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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

## **Corporate Decision #98-39 September 1998**

### **DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE CONSOLIDATED NOTICE AND APPLICATIONS OF CITICORP AND CITIBANK, N.A., NEW YORK, NEW YORK, UNDER THE CHANGE IN BANK CONTROL ACT AND UNDER 12 C.F.R. § 5.34, TO INDIRECTLY ACQUIRE UNIVERSAL BANK, N.A., COLUMBUS, GEORGIA, AND TO ACQUIRE AND ESTABLISH AT&T UNIVERSAL CARD SERVICES CORP. AND ITS SUBSIDIARIES AS OPERATING SUBSIDIARIES OF CITIBANK, N.A.**

**March 27, 1998**

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#### **I. INTRODUCTION**

On January 12, 1998, Citicorp and its principal subsidiary, Citibank, N.A., New York, New York ("Bank") filed a consolidated notice with the Office of the Comptroller of the Currency ("OCC"), pursuant to the Change in Bank Control Act ("CBCA"), 12 U.S.C. § 1817(j), and applications pursuant to 12 C.F.R. § 5.34, to acquire AT&T Universal Card Services Corp. ("CSC") and its subsidiaries, collectively "UCS", from AT&T Corp ("AT&T"). The Bank proposes to establish CSC as a direct operating subsidiary. The acquisition of CSC includes the indirect acquisition of Universal Bank, N.A., Columbus, Georgia, currently a second tier subsidiary of CSC.

The Bank is the principal subsidiary of its sole shareholder, Citicorp, a multi-state registered bank holding company, incorporated in Delaware. Citicorp is the largest issuer of credit cards in the U.S., with approximately 25 million accounts in the U.S. and approximately 36 million worldwide. It has approximately \$46 billion in managed credit card receivables in the U.S. and approximately \$55 billion worldwide. Citicorp currently operates its U.S. credit card business through multiple bank and non-bank affiliates. Citicorp's credit cards (MasterCard, VISA and Diners Club) are issued by Citibank (South Dakota), N.A., Sioux Falls, South Dakota.

CSC wholly owns three Delaware-incorporated direct non-bank subsidiaries, AT&T Universal Bancorp, Inc. ("Bancorp"), a holding company for depository institution subsidiaries, AT&T Universal Funding Corp. ("Funding"), a company engaged in securitization of receivables,

and AT&T Universal Bancorp Services, Inc. ("Services"). Bancorp wholly owns Universal Bank, N.A., Columbus, Georgia ("Georgia Bank"), a national CEBA credit card bank, and AT&T Universal Financial Corp., Salt Lake City, Utah ("Utah Bank"), a Utah state-chartered industrial loan company.

Services holds a 10 percent interest in both Mondex USA Services LLC and in Mondex USA Originator LLC ("Mondex LLCs"), two Delaware limited liability companies that have been established to implement the Mondex electronic stored value ("ESV") system in the United States. Mondex USA Originator LLC was established to create, sell and redeem Mondex ESV in exchange for dollars. Mondex USA Services LLC was established to act as a licensing and servicing entity for the Mondex USA services. Services also holds a 3.1 percent interest in Mondex International Limited ("Mondex International"), a U.K. company with limited liability that holds the rights to the Mondex concept and has authority to license institutions in various countries to develop and operate Mondex in their various countries.

Georgia Bank had \$49.5 million in assets and capital of \$5.3 million as of September 30, 1997. Its activities are limited to the issuance of credit card accounts and loans for personal, family or household use. It does not engage in the business of making commercial loans. Georgia Bank has only a single office that accepts deposits. It does not accept demand deposits or deposits that the depositor may withdraw by check. It accepts only savings and time deposits of \$100,000 or more. Accordingly, Georgia Bank is not regarded as a "bank" for purposes of the Bank Holding Company Act. 12 U.S.C. § 1841(c)(2)(F); 12 C.F.R. § 225.2(b)(2). Georgia Bank issues primarily MasterCard. The majority of AT&T Universal Card accounts issued as VISA cards have been issued by an unrelated bank pursuant to an affinity agreement. Citicorp intends to continue to issue the AT&T Universal Card through Georgia Bank

Utah Bank had approximately \$97.1 million in assets and capital of approximately \$16.6 million as of September 30, 1997. Its deposits are insured by the Federal Deposit Insurance Corporation. Utah Bank does not accept demand deposits. Utah Bank's business includes the issuance of AT&T Universal Business Cards to corporate customers. The Bank intends to continue the business conducted by Utah Bank, including the issuance of the MasterCard business credit card. However, the Bank plans to divest Utah Bank's industrial loan company charter either by sale within six months of consummation of the acquisition of CSC or by transfer to Citicorp within such time period.

As required by 12 C.F.R. § 5.50(g), the Bank published notice of its proposed acquisition of Georgia Bank, in which public comment was solicited. The notice was published in newspapers of general circulation in the cities in which the Bank and Georgia Bank are located. No comments were received.

## **II. LEGAL AUTHORITY**

A. Review under the Change in Bank Control Act

Under the CBCA, no person may acquire control of any insured depository institution through a purchase, assignment, transfer, pledge, or other disposition of voting stock unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time the agency has not issued a notice disapproving the proposed acquisition. 12 U.S.C. § 1817(j). Under the standards set forth in the CBCA and in 12 C.F.R. § 5.50, the OCC may generally disapprove a change in bank control notice if the transaction would result in a monopolistic market share or be in furtherance of any combination or conspiracy to monopolize the business of banking in the United States, the effect of the transaction would be to substantially lessen competition, the financial position of the acquiror is such as to jeopardize the financial stability of the bank or prejudice the interests of depositors, the competence of the acquiror or the proposed management indicates that it would not be in the interest of the public or the bank's depositors for the transaction to proceed, the acquiror fails to furnish all the information required, or the transaction would affect the insurance funds adversely. See 12 U.S.C. § 1817(j)(7) and 12 C.F.R. § 5.50(e)(4).<sup>1</sup>

For the following reasons, we find no objection to the change in bank control under section 1817(j). The OCC has analyzed the financial condition of the Bank, including its most recent reports of condition and income. The Bank had \$254 billion in consolidated total asset worldwide, as of September 30, 1997 and is the largest credit card issuer in the United States. The Bank's financial condition is consistent with a decision not to disapprove the change in bank control. The OCC has also considered the competence, experience and integrity of the management and other personnel of the Bank and the proposed management of Georgia Bank and has found no information to support a disapproval of the notice on those grounds. Further, the OCC is satisfied that the Bank has furnished all information that the OCC has

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<sup>1</sup> The grounds for disapproval of a notice under the CBCA set forth at 12 U.S.C. § 1817(j)(7) are as follows:  
(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;  
(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;  
(C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;  
(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank;  
(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency; or  
(F) the appropriate Federal banking agency determines that the proposed transaction would result in adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

required and that the proposed transaction would not result in an adverse effect on the insurance funds. Additionally, the OCC has determined that the transaction would not result in a monopoly or be in furtherance of a combination or conspiracy to that end and that the effect of the transaction would not be such as to substantially lessen competition or tend to create a monopoly or in any other manner be in restraint of trade. The OCC notes that the Department of Justice ("Department") has reviewed a notification pertaining to this transaction filed by the Bank and AT&T under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, and that the Department has not acted within the statutory waiting period to prevent the transaction from proceeding.

B. Review under 12 C.F.R. § 5.34

A national bank may establish or acquire an operating subsidiary to conduct activities that are part of or incidental to the business of banking, and other activities permissible for national banks or their subsidiaries under other statutory authority. See 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(d). In this regard, the activities of CSC and its subsidiaries and the minority investments they hold are consistent with approval.<sup>2</sup>

1. The activities of Georgia Bank are permissible for a national bank and the activities of each entity in the UCS family, including Georgia Bank, are permissible for a national bank operating subsidiary.<sup>3</sup>

Georgia Bank is organized as a CEBA credit card bank. It engages only in credit card operations, does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, does not accept any savings or

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<sup>2</sup> The Bank has represented that it will ensure that UCS's internal systems, third party data processing services, and purchased applications will be, by no later than December 31, 1998, Year 2000 compliant in accord with OCC issuances. In the event that UCS has a servicer or vendor which is not Year 2000 compliant, the Bank will ensure that the servicer or vendor, by December 31, 1998, has a Year 2000 compliance plan and the capacity to make its product or application Year 2000 compliant in accord with OCC issuances.

<sup>3</sup> In addition, there is no corporate structural objection to the Bank holding a CEBA credit card bank and a Utah industrial loan company as subsidiaries. The OCC has previously approved the establishment of national credit card banks as operating subsidiaries. See OCC Conditional Approval No. 200 (April 12, 1996). See also OCC Conditional Approval No. 245 (May 13, 1997). Thus Georgia Bank may be an operating subsidiary of the Bank. The establishment of a Utah industrial loan company as a national bank subsidiary is similarly permissible. (In addition, the Bank has indicated that it will divest itself of the charter of Utah Bank within six months of consummation of the acquisition of CSC).

time deposits of less than \$100,000,<sup>4</sup> maintains only one office that accepts deposits,<sup>5</sup> and does not engage in the business of making commercial loans. Thus, Georgia Bank conforms to the activity and business limitations set forth in section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841(c)(2)(F). Utah Bank is organized as an industrial loan company. As such, it conforms to the activity limitations set forth in section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841(c)(2)(H)(i)(I).

The Bank's ownership of Georgia Bank and Utah Bank does not render the Bank a bank holding company under the BHCA and is otherwise permissible for a national bank.<sup>6</sup> Since Georgia Bank is a CEBA credit card bank and Utah Bank is an industrial loan company, the Bank Holding Company Act, 12 U.S.C. §§ 1841-1850 is not applicable in either case. Georgia Bank is not a "bank" for purposes of the BHCA, 12 U.S.C. § 1841(c)(2)(F) and Utah Bank is not a "bank" for purposes of the BHCA, 12 U.S.C. § 1841(c)(2)(H)(i)(I). Neither Georgia Bank nor Utah Bank will become a "bank" for the purposes of the BHCA as a result of this transaction. Thus, no party that is not already a bank holding company under federal law will become one by virtue of this transaction.<sup>7</sup>

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<sup>4</sup> The Bank expects that the sole deposit at Georgia Bank will be a deposit of approximately \$5 million from the Bank.

<sup>5</sup> The location of the offices of Georgia Bank in Georgia and of Utah Bank in Utah, considered from the perspective of permissibility for the Bank, is consistent with the McFadden Act, 12 U.S.C. § 36. First, even if the offices and their activities were to be attributed to the Bank for McFadden Act purposes, they are permissible. The Bank has represented that the office of Georgia Bank will only take deposits from the Bank and not from customers who enter any premises. Its loan-making will be conducted only by credit cards. The offices of both Georgia Bank and Utah Bank do not serve customers in person and do not conduct business to attract customers from the general public in Georgia or Utah. A facility to which the public does not have access is not a branch for McFadden Act purposes, even if branch functions of 12 U.S.C. § 36(j) are performed there. See, e.g., OCC Interpretive Letter No. 634 (July 23, 1993), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,518; OCC Interpretive Letter No. 636 (July 23, 1993), reprinted in [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,520. Thus, assuming *arguendo* the offices were viewed as offices of the Bank, they are not branches and so do not violate the McFadden Act. Moreover, the offices are offices of a separate national bank and separate industrial loan company and conduct activities for those institutions, not for the Bank. Thus, arguably the offices should not be attributed to the Bank for branching purposes under the McFadden Act. See OCC Conditional Approval No. 200 (April 12, 1996).

<sup>6</sup> As subsidiaries of Citicorp, Georgia Bank and the Bank will be "depository institution affiliates" for the purposes of the Depository Institution Management Interlocks Act, 12 U.S.C. §§ 3201-3208, as implemented by 12 C.F.R. part 26. See 12 U.S.C. § 3201(3)(a) and 12 U.S.C. § 1841(d). Further, none of Georgia Bank's management officials holds a similar position in other depository institutions or depository holding companies for the purposes of the interlock prohibitions set forth in 12 U.S.C. §§ 3202, 3203.

<sup>7</sup> The Financial Institutions Code of Georgia requires a company that wishes to acquire a bank, including a credit card bank, to make an application to the commissioner of the Department of Banking and Finance ("Department"). See Ga. Code Ann. § 7-1-606 (1997). Citicorp has applied for approval under this holding company provision.

Delaware law regulates entities that come within the definition of a "Delaware bank holding company" ("DBHC").

Upon consummation of the acquisition of CSC by the Bank, Georgia Bank will continue to be a credit card issuer, soliciting and developing credit card relationships with customers throughout the United States. In addition, Utah Bank engages in business credit card lending.<sup>8</sup> Establishing credit card accounts and generating accounts receivable evidencing extensions of credit is a permissible activity for a national bank. See 12 U.S.C. § 24(Seventh) (power “to carry on the business of banking ... by discounting and negotiating ... evidences of debt”). The OCC has chartered national banks for this purpose and has permitted Georgia Bank to engage in these activities under its current ownership. In addition, the OCC has permitted such activities to be carried out in an operating subsidiary. See Conditional Approval No. 245 (May 13, 1997). See also 12 C.F.R. § 5.34(e)(2)(ii) (referring to credit card lending as a permissible activity that qualifies for a pre-approved notice procedure for a national bank operating subsidiary). Thus, Georgia Bank and Utah Bank may conduct these credit card activities as subsidiaries of the Bank.

Following consummation of the acquisition of CSC by the Bank, and as currently, certain credit card receivables will be securitized. Securitization of credit card receivables is a permissible activity for a national bank.<sup>9</sup> The OCC has previously authorized the securitization of credit card receivables as part of the business of banking. See OCC Interpretive Letter No. 540 (December 12, 1990), reprinted in [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,252. See also Securities Industry Association v. Clarke, 885 F.2d 1034 (2d Cir. 1989), cert. denied, 493 U.S. 1070 (1990) (national bank authority to securitize assets); Interpretive Letter No. 514 (May 5, 1990), reprinted in [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,218 (securitization of mortgages); Interpretive Letter No. 416 (February 16, 1988), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640 (securitization of automobile loans); No Objection Letter No. 87-9 (December 16, 1987), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,038

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Del. Code Ann. tit. 5, § 851-857 (Michie Cum. Supp. 1996). A DBHC is a company that is a bank holding company under 12 U.S.C. §§ 1841-1850, the operations of the bank subsidiaries of which are principally conducted in Delaware. As the Bank is not a bank holding company under the federal provision, these state provisions are inapplicable.

<sup>8</sup> As to any other activities of Utah bank, the Bank has represented that Utah Bank engages in no activities that are not permissible for a national bank.

<sup>9</sup> Presently, receivables are sold by Georgia Bank to CSC which in turn sells them to its subsidiary, Funding, a special purpose corporation. Funding transfers the receivables to a master trust that issues multiple series of securities from the same trust. The Bank has represented that it intends to merge Bancorp and Funding with and into CSC shortly following closing. Thenceforth, the securitization program will be effected by Georgia Bank’s transfer of receivables directly into a master trust. As to receivables held by CSC following the merger of Funding, any low quality assets held by CSC and transferred to Georgia Bank will be contributed to, and not purchased by, Georgia Bank.

(securitization of commercial loans originated by the bank). Thus, the Bank may engage in the activity of credit card securitization through its subsidiary, Funding.<sup>10</sup>

UCS provides merchant processing services including front-end authorization, back-end settlements, collection and customer care services to AT&T in AT&T's capacity as a merchant. It will also offer this service to other merchants. The OCC has previously determined that the provision of merchant processing services is authorized under 12 U.S.C. § 24(Seventh). See, e.g. Conditional Approval No. 255 (September 25, 1997); OCC Interpretive Letter No. 689 (August 9, 1995), reprinted in [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,004; OCC Interpretive Letter No. 720 (January 26, 1996), reprinted in [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,035 ; Banking Bulletin 92-94, Merchant Processing (May 5, 1992). Accordingly, UCS may engage in these activities.

Georgia Bank, through a subcontract with UCS, offers a billing service that combines bills from multiple companies into a single statement for holders of the AT&T Universal Cards. It also provides service to AT&T in support of AT&T's Direct Billed Card program for telecommunication customers whose service is not tied to a residence. The services provided to AT&T include account maintenance, credit and application processing, correspondence, collections statement production and remittance. The billing services in which UCS engages enable the transfer of funds between different financial accounts, either within the same financial institution or among more than one financial institutions. The transfer of funds from one account to another, or from one financial institution to another, is a fundamental part of the basic business of banking and, as such, is clearly a permissible activity. The OCC has previously held that national banks may use automated data processing to provide billing services and accounts receivable services for itself and others. See OCC Interpretive Letter No. 419 (Feb. 16, 1988), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,643. Thus Georgia Bank and UCS may engage in the automated billing services described above.

## 2. The Bank may acquire minority investments in the Mondex LLCs

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<sup>10</sup> As to the application of 12 U.S.C. § 371c, to the extent that the Bank's subsidiary, CSC, is acting as a principal and is purchasing receivables it does not already own, its acquisition of receivables from Georgia Bank appears subject to the prohibition against the purchase of low quality assets by a bank and its subsidiaries and to the requirement that it be on terms and conditions that are consistent with safe and sound banking practices . See 12 U.S.C. § 371c(a)(3), (4). The other restrictions in 12 U.S.C. § 371c are not applicable as the so-called "sister bank" exemption applies to these transactions. See 12 U.S.C. § 371c(d)(1) and F.R.R.S. 3-1177.1. Since CSC purchases receivables from Georgia Bank on the same day that they are created, none of the assets purchased are "low quality assets" for the purposes of section 371c. See 12 U.S.C. § 371c(b)(10).

All transactions described in 12 U.S.C. § 371c-1 between the Bank and its affiliates and between Georgia Bank and its affiliates must comply with the comparative standard set forth in 12 U.S.C. § 371c-1(a)(1) or in the absence of comparable transactions with non-affiliated companies, with the good faith standard in 12 U.S.C. § 371c-1(a)(2).

As a result of its acquisition of CSC, the Bank will acquire the interests held by CSC's subsidiary, Services, in the Mondex LLCs.<sup>11</sup> Services will continue to hold its existing equity interests in the Mondex LLCs, 10 percent of the equity of each. The OCC has previously approved indirect investments by national banks in limited liability companies through an operating subsidiary structure. Such investments are permissible if they meet the requirements for direct minority investments by national banks. One such approval pertained to the establishment of operating subsidiaries to acquire membership interests in the Mondex LLCs. See Conditional Approval No. 220 (December 2, 1996) ("Mondex Letter"). The filing states that the Bank will conform to the representations and descriptions contained in the Mondex Letter. It describes with details how CSC's investment in the Mondex LLCs conforms to the four standards the OCC has established with respect to a national bank's direct or indirect ownership of a non-controlling interest in a limited liability company. The Bank has also committed that its operating subsidiaries will conduct activities according to the OCC policies and guidance issued in the Mondex Letter, as well as policies and guidance issued regarding these activities.<sup>12</sup>

The discussion in the Mondex Letter regarding the permissibility of non-controlling minority investments applies equally to the Bank and its present proposal. On the basis of the representations specified in the consolidated notice and applications, and any other submitted materials, the operating subsidiaries may acquire the investments in the Mondex LLCs.<sup>13</sup>

### **III. CONCLUSION**

For the reasons set forth above, including the representations and commitments made and deemed made by Citicorp and the Bank, we find that there is no objection to the notice under

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<sup>11</sup> The Bank will also indirectly acquire the 3.1 percent interest of Services in Mondex International. The Bank has committed that immediately after closing, the interest in Mondex International will be transferred to Citibank Overseas Investment Corporation ("COIC"), the Bank's Edge Act subsidiary, or a subsidiary of COIC. Consequently, the Bank will not hold its interest in Mondex International in an operating subsidiary.

<sup>12</sup> In approving the Bank's request, the OCC approves only the same activities as approved in the Mondex Letter and based upon the same representations, agreements, and commitments. The Bank has confirmed that by filing the consolidated notice and applications, and accepting this approval, the Bank is deemed to have made the same representations, commitments and agreements as were made by the applicant banks in the initial Mondex notices.

<sup>13</sup> This approval is subject to the following conditions: the Mondex LLCs may engage only in activities that are part of, or incidental to, the business of banking; the Bank will withdraw from the Mondex LLCs in the event one or both Mondex LLCs engages in an activity that is not part of, or incidental to, the business of banking; the Bank will account for the investment in the Mondex LLCs under the equity or cost method of accounting; and the Mondex LLCs will be subject to OCC supervision, regulation, and examination. These conditions are "conditions imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 U.S.C. § 1818.

U.S.C. § 1817(j) nor to the approval of the operating subsidiary applications under 12 C.F.R. § 5.34. Accordingly, the OCC hereby issues notice of its intent not to disapprove the notice under 12 U.S.C. § 1817(j) and hereby approves the applications under 12 C.F.R. § 5.34.

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Julie L. Williams  
Chief Counsel

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Date

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98-WO-08-0003, and 98-WO-08-0004