

October 20, 2006

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-9303

File No. S7-03-06

Dear Ms. Morris:

The undersigned are the chief legal officers of Agilent Technologies, Inc. BellSouth Corporation, Constellation Energy Group, Inc., The Dow Chemical Company, Eli Lilly and Company, Exxon Mobil Corporation, General Electric Company, General Mills, Inc., Intel Corporation, Kimberly-Clark Corporation, PPG Industries, Inc., Texas Instruments Incorporated, United Technologies Corporation and Viacom Inc. On behalf of the companies that we serve, we are writing to provide our comments on the Commission's proposal in Release 8732 to require narrative disclosure for up to three employees who are not executive officers but whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers. At the outset, we would like to thank the Commission for the opportunity to present our views on this proposal.

We respectfully recommend that the Commission not require disclosure of total compensation of any employees other than the named executive officers. We believe that additional disclosure would not be material to investors, would create inconsistent disclosure practices among public companies and could place registrants at a competitive disadvantage in the market for managerial talent.

We believe that the distinction between named executive officers and other employees sets the appropriate boundary between individuals about whom compensation disclosure is meaningful for shareholders and those for whom it is not. Setting the compensation of employees who are not executive officers is typically the responsibility of a company's senior management, rather than a function of the company's board of directors or of the compensation committee of the board. Such an allocation of responsibility between management and the board is consistent with the corporate governance standards applicable to companies listed on the New York Stock Exchange and NASDAQ.¹ Because the compensation of employees who are not

¹ The NYSE requires that the functions of the compensation committee include (either as a committee or together with the other independent directors) determining and approving the compensation of the company's chief executive officer and making recommendations to the board with respect to non-CEO executive officer compensation. Similarly, NASDAQ's Marketplace Rules require that the compensation of the CEO and all other executive officers must be determined, or recommended to the full board for determination, by a majority of the independent directors or a compensation committee composed

executive officers will often be determined through a process distinct from that which applies to executive officers, information about the compensation paid to non-executive employees will not further the Commission's goal of "permit[ting] a better understanding of the compensation structure of the named executive officers and directors."² For the same reason, such disclosure will not assist shareholders in understanding the decision making processes of the company or the board with respect to NEO compensation, nor will it assist shareholders in assessing the performance of the directors.

Compensation decisions made by senior management, moreover, do not differ conceptually from other business decisions that a company's senior management make on a daily basis. The amount of compensation paid to an employee who is not an executive officer, even if material to the individual concerned, is likely to involve a smaller amount than many other transactions that senior management approve on a routine basis. Yet these other transactions do not trigger particularized disclosure in the company's annual report or proxy statement.

Requiring narrative disclosure of the total compensation for additional employees will increase the administrative burdens of complying with the new rules, as many registrants will need to track all elements of total compensation of a significant group of non-executive employees to correctly identify the covered employees and then to determine whether any disclosure is required. This burden will be especially high for companies at which some elements of compensation are determined at the subsidiary or business unit level, rather than by the registrant itself. Moreover, we expect the universe of employees required to be monitored, and consequently the administrative burden on registrants, to be heightened by the Commission's elimination of the exclusion of unusually large amounts of cash compensation that are not part of a recurring arrangement and are unlikely to continue.

The Commission has indicated that it is considering, among other things, limiting disclosure to those employees who, while not executive officers, have responsibility for significant policy decisions within the company, a significant subsidiary of the company or a principal business unit, division or function of the company. While we agree with the Commission's suggestion that the proposed supplemental disclosure should not apply to a registrant's "talent", we are concerned that requiring the supplemental disclosure for employees who have a "significant policy influence" at a subsidiary, business unit or division would lead to inconsistent disclosure practice among public companies. Companies and their boards of directors currently make periodic determinations of which officers and employees have sufficient policy making functions *for the registrant* to meet the definition of "executive officer" set forth in Rule 3b-7; the standard of Rule 3b-7 has proved workable and, we believe, has over time come to be applied on a reasonably consistent basis. Boards of directors, however, are less likely to be familiar with the day-to-day operations and decision-making processes of subsidiaries and individual business units or divisions than with those of the registrant. Moreover, different companies structure decision making below the executive officer level in different ways, making

exclusively of independent directors. Absent from the rules of both the NYSE and NASDAQ is any requirement that the compensation committee or other independent directors approve or review compensation paid to employees who are not executive officers.

² SEC Release 33-8732, §II.C.3.b.

it difficult to formulate a uniform “bright line test” for determining who exercises significant policy functions at the subsidiary or business unit level. In view of these difficulties, we are not confident that uniform practice can be expected from a standard that looks to significant policy making functions within a subsidiary, business unit or division.

Finally, we believe that requiring disclosure of the compensation of persons other than executive officers will place at least some registrants at a disadvantage in the competition for managerial talent. The identity of the additional employees for whom narrative disclosure is made will often be discernible, especially by competitors of the registrant, based on job description, whether or not the employee is named. Disclosure of total compensation information will provide competitors with information to which they otherwise would not have access and will highlight for them the identity and the talent of individuals who may be key to the registrant’s future. This danger is particularly acute in situations where special retention awards cause a promising employee to be catapulted on a one-time basis into the ranks of the employees other than NEOs for whom supplemental disclosure is required. We believe that the limited value to shareholders of this supplemental information does not justify compromising the competitive position of the registrant in the market for managerial talent. This risk, moreover, creates an uneven playing field between public and private companies, as only public companies would be required to disclose what has historically been considered privileged information concerning compensation levels of non-executive employees.

For the foregoing reasons, we encourage the Commission not to require narrative disclosure of the total compensation of employees other than a registrant’s named executive officers. If the Commission nevertheless does decide to require disclosure of the compensation of any employees other than named executive officers, we recommend that registrants not be required to identify these additional employees by name, in order to mitigate the competitive risks noted above.

Very truly yours,

AGILENT TECHNOLOGIES, INC.
D. Craig Nordlund
Senior Vice President, General Counsel and Secretary

BELLSOUTH CORPORATION
Marc Gary
General Counsel

CONSTELLATION ENERGY GROUP, INC.
Irving B. Yoskowitz
Executive Vice President and General Counsel

THE DOW CHEMICAL COMPANY
Charles J. Kalil
Corporate Vice President, General Counsel and Secretary

ELI LILLY AND COMPANY
Robert A. Armitage
Senior Vice President and General Counsel

EXXON MOBIL CORPORATION
Charles W. Matthews, Jr.
Vice President and General Counsel

GENERAL ELECTRIC COMPANY
Brackett B. Denniston, III
Senior Vice President and General Counsel

GENERAL MILLS, INC.
Siri S. Marshall
Senior Vice President, General Counsel, Chief Governance and Compliance Officer and Secretary

INTEL CORPORATION
D. Bruce Sewell
Senior Vice President and General Counsel

KIMBERLY-CLARK CORPORATION
Ronald D. McCray
Senior Vice President, Law and Government Affairs, and Chief Compliance Officer

PPG INDUSTRIES, INC.
James C. Diggs
Senior Vice President, General Counsel and Secretary

TEXAS INSTRUMENTS INCORPORATED
Joseph F. Hubach
Senior Vice President, Secretary and General Counsel

UNITED TECHNOLOGIES CORPORATION
William H. Trachsel
Senior Vice President and General Counsel

VIACOM INC.
Michael D. Fricklas
Executive Vice President, General Counsel and Secretary