** an ILEC in a contiguous region, (3) *community* of interest among businesses with multiple locations."); EarthLink Comments at 18-21; Cheyond **et al.** Comments at 5-6, 33; Letter from Brad E.
(continued.. ..)

53. First, there is no evidence that AT&T has access to a discount plan that is not available to other providers. The Applicants assert, and opponents do not rebut. that BellSouth's volume and term discount plans. under which AT&T takes BellSouth special access circuits. are also available to other competitive LECs.[141] Indeed, these plans are made available to others pursuant to contract tariffs or generally available tariffs. Moreover, BellSouth provides special access discounts in a variety of ways with differing conditions in different states and regions, including discounts available even to those carriers that might not qualify for the precise discount plan used by AT&T.[142] Indeed, the Applicants note that in 2005, two smaller competitors received a larger overall percentage discount off the tariffed rate in the BellSouth region than AT&T.[143] Finally. we note that regardless of whether competitors are able to negotiate significant discounts, where competitive duplication of the last-mile facility is not economic, competing carriers will be able to rely on high-capacity loop and transport UNEs priced at Total Element Long Run Incremental Cost (TELRIC) where they are available.[144]

54. Second, the Applicants submit evidence that a number of facilities-based competitive carriers with fiber rings other than AT&T are operating in the 11 MSAs where AT&T provides special access in BellSouth's region.[145] In fact. the Applicants have submitted evidence that AT&T accounts for only 24

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Mutschelknaus, Counsel to NuVox Communications *et al.*. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 4-5 (filed Sept. 28, 2006).

[140] We also are not persuaded by commenters' general arguments that the merger will result in **a** reduction of special access competition. **See,** *e.g.*, Consumer Federation *et al.* Reply at 31-39 (reciting general concerns that merger will reduce competition in the special access services markets due in part to the size of the merged entity. hut not providing specific evidence of how such harms would result); MSV LLC Reply at 4 (making general claims that AT&T has been **a** source of competition in BellSouth's territory); Ad Hoc Telecom Users Reply at 13-14 (arguing that the merger will result in anticompetitive effects).

[141] **See** AT&T/BellSouth Bickerstaff Decl. at paras. 11-12 (stating that BellSouth offers special access discount plans that are generally available).

[142] BellSouth provides special access services under tariffed rates as well as through individual contracts, as BellSouth has gained pricing flexibility in certain MSAs. Various volume and term discounts may apply to individual purchases or for all purchases in particular regions. Other discounts are dependent on maintaining minimum purchasing levels over several years. **See,** *e.g.*, AT&T/BellSouth Application at 61-62; AT&T/BellSouth Bickerstaff Decl. at para. 11 (describing BellSouth's ACT, TPP, TAP and other volume and term discount plans); BellSouth Info. Req. at 24-25. While it is not always clear how much each buyer pays, it *is* clear that the simple tariff rate sometimes used by commenters for comparing prices is not adequate for that purpose. ***See*** AT&T/BellSouth Reply at 32 (stating that "special access customers can choose from among many existing and differing discount plans or negotiate their own individualized contract tariff arrangements").

[143] *See* AT&T/BellSouth Reply at 26 n.95.

[144] In addition, we note that the Commission has found that "the availability of UNEs is itself a check on special access pricing." ***Triennial Review*** *Remand* ***Order,*** 20 FCC Rcd at 2574, para. 65.

[145] **See,** *e.g.*, Letter from Gary L. Phillips, Gen. Atty. and Asst. Cen. Counsel, AT&T, to Marlene H. Dortch, Secretary, FCC. WC Docket No. **07-34,** Attach. (filed Aug. 22,2006) (AT&T Aug. 22 *Ex Parte* Letter) (showing maps of competitive LEC deployment, including fiber rings). We therefore are not persuaded by commenters' claims to the contrary. **See,** *e.g.*, Ad Hoc Telecom Users Reply at 21-22 (arguing that "AT&T stands out as having, by a wide margin, the most broadly deployed alternative special access capabilities. both nationwide and in the BellSouth region"); Cbeyond *et al.* Comments at 63-65; MSV LLC Reply at 6 ("Even if AT&T's facilities are not nearly as extensive as BellSouth's within the latter's territory, its size and resources make it a meaningful check on the rates charged by BellSouth.").

percent of the competitive network fiber miles deployed for the 11 overlap areas, and that individual competitive LECs other than AT&T have deployed more fiber miles than AT&T in every overlap metropolitan area other than Atlanta and Miami.[146] The data regarding the number of competitive LEC building connections shows similar competitive deployment.[147] We conclude, therefore, that there are other existing competitors with local fiber networks that reasonably could provide Type II wholesale special access service in MSAs where AT&T now operates local facilities. We note that our findings here are consistent with the findings underlying the Commission's high-capacity loop impairment analysis in the ***Triennial Review Remand Order.***[148]

55. Third, we are not persuaded that AT&T's status as an incumbent LEC in a contiguous territory gives it such advantages over competitive LECs when competing out-of-region that we should prevent AT&T from acquiring BellSouth.[149] When competitive LECs seek to enter a new special access market,

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[146] *See* AT&T/BellSouth Carlton/Sider Decl. at para. 106. The Applicants further contend that, in live of the metropolitan areas, at least two other competitive LECs have deployed more fiber than AT&T. ***See id.*** We therefore are not persuaded hy claims that AT&T has deployed such an extensive amount of fiber in BellSouth's region that its merger with BellSouth will undermine the current level of competition for wholesale special access in BellSouth's region. ***See*** Cbeyond ***et a/.*** Comments at 60-65. ***See also*** Letter from Brad Mutschelknaus ***eral.,*** Counsel for Cheyond ***et al.***, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 5 (filed Aug. 22, 2006) (Cheyond ***er al.*** Aug. 22 ***Ex Parte*** Letter) (claiming that "AT&T is the single most important existing competitor to BellSouth"); ***see also*** Cbeyond ***et a/.*** Aug. 31 ***Ex Parte*** Letter, Attach. at 4. Nor are we persuaded that the potential loss of AT&T as a purchaser of wholesale special access services will harm competition in BellSouth's region. ***See.*** *e.g.*, ***id.*** at 7 (claiming that AT&T post-merger likely will stop purchasing services from other competitive LECs in the BellSouth region "who depend on AT&T as an anchor customer of their own wholesale offerings"); Sprint Nextel Comments at 12. Cheyond *et al.* do not provide evidentiary support for their contention that competitive LECs rely on AT&T as an "anchor customer." In addition, **as** discussed above, the record demonstrates ample facilities-based competition for wholesale special access services. Indeed, as the Applicants demonstrate, even the documents which Cheyond ***er a/.*** cite are in accord with the record evidence of wholesale special access competition in BellSouth's region. ***See*** AT&T/BellSouth Sept. 1 Special Access ***Ex Parre*** Letter at 3-4, **7-8;** ***see also*** Letter from Gary L. Phillips. AT&T, and Bennett **L.** Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC. WC Docket No. 06-74 at 2-3 (filed Sept. 14, 2006) (AT&T/BellSouth Sept. 14 ***Ex Parre*** Letter). Moreover, the submission of an e-mail discussion between BellSouth employees does not convince **us** that BellSouth has an "intent to undercut the ability of competitive carriers to provide meaningful price competition to BellSouth special access services." Cheyond ***et al.*** Aug. 22 ***Ex Parte*** Letter at 7-8. Not only are isolated **"smoking** gun" documents common in a transaction of this size. hut the e-mail cited by Cheyond ***er al.*** was written hy a single BellSouth employee, which minimizes the probative weight of this evidence. ***See*** AT&T/BellSouth Sept. **1** Special Access ***Ex Parre*** Letter at **5** n.24.

[147] *See* AT&T/BellSouth Carlton/Sider Decl. at para. 106 (asserting that "in each of the overlap metropolitan areas other than Miami. there is at least one CLEC other than AT&T that has more building connections than AT&T" and that, in seven of the overlap metropolitan areas, there are at least two such competitive carriers).

[148] ***See SBC/AT&T Order, 20*** FCC Rcd at 18313-14, para. 45; *Verizon/MCI Order*, 20 FCC Rcd at 18456. para. **45** (explaining how this analysis **is** consistent with the Commission's impairment analysis in the ***Triennial Review Remand Order).***

[149] We are not persuaded by commenters' arguments that AT&T possesses significant advantages in overcoming the entry harriers associated with deploying special access facilities in BellSouth's region **as** compared with other competitive LECs. ***See,*** *e.g.*, TWTC Comments at 17-19. TWTC supports its argument by claiming that, **in** prior orders, the Commission recognized the advantages that adjacent incumbent LECs have as potential competitors. ***See*** TWTC Comments at 18-19. **In** the precedent upon which TWTC relics, however. the Commission reaches the more limited conclusion that there arc instances in which incumbent LECs could he better situated than certain other competitors **to** provide competition out-of-region in limited situations. ***See,*** *e.g.*, ***SBC/Ameritech Order,*** 14 FCC Rcd

(continued....)

they generally concentrate their efforts in high density areas where the revenue opportunities are the greatest – such as locations where enterprise customers are located.[150] The record evidence indicates that, to the extent incumbent LECs compete out-of-region, their entry strategy is similar.[151] In addition, the economic barriers that prevent competitive LECs from providing service over their own facilities also apply to an incumbent LEC competing out-of-region, and, as revealed by the record evidence discussed above, an incumbent LEC competing out-of-region does not obtain more favorable discounts, nor more favorable collocation arrangements, than other competitive LECs.[152] Thus, we conclude that AT&T's status as an incumbent LEC in a contiguous territory does not give it any unique advantages when competing out-of-region against other competitive LECs.

56. In summary, we find that, within BellSouth's region, other competing carriers collectively have more fiber and many more collocations than does AT&T. In those MSAs where AT&T has local facilities in the BellSouth region, AT&T represents less than **[REDACTED]** percent of the competitive collocations. Moreover, the record clearly shows that AT&T's collocations are located exclusively in

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at 14757, para. 92 (concluding that "SBC and Ameritcch have the capabilities and incentives to expand into the mass market for local exchange and exchange access services in geographic markets adjacent to their own regions or ones in which they have a cellular presence"). In fact, for wholesale special access services, the Commission recognized that "competitive LECs have been most successful in the market for specialized services such as special access and local private line services, which are provided to business customers." ***See SBC/Ameritech Order,*** 14 FCC Rcd at 14726-27, para. 25. We find no persuasive evidence that would lead us to conclude that competitive LECs and other new entrants generally are less likely to be successful in entering new special access markets than an incumbent LEC in an adjacent territory. **See,** *e.g.*, AT&T/BellSouth Kahan Decl. at paras. 5-12 (outlining the evolution of competition in the telecommunications industry); AT&T/BellSouth Boniface Decl. at para. 27. Similarly, we disagree with the argument of Cbeyond *et al.* that the loss of BellSouth as a competitor in AT&T's region is likely to have anticompetitive effects. ***See*** Cbeyond ***et a/.*** Aug. 22 ***Ex Parte*** Letter at 10-11. We find the record does not support a finding that BellSouth is a substantial source of actual or potential competition for wholesale special access services in AT&T's region.

[150] ***See, e.g.***, AT&T/BellSouth Application, App. B at B-15 to B-30 (describing the services offered by numerous competitive LECs operating both in and out of BellSouth's region); **see *also*** ***Triennial Review Remand Order,*** 20 FCC Rcd at 2618-19, para. **154** (stating that when competitive LECs are deciding whether and where to build their own facilities, they "target areas that offer the greatest demand for high-capacity offerings (*i.e.*, that maximize potential revenues) and that are close to their current fiber rings (*i.e.*, that minimize the costs of deployment). The evidence in the record shows that the highest concentration of competitive LEC deployment of loops in the central business districts of large metropolitan areas is near where competitors have already deployed fiber rings.")

[151] **We** note, for example, that the 11 metropolitan areas where AT&T operates local fiber networks in BellSouth's territory are not contiguous to AT&T's in-region territory. ***See supra*** note 109 (listing the 11 metropolitan areas in BellSouth's territory where AT&T operates local fiber networks). We recognize that a significant portion of AT&T's out-of-region network facilities that are used to provide special access services in BellSouth's region are legacy AT&T facilities, and thus their construction was not influenced by any contiguity with legacy SBC's in-region territory – a point which tends to underscore that incumbent LECs do not possess special advantages in providing special access services out-of-region compared with competitive LECs. In any event, even after the acquisition of legacy AT&T's facilities in BellSouth's region, AT&T has only a limited competitive presence in the market for special access services in this territory. ***See,*** *e.g.*, T-Mobile Comments at 6 (stating that it has only been to a "very limited extent that AT&T has been a competitive provider of special access services in BellSouth's service area"); ***see*** *also* ***supra*** para. 54.

[152] ***See supra*** paras. ***5*** 1-53

MSAs with many other competitive collocations.[153] Therefore, we conclude that the elimination of AT&T as a provider of Type II wholesale special access services should not have an appreciable effect on the price or availability of Type II wholesale special access services.[154]

57. ***MSA-wide effects***. To the extent that the elimination of AT&T as a competitor in the Type I wholesale special access market causes competitive harm, this also could result in increases in the MSA-wide prices that BellSouth sets for its own special access services.[155] **As** discussed above, we find that the merger will eliminate AT&T as a provider of Type I special access services in 31 buildings where AT&T is the sole carrier with a direct connection besides BellSouth and where entry by competitive

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[153] As noted above, in every BellSouth MSA in which AT&T operates local fiber networks. cvmpctitors have at least [REDACTED] as many collocations **as** AT&T in that MSA. ***See*** *supra* para. 51

[154] Several commenters contend that the merger will increase AT&T and BellSouth's use of volume and term commitment Contracts, and that this will have anticompetitive effects. ***See.*** *e.g.*, COMPTEL Comments **at** 11-13 (arguing that the merger will allow AT&T to offer such volume and term contracts for special access services over a larger area and "the combined entity post merger will he able to demand that customers commit to purchase even greater volumes of special access services where potential competition may exist"); MSV LLC Comments at 12: Cheyond ***et*** *al.* Reply at 10-11 ("Further exacerbating the inherent high cost and other barriers to market entry is the fact that the Applicants have taken steps to effectively shrink the potential special access customer base by requiring special access customers to enter into long term and exclusionary contracts for special access services."). We are not persuaded that the merger will increase AT&T's incentive and/or ability to use volume and term discounts for anticvmpetitivc purposes. Commenters have presented no reason why the merger should increase AT&T's incentive to use such contracts or impose unreasonable terms and conditions, nor have they presented any convincing reason why, after the merger, AT&T will have an increased ability to use such contracts For anticompetitive purposes. Moreover, the divestitures upon which this order is conditioned are sufficient to address any potential anticompetitive effects **in** the markets for Type I special access services and, as noted elsewhere in this section, we find that the merger should **not** result in anticompetitive effects for Type 11 special access services. Nor is the merger likely to result in an appreciable increase in the MSA-wide prices that BellSouth charges for special access services. To the extent commenters allege that volume and term contracts of the type used by AT&T and BellSouth are anticompetitive in general, this **is** not **a** merger-specific harm, but rather is an issue that has been raised, and is better addresscd, in the Commission's pending special access rulemaking. **See** generally Special ***Access NPRM,*** 20 FCC Rcd 1994. We decline to adopt **a** "fresh look" condition for special access services for the same reasons. **See,** *e.g.*, Letter from Karen Reidy, VP, Regulatory Affairs, COMPTEL. *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 22,2006) (COMPTEL Sept. 22 Special Access ***Ex Pane*** Letter); Letter from Philip J. Macres and Patrick **I.** Donovan, Counsel for Access Point ***er*** *al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Sept. 28, 2006) (Access Point ***et*** *al.* Sept. 28 ***Ex Parte*** Letter); Letter From John J. Heitmann, Counsel for ScanSource. Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 28, 2006) (ScanSource Sept. 28 ***Ex*** Parte Letter) (providing examples of purported "fresh look" requirements adopted by the Commission); **see** also Letter from Gary L. Phillips, Gen. Atty and Asst. Gen. Counsel. AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 3,2006) (AT&T Oct. **3** ***Ex*** *Parte* Letter) (disputing the conclusions of the ScanSource Sept. 28 ***Ex*** *Parte* Letter).

[155] As previously discussed, each building represents **a** separate relevant geographic market, and competitors frequently charge different prices for special access services to different buildings. To the extent that BellSouth has received Phase II pricing flexibility, hut nevertheless sets special access prices that arc geographically averaged over **an** entire MSA, we would expect that BellSouth would **set** a geographically uniform price that maximizes its profits given competitive conditions that vary from building to building. If competition is reduced at **a** significant number of buildings, this is likely to cause BellSouth to raise **its** MSA-wide price. **See,** *e.g.*, TWTC Comments at 8-10 (need to take into account MSA-wide effects, stating that incumbent LECs "generally price their special access offerings on an MSA-wide basis").

LECs is unlikely.[156] AT&T's voluntary commitment to divest IRUs to those **31** buildings, which we accept, is sufficient to address any concerns regarding MSA-wide prices in the merged entity's territory

58. ***Coordinated Effects.*** We also are not persuaded by opponents' arguments that the merger will increase the likelihood of coordinated interaction."' **It** is generally recognized that the likelihood of coordinated effects depends on a number of factors, including the ease with which firms can reach tacit agreement, the incentive of firms to cheat, and the ability of the remaining firms to detect and punish such cheating.[158] Carriers that purchase wholesale special access services, whether Type I or Type II, are sophisticated customers that often rely on a competitive bid process or negotiate individual contracts, and that enter into long-term contracts.[159] Moreover, as noted above, there will remain numerous competitors that are able to provide Type II wholesale special access services. We find that these factors make it unlikely that the merger will lead to tacit collusion or other coordinated effects in the relevant special access markets in BellSouth's region.'"

59. ***Mutual Forbearance.*** Ad Hoc Telecom Users argue that if the present merger is consummated, the merged entity and Verizon will be more likely to "mutually forbear" from competing against each other in the provision of wholesale special access services in the other's service territory.[161] While we recognize that mutual forbearance is possible in theory, we reject commenters' allegations that this merger is likely to result in anticompetitive effects in Verizon's region. As an initial matter, AT&T has invested billions in its nationwide network, including facilities in Verizon's region. In light of this investment, it is reasonable to expect AT&T to have strong incentives to utilize fully its assets **in** Verizon's territory.[162] More significantly, however, we find no record evidence to suggest that the

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[156] *See* ***supra*** pard. 44.

[157] ***See.*** *e.g.*, COMPTEL Comments at 13-16 (arguing that merger will increase incentives to collude because the number of region-wide special access providers in the combined territory will drop from three to two); EarthLink Comments at 21-25 (stating that "the post-merger AT&T and Verizon would he able much more easily to coordinate pricing strategies designed to thwart competition");Consumer Federation ***et al***. Reply at 27-28.

[158] ***See, e.g.***, JEAN TIROLE, THE THEORY OF INDUSTRIAL ORGANIZATION 239 (1988); GEORGE STIGLER, "A Theory of Oligopoly," in THE ORGANIZATION OF INDUSTRY 39 (1968); ALEXIS JACQUEMIN AND MARGARET E. SLADE, "Cartels, Collusion, and Horizontal Merger," in THE HANDBOOK OF INDUSTRIAL ORGANIZATION 415 (1989).

[159] ***See,*** *e.g.*, AT&T/BellSouth Reply, Declaration of Ronald Pate and Kevin Graulich (AT&T/BellSouth Pate/Graulich Reply Decl.) at paras. 23-27 (discussing the performance measures in BellSouth's special access tariffs and the service level agreements found in certain of BellSouth's contract tariffs); AT&T/BellSouth Reply. Declaration of Ronald A. Watkins and Brett Kissel (AT&T/BellSouth Watkins/Kissel Reply Decl.) Attach. **4** (setting forth a special access tariff of an AT&T affiliate); Letter from John **I.** Heitmann, Counsel for ScanSource, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Sept. 22. 2006) (ScanSource Sept. 22 *Ex* ***Parte*** Letter) (setting forth ScanSource's processes and criteria for purchasing telecommunications services).

[160] *See DOJ/FTC* ***Guidelines*** § 2.12.

[161] ***See,*** *e.g.*, Ad Hoc Telecom Users Reply at 13 (arguing that AT&T and Verizon will he each other's single largest special access customers, and that each company "will confront a strong incentive to stay mainly within its own footprint, since any out-of-region activity will necessarily involve large **out-of-pocket** cash payments to the other for access services").

[162] ***See SBC/AT&T Order, 20*** FCC Rcd **at** 18319, para. 54; ***see also*** AT&T/BellSouth Reply at 26; AT&T/BellSouth Carlton/Sider Reply Decl. at paras. 107-08.

competitive conditions in Verizon's territory are significantly different than the competitive conditions in BellSouth's territory. Thus, just as there are numerous competitors with local facilities that will continue to provide competing special access services post-merger in BellSouth's territory, we have no reason to doubt that there similarly will be numerous competitors with local facilities in Verizon's territory that will provide competing special access services post-merger.[163] Thus, we conclude that, even if AT&T/BellSouth forbears from offering competing special access services in Verizon's region, competitive alternatives will remain for those locations where AT&T offered competing special access services.

b. Vertical Effects

60. We disagree with the argument of certain commenters that the merger will increase the Applicants' incentive and/or ability to raise rivals' costs or engage in a price squeeze.[164] As an initial matter, where UNEs are available, they provide an alternative for special access service and might serve to constrain, at least to some extent, special access price increases and other raising rivals' costs strategies.'" For areas where UNEs are not available, we note that competing carriers have invested

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[163] *See supra* note 100.

[164] *See* Cbeyond *et al.* Comments at 60-62, 77-78 (alleging that merger will give BellSouth greater ability and incentive to discriminate against rivals due to increased concentration in the market for loops and transport); Ad Hoc Telecom Users Reply at 13-14; COMPTEL Comments at 9-11, 15; Sprint Nextel Comments at 6-9; TWTC Petition at 34-46; TWTC Petition App. A, Declaration of Graham Taylor at paras. 32-33 (TWTC Taylor Decl.); Consumer Federation *er al.* Cooper/Roycroft Decl. at 40-44; Global Crossing Comments at 3-5. We are not persuaded hy Cbeyond *et al.*'s claims that AT&T's decision to increase the price *of* certain retail services in certain markets subsequent to the SBC/AT&T merger demonstrates an intent or ability to raise wholesale special access prices. *See* Cheyond *et al.* Reply at 11-12. As the Applicants point out, evidence of retail price increases is of limited relevance to possible increases in wholesale prices. *See* Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 at 3 (filed July 31, 2006) (AT&T/BellSouth July 31 Special Access *Ex Parte* Letter) (stating that competitive LECs generally purchase wholesale special access services for their business needs rather than retail services, and that, even when competitive LECs purchase retail services at a discount for resale, they generally do so at a fixed discount from retail rates, mitigating the competitive disadvantage competitive LECs might otherwise suffer from increased retail prices). Cbeyond *er al.* also specifically argue that AT&T has the intention to raise wholesale prices to the extent possible. *See* Cbeyond *et al.* Aug. *22 Ex Pane* Letter at 3-6. We do not find Cbeyond *et al.*'s evidence, which primarily is based on statements from several analysts and AT&T's own general comments about special access prices, dispositive on this point, and their claim is not supported by other record evidence. *See generally* AT&T/BellSouth Sept. 1 Special Access *Ex Parte* Letter at 1-5 (responding to Cbeyond *et al.*'s arguments); *see also* AT&T/BellSouth July 31 Special Access *Ex Parte* Letter at 2 (asserting that "AT&T's in-region wholesale special access prices have not increased since the [SBC/AT&T] merger, nor could they" due to the merger conditions that are still in effect). We similarly find the evidence of Global Crossing unconvincing. See Letter from Paul Kouroupas, Vice President, Regulatory Affairs. Global Crossing North America, Inc., to Marlene H. Dortch, Secretary. FCC, WC Docket No. 06-74 (filed Oct. 27, 2006) (Global Crossing Oct. 27 *Ex Parte* Letter); *see also* Letter from Gary L. Phillips, AT&T Inc., and Bennett L. Ross, BellSouth Corporation. to Marlene H. Dortch, Secretary, FCC, WC Docket Nu. 06-74 (filed Nov. 13, 2006). As explained in this paragraph below, the issue of special access prices is better addressed in our pending rulemakings on this topic.

[165] *See Triennia1 Review Remand Order, 20* FCC Rcd at 2625-33, paras. 167-181 (discussing the general criteria used to determine whether UNE DS1 and DS3 loops must he made available); *id.* at 2570-75, paras. 62-65 (discussing the potential for UNEs to act as a constraint, to some extent, on special access prices).

heavily in the 11 MSAs where AT&T has local facilities.[166] As described above, we have analyzed the likely impacts of this merger with regard to the provision of special access services and have found that AT&T's voluntary commitment to divest at least eight fiber strands in the form of ten-year IRUs for 31 two-to-one buildings where entry is unlikely is sufficient to address any potential anticompetitive effects.[167] Like other incumbent LECs, BellSouth already is a vertically integrated provider of telecommunications services, including wireless services.[168] The merger therefore is not likely to impact significantly the Applicants' incentives regarding discrimination."' As we have found previously, "[t]o the extent that certain incumbent LECs have the incentive and ability under our existing rules to discriminate against competitors" using special access inputs, "such a concern is more appropriately addressed in our existing rulemaking proceedings on special access performance metrics and special access pricing."'' A voluminous record on industry-wide special access pricing issues (along with

[166] *See supra* note 100. While exact fiber route miles for the competitive LECs arc not available for the 11 MSAs where AT&T has local fiber facilities, it appears that a number of competitive LECs have substantial fiber facilities in those MSAs, some even greater than AT&T's. *See supra* note 136, para. 54.

[167] *See* Appendix F

[166] *See, e.g.*, AT&T/BellSouth Application, App. A at A-2 to A-4 (describing BellSouth's lines of business); AT&T/BellSouth Reply at 28 (noting that incumbent LECs "have been vertically integrated wireless service providers since those services were first offered). Our conclusion is not altered by Applicants' contention that BellSouth is the "only RBOC without long-distance facilities of national scope." AT&T/BellSouth Application at 5. BellSouth has regional long distance facilities. *See. e.g.*, AT&T/BellSouth Application at 93-94 (citing Commission precedent).

[169] *SBC/AT&T Order*, 20 FCC Rcd at 18319-20, para. 55; *Verizon/MCI Order, 20* FCC Rcd at 18461, para. 54. This conclusion applies with particular force with respect to Cingular, which Applicants currently jointly wholly own and control. Various commenters allege that AT&T and BellSouth are already major suppliers of special access services to wireless carriers and that the merger would increase the incentives of the Applicants to discriminate against Cingular's wireless rivals because the combined company would realize the full extent of any benefits of such conduct. *See. e.g.*, T-Mobile Reply at 5-6; MSV LLC Reply at 1-2, 6 (arguing that. without regulatory oversight, the merged entity will be able to offer Cingular discounts that are not available to other wireless carriers, making it "almost impossible for independent wireless carriers to compete on an equal footing with Cingular"); Sprint Nextel Comments at 9-12 (arguing that Applicants' post-merger incentives to impose rate increases on transit services will increase); Cbeyond et *al.* Reply at 7-8. As previously noted, however, Applicants already jointly wholly own Cingular, and apparently already provide the vast majority of Cingular's wireless competitors' special access circuits in the Applicants' territories. Thus, the Applicants already would obtain the full benefit of any increase in Cingular's profits that would result from raising rivals' costs, and currently would each individually keep 100% of any increased profits obtained by charging competing wireless carriers higher special access prices in their in-region territories.

[170] *SBC/AT&T Order*, 20 FCC Rcd at 18320, para. 55; *Verizon/MCI Order, 20* FCC Rcd at 18462, para. 55; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21592, para. 183. Similar issues also are raised in the pending proceeding dealing with the sunset of BOC section 272 requirements. *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) (*Section 272 FNPRM*); *see also* 47 U.S.C. § 272(e)(1). *See also* T-Mobile Reply at 4 (acknowledging the relevance of the pending special access rulemaking to the issues T-Mobile raises and urging the Commission to complete this rulemaking): PAETEC Comments at 5 (similar). Relatedly, due to commitments AT&T has made in connection with the Commission's section 271 proceedings, as well as pursuant to various special access tariffs and contracts, AT&T has committed to certain performance guarantees and files certain special access performance measures with the Commission, better enabling the Commission to detect and remedy non-price discrimination against AT&T's competitors. AT&T/BellSouth Watkins/Kissel Reply Decl. at paras. 27-41; *id.* at paras. 67-75 (discussing external section 272 audits of AT&T's special access performance); see *also* AT&T/BellSouth Pate/Graulich Reply Decl. at paras. 23-27, 38-42 (providing similar information as pertains to BellSouth). AT&T

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specific pricing information) has been submitted to the Commission in one of these proceedings."' By addressing these issues in the context of a rulemaking, we will be able to develop a comprehensive approach based on a full record that applies to all similarly-situated incumbent LECs.[172]

c. Proposed Remedies

61. We also have considered, but decline to accept, a number of other proposed conditions relating to wholesale special access service various parties ask us to impose.[173] Commenters have proposed far

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also remains subject to special access-related conditions set forth in the *SBC/AT&T Order*. ***See SBC/AT&T Order.*** 20 FCC Rcd at 18412-13.

[171] *Special Access NPRM*, 20 FCC Rcd at 1994 (special access comments filed June 13, 2005 and repiy comments filed July 29, 2005).

[172] **See** *SBC/AT&T Order*. 20 FCC Rcd at 18320, para. 55: *Verizon/MCI Order*, 20 FCC Rcd at 18462, para. 55; *Cingular/AT&T Wireless Order, 19* FCC Rcd at 21592, para. 183; *see also Alltel/Western Wireless Order*, 20 FCC Rcd at 13091-92, 13093, pards. 104, 109; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70. Memorandum Opinion and Order, 17 FCC Rcd 23246,23257, para. 30 (2002) (*AT&T/Comcast Order*). For these same reasons, we reject calls for the Commission to provide for "final offer" or "baseball style" arbitration of special access disputes as a condition of the merger. **See**, *e.g.*, Global Crossing Comments at 8-14; Letter from Brad E. Mutschelknaus *et al.*, Counsel for Competitive Carriers of the South, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 14, 2006) (Competitive Carriers Sept. 14 *Ex Parre* Letter); Letter from Brad E. Mutschelknaus and Edward A. Yorkgitis, Jr., Counsel for XO Communications, LLC, to Marlene H. Dortch. Secretary, FCC, WC Docket No. 06-74 (filed Sept. 18, 2006); Global Crossing Oct. 27 *Ex Parte* Letter: Letter from Paul Kouroupas, Vice President, Regulatory Affairs, Global Crossing North America, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Nov. 28, 2006) (Global Crossing Nov. 28 ***Ex Parte*** Letter); **see** *also* Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene **H.** Dortch, Secretary, FCC, WC Docket No. 06-74 at I, 3-4 (filed Sept. 15, 2006) (AT&T/BellSouth Sept. 15 *Ex Parre* Letter) (arguing that Global Crossing's proposed arbitration condition is more appropriately raised in the ongoing special access rulemaking proceedings); Letter from Bennett L. Ross. BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 20,2006) (similar, regarding the arguments set forth in the Competitive Carriers Sept. 14 *Ex Pane* Letter); Letter from Gary L. Phillips. AT&T Inc., and Bennett L. Ross, BellSouth Corporation, to Marlene **H.** Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 7, 2006) (disputing arguments set forth **in** the Global Crossing Nov. *28 Ex Parre* Letter); Letter from Robert W. Quinn, Jr., Senior Vice President – Federal Regulatory, AT&T Services, Inc. and James G. Harralson, Vice President and Associate General Counsel, BellSouth Corp., to Kevin J. Martin, Chairman, FCC *et al.*, WC Docket No. 06-74 (filed Dec. 4,2006). We similarly reject the claims of commenters seeking special access conditions or raising concerns unrelated to the merger, many of which are the subject of pending rulemaking proceedings. *See, e.g.*, ACCESS Comments at **3** (contending that BellSouth lowered its average retail rates to an amount less than the wholesale rates ACCESS agreed to pay under its current commercial agreement and asking the Commission to adopt a pricing formula or cap).

[173] **See**, *e.g.*, COMPTEL Sept. 22 Special Access ***Ex Parte*** Letter. Attach.; Letter from Karen Reidy. VP, Regulatory Affairs, COMPTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Sept. 22, 2006) (COMPTEL Sept. 22 UNE *Ex Parre* Letter); Letter from Karen Reidy, Vice President, Regulatory Affairs, COMPTEL, to Marlene H. Dortch. Secretary, FCC. WC Docket No. 06-74 (filed Dec. 4, 2006) (clarifying the COMPTEL Sept. 22 Special Access *Ex Parre* Letter); Letter from Brad E. Mutschelknaus, Counsel for Cbeyond *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Sept. 26, 2006); Access Point *et al.* Sept. 28 *Ex Parre* Letter, Attach.; Letter from James F. Wade, MIC Venture Partners *et al.* to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 24, 2006) Letter from Darrell Maynard, President, SouthEast Telephone, to Marlene H. Dortch. Secretary, FCC, WC Docket No. 06-74 (filed Oct. 19, 2006) (requesting the merger be conditioned on state regulation of section 211 rates); Letter from Genevieve Morelli, Counsel for Momentum

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too many possible remedies for alleged harms to address the merits of each proposal individually. We instead address any alleged merger-specific harms that give rise to commenters' proposals throughout this Order.'"

C. Retail Enterprise Competition

62. In this section, we analyze the potential competitive effects of the proposed merger on retail enterprise services. We find that the Applicants compete against each other with respect to certain types of enterprise services and some classes of enterprise customers, and that the merger will lead to increased concentration in certain relevant markets. We conclude, however, that the merger is not likely to result in anticompetitive effects for enterprise customers. We find that competition for medium and large enterprise customers should remain strong after the merger because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services, including in particular high-capacity communications services, and because there will remain a significant number of carriers competing in the market. With respect to small enterprise customers, we recognize that AT&T continues its withdrawal from this customer segment, and we conclude, after examining the record, that it is not exerting significant competitive pressure outside its in-region territory with respect to those customers.

1. Relevant Markets

a. Relevant Product Markets

63. Retail enterprise customers purchase a variety of different communications services, including local voice, long distance and international voice, and data services."' More specifically, enterprise customers frequently purchase high-capacity transmission services,[176] including Frame Relay,'"

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Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 13, 2006) (same); Letter from Brad E. Mutschelknaus and Edward A. Yorkgitis, Jr., Counsel for Cbeyond Communications and XO Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 27, 2006) (arguing for portability of interconnection and special access volume and term agreements); COMPTEL Condition Comments; Special Access Coalition Condition Comments; T-Mobile Condition Comments at 6; Sprint Nextel Condition Comments.

[174] ***See, e.g.***, COMPTEL Sept. 22 Special Access ***Ex Parte*** Letter (arguing that a number of specific conditions are justified because the merger will result in the **loss** of AT&T as a competitor in BellSouth's region, will give the merged entity the incentive and opportunity to raise rivals' costs, and will lessen regulators' ability to engage in benchmarking); **see *also passim*** (addressing the loss of AT&T as a competitor in BellSouth's region); ***supra*** Part V.B.2.b (addressing whether the merger will increase the Applicants' incentive and/or ability to raise rivals' costs or engage in a price squeeze); ***supra*** V.I.2 (addressing issues related to benchmarking).

[175] *See SBC/AT&T* ***Order,*** 20 FCC Rcd at 18321-22, para. 57; ***Verizon/MCI Order,*** 20 FCC Rcd at 18463, para. 56. AT&T provides "advanced IP and traditional network solutions for both voice and data" to business and government customers. AT&T/BellSouth Application, App. A at A-1. BellSouth provides "both standard and highly specialized communications services and products, including voice, data, Internet access. private networks, high-speed data equipment and conferencing services" to large business and government customers. ***Id.*** at A-3.

[176] The specific technology used by the individual enterprise customer depends on availability, needed capacity, services required, and desired service quality levels. Enterprise services could include some number of DS0 circuits or high-capacity circuits of DSI or higher bandwidth, such as DS3, and OCn circuits. ***See, e.g.***, ***Triennial Review Order,*** 18 FCC Rcd at 17155-56, para. 298 (discussing services typically purchased by enterprise customers). A DS0 is a two-wire basic connection, which operates at 64.000 bps, the worldwide standard speed for digitizing voice conversation using pulse code modulation. HARRY NEWTON, NEWTON'S TELECOM DICTIONARY, 273 (20th ed.,

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Asynchronous Transfer Mode (ATM),[178] Gigabit Ethernet,[179] and similar services provided via emerging technologies.[180] Retail enterprise customers also purchase other facilities and CPE.[181]

64. Consistent with Cornmission precedent,[182] and with the record in this proceeding, we find that the services offered to enterprise customers fall into a number of separate relevant product markets. More specifically, we find that local voice, long distance voice, and data services constitute distinct product markets.

65. We have less information about the substitutability of different transmission services. While there is data in the record indicating that the number of customers taking Frame Relay is declining. while the number taking IP transmission services is increasing,[183] we do not have data on elasticities (and cross

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2004) (defining "DS-0") (NEWTON'S TELECOM DICTIONARY). **A** DS1 is **a** four-wire connection equivalent to 24 DS0s. **A** DS3 is equivalent to 28 DS1s. These circuits may be purchased by customers from state and federal tariffs. *See Triennial Review* ***Order,*** 18 FCC Rcd at 17155-56, para. 298.

[171] Frame Relay is **a** high-speed data service that allows local area networks to be connected across **a** public network. ***See*** TELECOMMUNICATIONS INDUSTRY ASSOCIATION, 2006 TELECOMMUNICATIONS MARKET REVIEW AND FORECAST 138 (2006) (TIA 2006 MARKET REVIEW). **A** T-1 provides the same speed and capacity service **as** a DS1. ***See Triennial Review Order,*** 18 FCC Rcd at 17104-05. para. 202 n.634. Similarly, a T-3 provides the same speed and capacity service **as a DS3.**

[178] ATM service can guarantee different qualify of service levels to meet various customer needs. ATM offers higher reliability and greater capacity because if combines the advantages of circuif-switched and packet-switched networks, guaranteeing the delivery of information that is intolerant of delays, while allocating bandwidth more efficiently. ***See*** **TIA** 2006 MARKET REVIEW at 140-42.

[179] Gigabit Ethernet is **a** local area network (LAN) standard that allows a network to accommodate the high-bandwidth requirements of converged voice, video and data network applications. ***See*** TIA 2006 MARKET REVIEW at 125.

[180] Enterprises are increasing their use **of** IP Virtual Private Networks (IP-VPNs), and carriers are migrating to Multiprotocol Label Swifching (MPLS). ***See*** TIA 2006 MARKET REVIEW at 134-36. MPLS is similar to other circuit-switched ATM or Frame Relay networks, except that MPLS is not dependent on **a** particular technology. ***See,*** *e.g.*, MPLS Resource Center, ***The*** MPLS ***FAQ,*** (visited July 31, 2006), *available at* http://www.mplsrc.com/faq1.shtml#MPLS%20History.

[181] ***See SBC/AT&T Order***, 20 FCC Rcd at **18322,** para. 57

[182] ***See SBC/AT&T Order,*** 20 FCC Rcd at 18322, para. 58; ***Verizon/MCI Order,*** 20 FCC Rcd at 18464, para. 58.

[183] *See, e.g.*, AT&T/BellSouth Application App. B (discussing the growing trend in the use of IP networks); AT&T Info. Req., ATT232329 at 232329-47 **([REDACTED]).** From 1997 through 2002, the number of Frame Relay ports more than tripled to 1.3 million; however, since then the market has shifted to IP-VPNs and frame relay port growth has dropped. TIA 2006 MARKET REVIEW at 140. From the year 2000 through the year 2005, ATM service revenues nearly tripled, from $1.1 billion to $2.70 billion. ***Id.*** at 143. The number of ATM ports in the United States reached a peak of 40,000 in 2005, and beginning in 2006 that number is expected to decline. *Id.* at 142. **As** newer technologies emerge, ATM's role **as a** backbone technology is changing as enterprise customers increase their use of IP-VPNs. ***Id.***

Note that documents submitted by AT&T and BellSouth in response to the Commission's information request include numerical labeling in the following format: ATT-FCC-######### and BLS-FCC-######### (where # represents **a** digit). For convenience in citing these documents, we do not include "FCC," dashes or leading zeros.
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elasticities) of demand for any particular transmission services. Similarly, there is insufficient information about the migration time, price differences, and service quality differences that customers face when deciding to change from one transmission service to another. Thus, the evidence is insufficient for us to define precisely the boundaries of those transmission service markets.

66. In previous orders, the Commission also has found it appropriate to define separate relevant product markets based on the class of customer (particularly where there is "price discrimination").'" For example, the Commission previously found that small enterprise customers fall into a separate relevant product market from mid-sized to large retail enterprise customers.[185] This distinction exists because, unlike small enterprise customers, larger businesses often contract for more complex services, including Frame Relay, virtual private networks, and enhanced 800 services."" Larger businesses also demand a greater volume of minutes, for which they often negotiate discounts.[187] Moreover, carriers treat small enterprise customers differently from larger business customers, both in the way they market their products and in the prices they charge.[188]

67. While the record demonstrates that service providers charge different prices to different customers for particular services, it fails to reveal any standard rules or general principles that dictate how service providers set prices for particular customers. For example, while record evidence indicates that AT&T and BellSouth have created classes of enterprise customers for pricing, marketing, and other purposes, it appears that the two carriers use different break-points between the customer classes.[189]

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Thus, a document beginning on page ATT-FCC-000012345 and ending on page ATT-FCC-000012349 would be cited as "ATT12345-49."

[184] *See SBC/AT&T Order,* 20 FCC Rcd at 18323, para. 60; *Verizon/MCI Of-der,*20 FCC Rcd at 18465, para. 60

[185] See *SBC/AT&T Order,* 20 FCC Rcd at 18323, para. 60; *Verizon/MCI Order,* 20 FCC Rcd at 18465, para. 60; **see** *also* ***Bell Atlantic/GTE Order,*** 15 FCC Rcd at 14088-89, para. 102.

[186] *WorldCom/MCI Order,* 13 FCC Rcd at 18040-41, para. 26.

[187] *Id.*

[188] ***See*** *infra* note 189 (discussing how both AT&T and BellSouth adopt different marketing approaches for different classes **of** customers).

[189] Indeed, both AT&T and BellSouth use the term "enterprise" differentlyin the ordinary course of business. AT&T explains that it breaks down its business customers into two main categories: AT&T Business Services (ABS) (*i.e.*, retail business customers that are global. large, or outside the legacy SBC 13-state region); and Business Communications Services (BCS) (*i.e.*, small to medium retail business customers within the legacy SBC 13-state region).

Within ABS are the following categories: Signature: Enterprise: Select; Small Business; Global: Government; and Wholesale. "Signature" comprises a defined list of approximately 300 business customers that are typically AT&T's largest customers and generate the highest level of revenue. "Enterprise" customers generally order more than $1 million annually and include qualifying local governments and all state government customers outside the legacy SBC 13-state region, except Hawaii and Alaska. "Select" customers generally order more than $18,000 annually, have more than 85 employees, and make at least limited use of managed or data services. The "Small Business Customer" includes all business customers that do not satisfy the criteria for any of the other groups previously explained and are not "Wholesale,""Federal Government." or "Global" customers. "Global" customers include non-U.S. based customers and non-U.S. based subsidiaries of Enterprise customers. "Government" customers consist of federal government departments and agencies, the District of Columbia government, the State **of** Hawaii, foreign government embassies, missions, and consulates, quasi-government agencies: and services provided to

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There is evidence in the record, however, suggesting that a number of factors influence how carriers price their services to particular types of customers.[190] These factors include the customer's total telecom spend; the types of services and technologies ordered; the customer's total employee count; the customer's total annual revenues; and whether the customer obtains customized services.'" Further, it appears that carriers place varying degrees of importance on each of these factors, and consequently, carriers' pricing to particular enterprise customers may vary. Thus, although we find that there are separate product markets for the different enterprise customer groups, there does not appear to be industry-wide consensus as to how to differentiate one class from another."'

b. Relevant Geographic Markets

68. In prior merger orders, the Commission has recognized that, because a customer **is** unlikely to physically move its location in response to a small, but significant and nontransitory increase in the price of a communications service, each customer location constitutes a separate relevant geographic market. For reasons of administrative practicality, however, the Commission has aggregated customers facing similar competitive choices to create larger relevant geographic markets.'" We believe this traditional approach is appropriate for enterprise customers with single locations in BellSouth's region. Unfortunately, the data in the record are not sufficiently detailed to define localized relevant geographic markets in which all enterprise customers face the same competitive choices. Accordingly, we will use the most disaggregated data possible in performing our structural analysis for different types of business services and for certain broad classes of business customers, where such data is available. In most cases,

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government customers when AT&T is a member of **a** consortium or a sub-contractor. "Wholesale" customers include common carriers, Internet service providers (ISPs), and systems integrators. ***See*** AT&T Info. Req. at 4-6

Within BCS are the following categories: BCS GEM; BCS Select; BCS Valued; and Affiliates. "BCS GEM' includes state and local governments. educational institutions, and medical institutions. "BCS Select" customers are expected to generate revenues of more that $7,000 per year, have more than 50 employees, or require complex services. "BCS Valued" customers are expected to spend less than $7,000 per year, have fewer than 50 employees, or require non-complex services. For financial and accounting purposes, legacy SBC separately maintains revenue information for affiliate businesses that **use** telecommunications services to operate their business and refers to them as "Affiliates." *See* AT&T Info. Req. at 6-7; ***see*** *also* AT&T Info. Req., ATT379971 at 379976 ([REDACTED]).

BellSouth breaks down its business customers into the following categories: Business Markets, which handles large business (LBS) customers and wholesale customers, and Retail Markets, which handles small business (SBS) and residential customers. LBS customers are divided into three categories: general business (less than 300 lines but total annual spending of at least $65,000); major (300-700 lines); and enterprise (700 or more lines). SBS customers are tiered according to monthly revenue. ***See*** BellSouth Info. Req. at 3-5. BellSouth has nothing approaching AT&T's high-end segmentations. **See** AT&T/BellSouth Application at 67.

[190] ***See.*** *e.g.*, AT&T Info. Req.. ATT379971 at 379986,379990 ([REDACTED])

[191] ***See supra*** note 189.

[192] ***See SBC/AT&T Order.*** 20 FCC Rcd at 18323-24, para. 61; ***Verizon/MCI Order-.*** 20 FCC Rcd at 18465-66. pare. 61.

[193] ***See SBC/AT&T Order,*** 20 FCC Rcd at 18324, pare. 63; ***Verizon/MCI Order,*** 20 FCC Rcd at 18467, para. 63.

the data will be presented at the state level.[194] We do supplement our analysis with Metropolitan Statistical Area (MSA) data, however, where it is available.[195]

69. Consistent with the *SBC/AT&T Order* and *Verizon/MCI Order*, we reach a slightly different conclusion for larger, multi-location enterprise customers.[196] We find that these customers typically seek service from a provider that can serve all their locations, and generally only a few carriers serving a particular location have such capabilities. In light of the fact that there are relatively few providers that can offer a high level of ubiquitous service, we conclude that this geographic market should encompass all the geographic locations where these multi-location business customers may have a presence.[197] Thus, we find it appropriate to consider BellSouth's various states and regions as the relevant geographic market for regional, multi-location customers, while for business customers with locations throughout the U.S., we will perform a structural analysis based upon available data at the national level that focuses on carriers that have the capability of serving customers throughout the country.[198]

c. Market Participants

70. We find, based on the record, that there are numerous categories of competitors providing services to enterprise customers. These include interexchange carriers, competitive LECs, data/IP network providers, cable companies, other incumbent LECs, VoIP providers, systems integrators, and equipment vendors.[199]

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[194] *See SBC/AT&T Order*, 20 FCC Rcd at 18324-25, para. 62; *Verizon/MCI Order*, 20 FCC Rcd at 18466-67, para. 62; Letter from Gary L. Phillips, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Aug. 18, 2006) (AT&T Aug. 18 *Ex Parte* Letter).

[195] We are unable to rely exclusively on MSA-level data because the data, in many cases, is based on too few observations and on small sample sizes. **See** Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC. WC Docket No. 06-74 at 2 (filed July 31, 2006) (AT&T/BellSouth July 31 *Ex Parte* Letter) (discussing limitations in the Harte Hanks data). In light of these data limitations, we did not analyze MSA-level data that did not reflect at least thirty observations or where there were an insufficient number of MSAs to analyze.

[196] *SBC/AT&T Order*, 20 FCC Rcd at 18325, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para. 63

[191] *See, e.g.*, *SBC/AT&T Order*, 20 FCC Rcd at 18325, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para 63.

[198] *See SBC/AT&T Order*, 20 FCC Rcd at 18325, para. 63; *Verizon/MCI Order*, 20 FCC Rcd at 18467, para. 63

[199] See AT&T/BellSouth Application at 68-82, App. B. We reject commenter suggestions that our list of market participants includes providers that do not provide actual market competition or is overly broad because we do not rely exclusively on the various types of market competitors to justify our conclusions. *See, e.g.*, Access Point *et al.* Petition at 42 (stating that there is no evidence that cable operators provide a serious competitive offering for large business customers); Cbeyond *et al.* Comments at 51-9 (arguing that competitive LECs do not account for enough competition to counter AT&T's removal from BellSouth's region and that other intermodal market participants do not qualify as significant market participants); MSV Reply at 3 (arguing that cable and wireless providers are not significant competitors in the enterprise market); ScanSource Reply at 8 (agreeing with Cbeyond *et al.* that intermodal providers such as wireless, cable, and VoIP providers are not and will not soon be significant competitors in the enterprise market); *but* see AT&T/BellSouth Reply at 36-7 (stating that cable companies are taking aim at the enterprise market and that they have significant business offerings); *id.* at 38 (arguing that VoIP competition is growing); *id.* at 39-41 (arguing that competitive LEC and interexchange carriers are providing competition in the

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2. Competitive Analysis

a. Horizontal Effects

71. *Unilateral Effects.* We conclude that, although there is evidence that horizontal concentration will increase as a result of the merger, this increase is not likely to result in anticompctitive effects for medium and large enterprise customers, given the large number of competitors already participating in this market and the high level of sophistication of mid-sized and large enterprise customers. For small enterprise customers, we similarly conclude that the merger is not likely to result in anticompetitive effects, based upon AT&T's withdrawal from this segment of the market,[200] as well as likely increased competition from cable and VoIP providers.

72. The lack of precise demand data notwithstanding, there is documentary evidence in the record that allows us to examine the Applicants' assertions regarding the degree to which they compete for particular classes of enterprise customers. Moreover, there are some data that permit us to identify (with some level of disaggregation) market participants, as well as to calculate current market shares, and to estimate changes in market share that are likely to result from the merger. In addition, the Applicants have provided internal documents about their business operations, as well as a number of studies that provide market share data about the carriers serving certain markets."'

73. The Applicants contend that they generally compete at opposite ends of the retail enterprise market."' The Applicants argue that BellSouth provides its local network services to primarily small and medium sized enterprise customers,[203] whereas AT&T focuses on serving large enterprise and

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enterprise market); Letter from Gary L. Philips, Gen. Atty and Asst. Gen. Counsel, AT&T Services. Inc., to Marlene Dortch, Secretary, FCC. WC Docket No. 06-74 at 2 (filed June 26, 2006) (AT&T June 26 *Ex Pane* Letter) (observing that ScanSource itself listed both a competitive LEC and a cable company in its list of current providers for Internet-based services). Moreover, our analysis is based on actual competition data supplied by the Applicants. *See* Appendix C.

[200] See AT&T/BellSouth Application at 65

[201] *See* AT&T Info. Req., Exh. 5.13.

[202] *See* AT&T/BellSouth Application at 64-65, *67* (stating that AT&T's focus is on customers with the most geographically dispersed, complicated needs, while BellSouth is focused on in-region customers and voice and data requirements of other large business customers with operations in-region): AT&T/BellSouth Boniface Decl. at para. 15 (explaining that AT&T's focus is on the Fortune 1000 customers). The Applicants do not contend that they do not compete at all for the same customers, but suggest that they compete less than SBC and AT&T did in the previous merger. *See* AT&T/BellSouth Application at 67; AT&T/BellSouth Reply at 42. Additionally, the Applicants suggest that they provide a different suite of products. *See* AT&T/BellSouth Application at *67.*

'"'*See* AT&T/BellSouth Carlton/Sider Decl. at para. 89. The Applicants further assert that BellSouth is a limited competitor to AT&T for large, national enterprise customers because it lacks out-of-region assets and strategic focus. *See* AT&T/BellSouth Application at 63; AT&T/BellSouth Boniface Decl. at paras. 5-8, 11-15; see *also id.* at para. *22* (discussing that BellSouth competes to service out-of-region large enterprise customers with operations that are predominantly in-region); AT&T/BellSouth Reply at 42 (noting that opponents of the merger do not dispute that BellSouth has no assets, facilities, or sales offices outside its region or plans to expand); AT&T June 26 *Ex Parte* Letter at 3 (stating that BellSouth's limited out-of-region attempts have "never positioned it to compete in any meaningful way to serve the primary telecom requirements of national customers"); *but see* ScanSource Reply at *3* (asserting that the merger will eliminate the possibility of AT&T and BellSouth competing out-of-region against each other).

government customers.[204] According to the Applicants, their respective enterprise businesses are largely complementary, and thus, the merger will have little competitive impact upon the enterprise market.'"'

74. Based upon review of internally produced documents, we find that the two companies in fact compete for certain classes of customers in the enterprise market."" Specifically, **we** find that BellSouth competes to a certain extent with AT&T for large enterprise customers'"' and that conversely, AT&T competes with BellSouth for small and mid-sized enterprise customers.[208] Documents clearly show that BellSouth has achieved some degree of success with its entry into the large enterprise market, especially in its own region. Documents in the record further show that AT&T has a presence in the small and mid-sized enterprise market, and that it competes for a wide range of customers.

75. Using data submitted by the Applicants, staff calculated Herfindahl-Hirschman Indices (HHIs),[209] at the state level and, where possible, the MSA-level. for local voice, long distance voice, and data enterprise services. In keeping with our conclusions about the relevant geographic markets, this

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[204] ***See*** AT&T/BellSouth Carlton/Sider Decl. at para. *88.*

[205] ***See*** *AT&T/BellSouth* Application at 64 (noting that the competitive overlap between AT&T and BellSouth is narrower than that presented in the SBC/AT&T merger).

[206] **See.** *e.g.*, AT&T Info. Req., ATT111961 at 111967, 11 1974 **([REDACTED]);** Letter from Peter F. Martin, Vice President, Regulatory and External Affairs, BellSouth Telecommunication?, Inc., to Reece McAlister, Executive Secretary, Georgia Public Service Commission, G.P.S.C. Docket No. 20729, Attach. at para. 51 (filed May 19, 2005) **(tiling** for retail deregulation from the Georgia Public Service Commission and stating. among other things, that AT&T is a competitor in the retail enterprise market); ***see also*** Cbeyond ***et al.*** Aug. 22 ***Ex Parte*** Letter at 6-7 (arguing that **[REDACTED]);** Letter from Denise N. Smith, Counsel for Cbeyond *et al.*, to Marlene H. Dortch. Secretary, FCC, **WC** Docket No. 06-74 at 1 (tiled Aug. 31,2006) (arguing that the merger will reduce competition **in** the retail enterprise market); *but* **see** AT&T/BellSouth Sept. 1 Special Access *Ex* ***Parte*** Letter at 7 (arguing that Cbeyond *et al.* misrepresent the evidence).

[207] *See, e.g.*, AT&T **Info.** Req.. ATT343317 at 34330 **([REDACTED]);** BellSouth News Release, "BellSouth to Launch Nationwide Business Data Service" (Oct. 10, 2005), *available* at http://bellsouth.mediaroom.com/index.php?s=press_releases&item= 1445 (announcing BellSouth's internetworking agreement with Sprint Nextel to link businesses with multiple locations nationwide); BellSouth News Release, "BellSouth Launches Nationwide Business Data Service" (Mar. 20. 2005), *available at* http://bellsouth.mediaroom.com/index.php?s=press_releases&item=2831 (announcing BellSouth's launch of its nationwide business data service "to allow internetworking of multiple access methods across carrier networks for a consistent customer experience in any service location"); BellSouth Info. Req., BS24898 **at** 24931-37 **([REDACTED]);** *bur* ***see*** AT&T/BellSouth Sept. 1 Special Access *Ex* ***Parte*** Letter at 8 n.36 (citing AT&T/BellSouth Boniface Decl. for the contention that BellSouth's agreement with Sprint is an attempt to "stem losses from large business customers who increasingly demand MPLS services across all of their locations, but will not provide BellSouth with the ability to become a significant competitor for enterprise customers whose locations arc not predominantly within [the BellSouth 9-state region]").

[208] ***See,*** *e.g.*, BellSouth Info. Req., BS39325 at 39325 **([REDACTED]);** BellSouth Info. Req., BS46278 at 46279 **([REDACTED]).**

[209] The HHI is calculated as the **sum** of the squares of the market shares of each firm participating in a relevant market. The HHI can range from nearly zero in the case of an atomistic market to 10,000 in the case of a pure monopoly. Because the HHI is based on the squares of the market shares of the participants, it gives proportionately greater weight to carriers with larger market shares. Changes **in** market concentration are measured by the change in the HHI. **See** *DOJ/FTC* ***Guidelines*** § 1.5.

analysis **is** conducted by examining the competitive alternatives of enterprise customers with single or multiple operations within the BellSouth franchise area, and also conducting a separate examination of the competitive choices for enterprise customers having multiple operations throughout the country.

76. In general. the market share calculations indicate a high level of concentration in most franchise areas for many relevant services for ***large*** enterprise customers with significant operations in BellSouth's region after the merger.[210] Within BellSouth's region, BellSouth's median statewide market share for local voice services increases from **[REDACTED]** percent to **[REDACTED]** percent.[211] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED].**[212] BellSouth's median statewide market share for long distance voice services increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[213] The *median* post-merger HHI for these services in BellSouth's entire region is **[REDACTED].**[214] For Frame Relay services, BellSouth's median statewide market share increases from **[REDACTED]** percent to **[REDACTED]** percent for the states

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[210] Our analysis of BellSouth's position in the large, mid-sized, and small retail enterprise services markets both before and after the merger is based upon analysis of certain data from Harte Hanks, which were supplied by the Applicants. Our analysis of BellSouth's position in the large, mid-sized. and small retail enterprise services markets hoth before and after the merger is based upon analysis of third-party data supplied by AT&T. These data arc based on **[REDACTED].** The analysis may overstate or understate carriers' competitive significance because our unit of measurement is customer counts rather than revenues or other. more traditional, metrics. Moreover, these business segments do not generally conform to the categorization schemes used by AT&T or BellSouth and thus may overstate or understate the actual level of concentration in each geographic market. ***See supra*** note 189. In general, we limit our analysis to geographic areas with at least 30 observations. We exclude the "UNSPECIFIED category from our analysis because it represents incomplete responses. ***See*** AT&T/BellSouth July 31 ***Ex Parte*** Letter at 1-3; AT&T/BellSouth Aug. 18 ***Ex Parte*** Letter, Attach. (Syndicated Data); AT&T/BellSouth Aug. 18 ***Ex Parte*** Letter **at** 1.

[211] Appendix C, Table 1A. BellSouth's pre-merger market share for local service ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** ***Id.***

We present the range for BellSouth's pre- and post- merger market shares for MSA-level data for each product where sufficient data are available. **See** Appendix **C**, Tables 4A to 5B. BellSouth's pre-merger market share for local service ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** Appendix C, Table 4A; ***see*** also ***supra*** note 195.

[212] Appendix ***C,*** Table 1A. We report the median post-merger HHI for BellSouth's territory for each product for which there are sufficient data. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED],** and the maximum is **[REDACTED]** with an associated delta of **[REDACTED].**

We present post-merger HHIs for the MSA data for each product where sufficient data are available. ***See*** Appendix C. Tables 4A-5C. The post-merger HHIs for these services, based on MSA data. range from **[REDACTED]** to **[REDACTED].** Appendix 4A.

[213] Appendix **C.** Tahlc 1B. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED]. Its** post-merger market share ranges from **[REDACTED]** to **[REDACTED].** *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** Appendix C, Table 4B.

[214] Appendix C, Table 1B. The minimum post-merger HHI for these services **is [REDACTED]** with an associated delta of **[REDACTED],** and the maximum is **[REDACTED]** with an associated delta of **[REDACTED].** ***Id.*** The post-merger HHIs for these services, based on MSA data, range from **[REDACTED]** to **[REDACTED].** Appendix C, Table 4B.

within its region.[215] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED].**"' For **T-1** services, BellSouth's median statewide market share increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[217] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED].**[218]

77. Similarly, the market share calculations indicate a high level of concentration in most franchise areas for many relevant services for ***mid-sized*** enterprise customers with significant operations in BellSouth's region after the merger."' BellSouth's median statewide market share for local voice services increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.'" The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED].'"** BellSouth's median statewide market share for long distance voice services increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region."' The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]."'** For Frame Relay

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[215] Appendix C, Table IC. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** Appendix C. Tahle 4C.

[216] Appendix ***C,*** Table IC. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED],** and the maximum is **[REDACTED]** with an associated delta of **[REDACTED].** *Id.* The post-merger HHIs for these services, based on MSA-level data. range from **[REDACTED]** to **[REDACTED].** Appendix **C,** Table **4C.**

[217] Appendix **C,** Table ID. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** Appendix **C,** Table **4D.**

[218] The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED],** and the maximum is **[REDACTED]** with ***an*** associated delta of **[REDACTED].** The post-merger HHIs for these services, based on MSA data, range from **[REDACTED]** to **[REDACTED].**

[219] ***See supra*** note 210.

[220] Appendix **C,** Table 2A. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED].** Its postmerger market share ranges from **[REDACTED]** to **[REDACTED].** Appendix C, Table 5A.

[221] Appendix **C,** Table 2A. The minimum post-merger HHI for these services **is [REDACTED]** with an associated delta of **[REDACTED],** and the maximum is **[REDACTED]** with an associated delta of **[REDACTED].** *Id.* The post-merger HHIs for these services, based on **MSA** data, range from **[REDACTED]** to **[REDACTED].** Appendix C, Table 5A.

[222] Appendix C, Table 2B. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** lo **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** Appendix **C,** Table **5B.**

[223] Appendix **C,** Table 2B. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED],** and the maximum is **[REDACTED]** with an associated delta of **[REDACTED].** *Id.* The (continued....)

services, BellSouth's median statewide market share increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region."' The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]."'** For T-1 services, BellSouth's median statewide market share increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region."' The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]."'**

78. Market share data pertaining to *small* enterprise customers within BellSouth's franchise area also indicate a high level of concentration for certain services in particular markets. Specifically, we consider data pertaining to local and long distance voice services for small enterprise customers.'" BellSouth's median statewide market share for local voice services increases from **[REDACTED]** percent to **[REDACTED]** percent for the states within its region.[229] The median post-merger HHI for these services in BellSouth's entire region is **[REDACTED]."'** BellSouth's median statewide market share for long distance voice services increases from **[REDACTED]** percent to **[REDACTED]** percent

(Continued from previous page)
post-merger HHIs for these services, based on MSA data, ranges from **[REDACTED]** to **[REDACTED].** Appendix C. Table 5B.

[224] Appendix C, Table 2C. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** *Id.* We do not report MSA-level data for this service because there is sufficient data for only a few MSAs.

[225] Appendix C, Table 2C. The minimum post-merger HHI for these services **is [REDACTED]** with an associated delta of **[REDACTED],** and the maximum is **[REDACTED]** with an associated delta of **[REDACTED].** *Id.*

[226] Appendix C, Table 2D. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** *Id.* BellSouth's pre-merger market share for MSA-level data ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** Appendix C, Table 5C.

[227] Appendix **C,** Table 2D. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED],** and the maximum is **[REDACTED]** with an associated delta of **[REDACTED].** ***Id.*** The post-merger HHIs for these services, based on MSA data, range from **[REDACTED]** to **[REDACTED].** Appendix C, Table 5C.

[228] Given the difficulty in obtaining accurate data about the various customer groups, it **is** likely that there is an overlap of data between consumer groups. For example, **as** noted above, BellSouth explains that its small business category includes small business and residential customers. BellSouth Info. Req. at **3.** In light of this, BellSouth's data about small enterprise customers are likely to contain data from small business customers, which are discussed in our section on mass market customers. **See** ***infra*** Part V.D (Mass Market Competition). Additionally, we note that, although small enterprise customers **also** purchase data services, we do not present summary statistics for these services because there is an insufficient number of observations for these services. ***See supra*** note 210.

[229] Appendix C, Table 3A. BellSouth's pre-merger market share ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market share ranges from **[REDACTED]** to **[REDACTED].** We do not report MSA-level data for this service because there is sufficient data for only **a** few MSAs. **See** ***supra*** note 210.

[230] Appendix C, Table 3A. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED],** and the maximum is **[REDACTED]** with an associated delta of **[REDACTED].** *Id.*

for the states within its region."' The median post-merger HHI for these services in BellSouth's region is **[REDACTED]**.[232]

79. The data indicate that the merger will result in a smaller increase in market concentration for enterprise customers having multiple operations located both inside and outside of BellSouth's region."' For example, for long distance voice services provided to these multi-location customers,'" AT&T's national market share for services provided to the **[REDACTED]** customer class increases from **[REDACTED]** percent to **[REDACTED]** percent."' The HHI for these services increases from **[REDACTED]** to only **[REDACTED]**.[236] Similarly, AT&T's national market share for services provided to the **[REDACTED]** customer class increase from **[REDACTED]** percent to **[REDACTED].** The HHI for services provided to this customer class increases from **[REDACTED]** to **[REDACTED]**.[237]

80. For enterprise customers with locations predominantly in BellSouth's region, we find that myriad providers are prepared to make competitive offers. We further find that available market share data does not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless usage.[238] Foreign-based companies, competitive LECs, cable companies, systems integrators, and equipment vendors and value-added resellers are also providing services in this market.[239] Similarly, we find that market shares may misstate the competitive significance of existing firms and new entrants.[240] Large interexchange carriers and the BOCs currently have the biggest share of the market,

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[231] Appendix C, Table 3B. BellSouth's pre-merger marker share ranges from **[REDACTED]** to **[REDACTED].** Its post-merger market shares range from **[REDACTED]** to **[REDACTED].** *Id.* We do not report MSA-level data for this service because there is sufficient data for only a few MSAs. ***See supra*** note 210.

[232] Appendix C, Table 3B. The minimum post-merger HHI for these services is **[REDACTED]** with an associated delta of **[REDACTED],** and the maximum is **[REDACTED]** with an associated delta of **[REDACTED].** ***id.***

[233] Our analysis of AT&T's and BellSouth'smarket position for mid-sized and large enterprise customers with operations both in and out of its region is based upon data reported in AT&T internal reports on **[REDACTED],** and the **[REDACTED].** ***See*** AT&T Info. Req., Exh. 5.13 Excerpt **[REDACTED]** at 24; ***id.*** at 28. The carrier market share data are hased on national revenue data for the **[REDACTED].** Appendix C, Table 6.

[234] The study does not define "long distance." **See** AT&T Info. Req., Exh. 5.13 Excerpt **[REDACTED]** at 11

[235] Appendix ***C,*** Table 6.

[236] *Id.*

[237] *Id.*

[238] ***See*** AT&T/BellSouth Aug. 18 ***Ex Parte*** Letter.

[239] ***See*** AT&T/BellSouth Application at 69-82; ***id.***, App. B ("Description of Competitors"). As discussed in prior Commission orders, there are numerous types of business models supporting competition for enterprise customers. Some competitive LECs market integrated voice and data services to enterprise customers, primarily through leasing high-capacity loops from the BOCs as UNEs or special access and then using the loops to provide a bundled offering including voice, data and Internet access. ***See Triennial Review Order.,*** 18 FCC Rcd at 17014, para. 48 n.159 (observing that companies such as ITC^Deltacom, NewSouth and Cbeyond have focused on providing integrated services to the business market).

[240] ***See supra*** note 210.

hut they are not the only providers competing for these customers. We find that a large number of carriers compete in this market (even though the market shares of some may be small), and that these multiple competitors ensure that there is sufficient competition.'" For example, although AT&T/BellSouth's post-merger market share for long distance services provided to mid-sized enterprise customers will be **[REDACTED]** percent in **[REDACTED].** five competitors each individually capture from **[REDACTED]** percent to **[REDACTED]** percent of the market, with the rest of the other competitors capturing the remaining **[REDACTED]** percent.'"? Thus, we find that sufficient enterprise competition remains within BellSouth's region to ensure that the merger is not likely to result in anticompetitive effects for medium and large in-region enterprise customers.

81. Although we find that medium-sized and large enterprise customers with national, multi-location operations do not have as many competitive options, we nevertheless conclude that this merger is unlikely to cause competitive harm to this market.'"' First, BellSouth's pre-merger presence in this market is negligible, and thus, the post-merger market will have virtually as many competitors as before.[244] Second, as further discussed below, given their size and geographically-dispersed operations, these customers are highly sophisticated and negotiate for significant discounts.'" We find that systems integrators and the use of emerging technologies, including various Internet Protocol enabled (I€-enabled) technologies, are likely to make this market more competitive, and that this trend is likely to continue in the future.[246]

82. As noted above, we find, consistent with the Commission's conclusions in the *SBC/AT&T Order* and the ***Verizon/MCI Order,*** that mid-sized and large enterprise customers tend to be sophisticated purchasers of communications services, whether they are located solely within BellSouth's region, or have locations both inside and outside BellSouth territory. These users tend to make their decisions about communications services by using either communications consultants or employing in-house communications experts. This is significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because it shows that these users are likely to make

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[241] On average, there **will** he [REDACTED] providers of long distance services provided to mid-sized enterprise customers and [REDACTED] providers of long distance services provided to large enterprise customers. The corresponding figures for TI services are [REDACTED] and [REDACTED], respectively. We calculated this data hased on the attachments to the AT&T Aug. 18 ***Ex Pane*** Letter. ***See*** AT&T Aug. 18 ***Ex Pane*** Letter, Attach.

[242] **In** the case of large enterprises, AT&T/BellSouth's post-merger market share for long distance services will he [REDACTED]% in [REDACTED], hut five competitors each individually capture from [REDACTED]% to [REDACTED]% of the market, and the remaining competitors account for the remaining [REDACTED]% of the market. We calculated this data based on the attachments to the AT&T Aug. 18 ***Ex Parte*** Letter. ***See*** AT&T Aug. ***18 Ex Parte*** Letter, Attach.

[243] We reject commenters' assertion that, if the Commission finds that little current competition exists between the two companies, the merger nonetheless eliminates BellSouth as a potential competitor in the large enterprise market because we find that mid-sized and large enterprise customers tend to he sophisticated purchasers and are able to negotiate for significant discounts. ***See,*** *e.g.*, Access Point *et al.* Petition at 7-13; ScanSource Reply at 3-5; ***bur see*** *infra* para. 82.

[244] ***See supra*** para. 79,

[245] ***See*** AT&T/BellSouth Application at 64, 68; AT&T/BellSouth Carlton/Sider Decl. at para. 14

[246] ***See,*** *e.g.*, AT&T/BellSouth Application at 78-9.

informed choices based on expert advice about service offerings and prices. Thus, so long as competitive choices remain in this market, these classes of customers should seek out best-priced alternatives, and the merged entity should not be able to raise and maintain prices above competitive levels.'"'

83. Finally, although small enterprise customers may not possess the same level of sophistication as their larger counterparts, we nonetheless find that the merger is not likely to result in anticompetitive effects for this group of customers. Consistent with the Commission's findings in the ***SBC/AT&T Order,*** we base our conclusion largely on the fact that AT&T has ceased to market to these customers outside the former SBC 13-state region.[248] As discussed elsewhere in this Order, evidence in this proceeding clearly indicates that AT&T determined that these types of services no longer presented a viable business opportunity, and that it has taken steps to close down its operations.[249] Thus, AT&T's gradual withdrawal from this market is due to its own internal decisions and would have occurred notwithstanding its acquisition of BellSouth. Moreover, we find that intermodal competition from cable telephony and mobile wireless service providers, and providers of certain VoIP services will likely continue to provide these customers with viable alternatives.[250]

84. In conclusion, although we find overlap between the Applicants' enterprise operations, we do not find that the increase in concentration resulting from the merger is likely to result in anticompetitive effects in this market. Thus, we reject commenters' claim that the merger will have adverse competitive effects because AT&T and BellSouth already compete to a significant degree for the same customers, and thus the merger will cause an increase in the merged entity's market share and in market concentration.[251] As discussed above, the record shows that, for all groups of business customers, there are multiple services and multiple providers that can meet their demand."'

85. ***Coordinated Effects.*** We find that the merger will not increase the likelihood of tacit collusion and other coordinated behavior in relevant markets. On the contrary and consistent with the Commission's conclusions in the ***SBC/AT&T Order*** and the ***Verizon/MCI Order,*** we find that, even if competitors reached tacit agreements in the enterprise market, there are strong incentives to cheat and

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[247] *See* ***SBC/AT&T Order,*** 20 FCC Rcd at 18332-33, para. 75; ***Verizon/MCI Order,*** 20 FCC Rcd at 18474, para. 75.

[248] ***See SBC/AT&T Order,*** 20 FCC Rcd at 18333, para. 76; ***see*** *also* AT&T/BellSouth Application at 65; AT&T/BellSouth Boniface Decl. at para. 30 (noting that AT&T is much less active in competing for smaller customers than it is in competing for larger business customers); AT&T/BellSouth Carlton/Sider Decl. **at** para. 88 (stating that AT&T is selective in **its** approach to small businesses).

[249] ***See infra*** Part V.D (Mass Market Competition)

[250] *See* AT&T/BellSouth Application at 81-82: AT&T/BellSouth Reply at 36-38: ***see*** *also* ***SBC/AT&T Order,*** 20 FCC Rcd at 18333, para. 76; ***Verizon/MCI Order,*** 20 FCC Rcd at 18474-75, para. 76.

[251] ***See*** Access Point **et** *al.* Petition at 10-11; Cbeyond *et al.* Comments at 51-2; MSV LLC Reply at **4.** We likewise reject calls for a "fresh look" condition. ***See,*** *e.g.*, ScanSource Sept. 22 ***Ex Pa!-re*** Letter, Attach. at 9; ScanSource Sept. Sept. 28 ***Ex Parte*** Letter; ***but see*** AT&T Oct. 3 ***Ex Pane*** Letter.

[252] We note that filings in this proceeding offer the opinions of various enterprise customers expressing either support for, or concern about, the proposed merger. **See,** *e.g.*, AT&T/BellSouth Reply, App. B (providing statements from a number of enterprise customers **on** the competitive nature of the market). We conclude that none **of** these filings provide representative or reliable evidence regarding enterprise competition for any particular class or classes of enterprise customers nor do they provide clear evidence regarding particular services offered in particular geographic markets. Thus, we do not rely on any of these filings in our analysis.

scant ability to detect and punish such cheating. Specifically, the high value of enterprise contracts will create significant incentives for many competitors – particularly those with smaller market shares – to cheat on tacit agreements. Moreover, detection and punishment would be significantly frustrated by the facts that enterprise customers tend to be sophisticated and knowledgeable (often with the assistance of consultants). that contracts are typically the result of RFPs and are individually-negotiated (and frequently subject to non-disclosure clauses), that contracts are generally for customized service packages, and that the contracts usually remain in effect for a number of years. Accordingly, we find no basis to conclude that the merger increases the likelihood of tacit collusion or other coordinated effect in the relevant markets in BellSouth's region."[253]

86. Mutual Forbearance. We reject commenters' assertions that this merger would reinforce the BOCs' historical reluctance to compete with each other."[254] First, consistent with the Commission's findings in the *SBC/AT&T Order* and the *Verizon/MCI* Order, we find it highly unlikely that the companies would engage in mutual forbearance with respect to large national enterprise customers, given the significant revenue opportunities associated with serving those customers. Second, even if commenters are correct with respect to medium and large in-region enterprise customers, we find, as discussed above, that there will be sufficient competition based on the competitors that remain in the market."[255] Finally, with respect to small enterprise customers, we have already discussed AT&T's announced gradual withdrawal from this market, and we conclude, based on the record, that it was not exerting significant competitive pressure with respect to those customers prior to the announcement of the merger. In those markets, as discussed above, we find that intermodal competition from cable telephony service providers, mobile wireless service providers, and VoIP service providers will likely continue to provide these customers with viable alternatives.[256]

b. Vertical Effects

87. We reject commenter concerns about their continued ability to serve enterprise customers in BellSouth's franchise region because the merger will make them more reliant on BellSouth's facilities.[257] We address these arguments in our analysis of the wholesale special access market, and in other sections of this Order.[258] Thus, we find that the merger is not likely to result in anticompetitive effects for wholesale inputs used to serve enterprise customers.

D. Mass Market Telecommunications Competition

88. In this section, we consider the effects of the proposed merger on local service; long distance service; and bundled local and long distance service provided to mass market customers. As discussed below, we find that AT&T's acquisition of BellSouth is not likely to result in anticompetitive effects for mass market services.

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[253] *See SBC/AT&T* Order, 20 FCC Rcd at 18334, para. 78; *Verizon/MCI* Order, 20 FCC Rcd at 18475-76, para. 79.

[254] See, *e.g.*, New Jersey Ratepayer Advocate Comments at 17; ScanSource Reply at 10.

[255] *See SBC/AT&T* Order, 20 FCC Rcd at 18334-35, para. 79; *Verizon/MCI* Order, 20 FCC Rcd at 18478, para. 80.

[256] *See supra* para. 83

[257] See, *e.g.*, ACCESS Comments at 1-3; Cbeyond *et al.* Comments at 88-90; TWTC Petition at 32-49.

[258] *See supra* Part V.B (Wholesale Special Access Competition); *infra* Part V.F (Internet Backbone Competition).

1. Relevant Markets

a. Relevant Product Markets

89. Based on the record in this proceeding and consistent with the ***SBC/AT&T Order*** and the ***Verizon/MCI Order***,[259] we identify three relevant product markets for our mass market analysis: (1) local service; (2) long distance service; and **(3)** bundled local and long distance service.[260] **Also,** consistent with those orders, we consider both the demand for "access" and demand for "usage" when defining our relevant product markets.[261]

(i) Local Service

90. Based on record evidence, and consistent with the ***SBC/AT&T Order*** and the ***Verizon/MCI Order,*** we define the market for local service to include not only wireline local service,[262] but also facilities-based VoIP service, and circuit-switched cable telephony service to the extent that consumers view these as close substitutes for wireline local service. In addition, the record evidence suggests that, for certain categories of customers, mobile wireless service is viewed as a close substitute to wireline local service.

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[259] ***SBC/AT&T Order***, 20 FCC Rcd at 18336-46, paras. 82-99; ***Verizon/MCI Order,*** 20 FCC Rcd at 18477-87, paras. 83-100. In prior proceedings, the Commission has defined mass market customers **as** residential and small business customers that purchase standardized offerings of communications services. ***See. e.g.***, ***WorldCom/MCI Order,*** 13 FCC Rcd at 18040, para. 24; ***SBC/Ameritech Order,*** 14 FCC Rcd at 14746, para. 68. The Commission addresses international mass market voice services, along with other international services in Part V.G of this Order. The Commission addresses mass market broadband services in Part V.E.

[260] Fones4All, a competitive wireline carrier. urges the Commission to recognize an additional product market of low income consumers eligible for universal service support. Fones4All Comments at 8-10. We are not persuaded that the availability of universal service support to all qualified eligible telecommunications carriers (ETCs) affects our competitive analysis sufficiently to warrant a separate product market.

[261] ***SBC/AT&T Order,*** 20 FCC Rcd at 18336-37, para. 84; ***Verizon/MCI Order,*** 20 FCC Rcd at 18477-78, para. 85. **As** the Commission explained, **a** consumer requires "access" in order to connect to a communications network, whether it be a wireline telephone network, a mobile wireless network. or the public Internet. Because a mass market consumer today can choose one or more access providers, his demand for usage – *i.e.*, how much of a service he actually consumes – will be determined by the set of access providers he has chosen, the prices and terms set by those access providers, and other personal characteristics of the consumer. Thus, for example, if **a** consumer has **a** wireless phone, a wireline phone, and **a** broadband connection plus **a** VoIP subscription, he can make **a** long distance call using either phone or through the broadband connection. To the extent that consumers view these choices **as** reasonable substitutes, they are in the same product market for purposes of our analysis. ***See EchoStar/DirecTV Order,*** 17 FCC Rcd at 20606, para. 106.

[262] One commenter asserts that switched wireline access dedicated to voice communication is in such steep decline that it **is** no longer a competitively significant product market. Jonathan L. Rubin Comments at 9. **As** discussed herein. we agree that there are many potential substitutions for that method of providing mass market local or long distance communications services.

91. *Competitive LECs.* Competitive wireline carriers in the AT&T and BellSouth franchise areas provide local service to mass market consumers.[263] Most of these carriers provide service using a mix of their own facilities and the incumbent wireline carrier's facilities."[264] Some companies resell communications service provided entirely over the incumbent's facilities.'"[265]

92. *VoIP.* VoIP services are being provided to consumers in a variety of ways today. The degree to which particular VoIP services are viewed as close substitutes to other local services varies depending upon the characteristics of the VoIP offering. Consistent with the *SBC/AT&T Order* and the ***Verizon/MCI Order,*** we divide VoIP providers into two general types: (1) facilities-based VoIP providers and (2) "over-the-top" VoIP providers.[266] As discussed below, we find that mass market consumers view facilities-based VoIP services as sufficiently close substitutes for local service to include them in the relevant product market. However, the record is insufficient to determine which over-the-top VoIP services should be included in the relevant product market.

93. Based upon the information in this record, we find that facilities-based VoIP services clearly fall within the relevant service market for local services. Facilities-based VoIP services have many similar characteristics to traditional wireline local service.[267] There is also significant evidence indicating that mass market subscription to cable-based VoIP continues to increase nationwide as cable operators continue to roll out these services throughout their footprints.[268] In addition, the record indicates that the

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[263] AT&T/BellSouth Application at 82. 92; BellSouth Info. Req., Exh. 36.f; *Local **Telephone** Competition: Status **as** of **December** 31, **2005,*** Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (July 2006), at Table 7.

[264] ***See.*** *e.g.,* Cbeyond *et al.* Comments at 35-40

[265] ***See.*** *e.g.,* Resale Joint Commenters Comments at 5-7.

[266] We define facilities-based VolP providers as providers that own and control thr last mile facility between the customer's home and the provider's network. Facilities-based VolP providers include the cable VoIP providers. These VolP providers typically have dedicated facilities, transport calls over a private network they own or lease, and may have a backup power source in the event of a service disruption. VoIP providers not meeting this definition are referred to as "over-the-top" VoIP providers. Examples of over-the-top VolP providers include Vonage, Skypc, and AT&T (by means ***of*** its CallVantage service). These providers require the end user to obtain broadband transmission from a third-party provider, and the extent to which they rely on their own facilities varies from provider to provider. ***SBC/AT&T Order***, 20 FCC Rcd at 18337-40, paras. 86-88; *Verizon/MCI Order*, 20 FCC Rcd at 18479-81, paras. 87-89.

[267] For example, a facilities-based VolP provider will generally provide installation of necessary equipment, which is connected to the consumer's home inside wiring. This permits the use of all of the household's traditional wireline and cordless handsets. **See,** *e.g.*, Cox Communications, Digital Telephone Frequently Asked Questions (visited Sept. 6, 2006) http://www.cox.com/telephone/FAQs.asp#P25_5970.

[268] **See,** *e.g.*, Letter from Cody J. Harrison, Advance/Newhouse Communications *et al.*, to Marlene H. Dortch, Sccretary, FCC. WC Docket 06-74 at 3 (filed Sept. 27,2006) (Cable Companies Sept. 27 ***Ex*** *Parte* Letter) (stating "[t]here is no doubt that cable is offering real, facilities-based competition *tu* incumbent [LECs] across the country, including AT&T and BellSouth. Consumers are reaping the benefit of this competition and these benefits are likely to expand significantly."); *Id.* at **2** (describing IP telephony offerings by Advance/Newhouse Communications, Cablevision Systems Corporation, Charter Communications, Cox Communications, and Insight Communications Company). In December 2004, Time Warner completed **its** launch of residential IP telephony service across the country. ***See*** Time Warner Inc., Highlights: **A** Quarterly Overview of Key Developments at Time Warner and its Businesses, Press Release (Feb. 1,2005) **http://www.timewarner.com/corp/newsroondpr/0,**12,1024486,00.html.

(continued.. ..)

Applicants view cable-based VoIP as their primary competitive threat in the mass market, and consider the prospect of consumer substitution to cable-based VoIP when devising their strategies and service offers."'

94. As with the SBC/AT&T and Verizon/MCI proceedings, the record here is inconclusive regarding the extent to which various over-the-top VoIP services should be included in the relevant product market for local services. The varieties of over-the-top VoIP differ significantly in their service characteristics, including quality of service and price."" The extent to which consumers view these services as substitutes for traditional wireline local service may vary based on these differences.[271] In addition, the requirement that a consumer have broadband access to be able to use certain over-the-top VoIP services affects its substitutability. Specifically, for consumers who do not already have broadband access service, the subscription fee to obtain it must be added to the subscription fee for the over-the-top VoIP service when weighing it against the price of traditional wireline local service, which could make substitution uneconomical."' Even for consumers who have broadband service, their willingness to subscribe to over-the-top VoIP service instead of wireline local service will vary with the attributes of the service and their willingness to trade service characteristics for lower prices. Although it is likely that some portion of mass market consumers view certain over-the-top VoIP services as substitutes for wireline local service, there is insufficient information in our record to determine which types of over-the-top VoIP services should be included in the product market. For this reason, and in order to be conservative, we decline to include these services for purposes of our product market analysis in this proceeding.

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As of June 2006, Time Warner's Digital Phone subscriber base was 1.6 million, an increase of 990,000 from June 2005. ***See*** Time Warner Inc., SEC Form 10-Q at 23-24 (filed Aug. 2, 2006), ***available at*** **http://www.sec.gov/Archives/edgar/data/** 1105705/000095014406007216/g01998e10vq.htm.

[269] ***See, e.g.***, AT&T Info. Req., ATT4537; ATT4718 at 4722; ATT3166.15-652; BellSouth Info. Req., BS196769-880; BS264001 at 264006-09; BS268403-18. In light **of** such competition, certain cable companies argue that this merger should be conditioned on the resolution of certain IP-enabled voice network interconnection, intercarrier compensation, and transiting issues. **See** Cable Companies Sept. 27 ***Ex Parte*** Letter at 9-13; Cable Companies Condition Comments; Letter from Michael H. Pryor, Counsel for Advance/Newhouse ***er al.***, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74, Attach. (filed Dec. 11, 2006). We disagree. These issues are the subject of ongoing Commission proceedings, and are not appropriately addressed in the context of this merger review. ***See IP-Enabled Services.*** WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (***IP-Enabled Services NPRM***); ***Developing a Unified Intercarrier Compensation Regime,*** CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005); ***see generally*** Letter from Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Oct. 3, 2006).

[270] ***See SBC/AT&T Order,*** 20 FCC Rcd at 18338, para. 87: ***Verizon/MCI*** Order, 20 FCC Rcd at 18479-80, para. 88.

[271] ***See.*** *e.g.*, Cbeyond *et al.* Comments at 49-50; Consumer Federation ***er al.*** Cooper/Roycroft Decl. at 15-16; New Jersey Ratepayer Advocate Comments, Declaration of Susan M. Baldwin and Sarah M. Bosley (New Jersey Ratepayer Advocate Baldwin/Bosley Decl.) at paras. 116-17.

[272] About **30** million U.S. households (approximately 28%) subscribed to a broadband service in 2005. U.S. General Accountability Office, Broadband Deployment is Extensive throughout the United States, but it **is** Difficult to Address the Extent of Deployment Gaps in Rural Areas, GAO-06-426 at 10 (May 2006), ***available*** *ar* **http://www.gao.gov/new.items/d06426.pdf** These consumers may be more willing to consider over-the-top VoIP services than consumers without broadband service.