

to transfer control of AT&T's international section 214 authority and submarine cable landing licenses to SBC that neither AT&T nor SBC is affiliated with a dominant foreign carrier that has sufficient market power on the foreign end of a route to affect competition adversely in the U.S.³⁸² Moreover, SBC has only very limited, resale-based retail international operations.³⁸³ The combination of SBC and AT&T thus will not significantly increase concentration in the retail provision of service on U.S. international routes that are today served by numerous large facilities-based and resale providers.³⁸⁴

Nor will the proposed merger significantly affect concentration or competition in the market for international transport services or any other input market that is essential for the provision of international services. Indeed, because SBC holds no submarine cable landing licenses and has no IRU or other ownership in any international submarine cables, the proposed merger will have no effect on concentration or competition in these markets. Moreover, it is well settled that there is currently substantial competition in the provision of international transport services.³⁸⁵

Footnote continued from previous page
Rcd. 5376, 5399-401 ¶¶ 47-50 (2000) (“*Qwest/US West Order*”) (finding no competitive concerns because Qwest’s foreign affiliates were in WTO member countries). With respect to AT&T’s affiliated Russian carrier, that carrier owns no facilities in that destination market, thus raising no competitive concerns. See 47 C.F.R. § 63.11(b)(1)(ii) (2004). Moreover, as detailed in the 214 applications, all of SBC’s foreign affiliations are with wireless carriers, which raise no competitive concerns here. See *id.* § 63.12(c)(iii) (2004).

³⁸² See 47 C.F.R. § 63.18 (2004).

³⁸³ SBC’s European Community operations, for example, are sufficiently limited that the proposed transaction will not require an EC filing.

³⁸⁴ See, e.g., *MCI/Worldcom*, 13 FCC Rcd. at 18096 ¶ 124 (“[t]here are hundreds of carriers that compete . . . in the market for U.S. international services”); *Qwest/US West*, 15 FCC Rcd. at 5399-401 ¶¶ 47-50.

³⁸⁵ See, e.g., *AT&T Corp./BT Joint Venture*, 14 FCC Rcd. at 19177 ¶ 75 (1999) (“the global transit market is highly competitive. . . there are thousands of routes to the 240

Accordingly, the proposed merger will not have anti-competitive effects in any U.S. international market and will serve the public interest, convenience and necessity, and pursuant to section 63.10(a)(3) of the Commission's rules, the combined companies should continue to be regulated as non-dominant on all U.S.-international routes.³⁸⁶

XIII. RELATED GOVERNMENTAL FILINGS

In addition to filings with the Commission, SBC and AT&T are taking steps to satisfy the requirements of other governmental entities with respect to the merger. First, the Department of Justice will conduct its own review of the competitive aspects of this transaction pursuant to the Hart-Scott-Rodino Antitrust Improvement Act of 1976 and the rules promulgated thereunder. Second, some state commissions may review the merger. Third, local franchising authorities in certain jurisdictions in which AT&T has a franchise may review the transfer of control effected by this merger. Finally, SBC and AT&T will make certain notifications to or filings with regulatory authorities in the some foreign countries in which SBC or AT&T holds direct or indirect investments in telecommunications companies. The Applicants fully expect that these reviews will confirm that the merger of SBC and AT&T is in the public interest and not anticompetitive.

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countries of the world . . . there is no dearth of capacity on most transit routes and there are no barriers to entry for firms with excess capacity to provide transit services"); *MCI/WorldCom*, 13 FCC Rcd. at 18081 ¶ 100 (finding no anticompetitive effects with respect to transport due to "low barriers to entry" and "substantial amount of . . . transport capacity").

³⁸⁶ See 47 C.F.R. § 63.10(a)(1), (3) (2004) (providing that a U.S. carrier that is not affiliated with a dominant foreign carrier in a particular country shall presumptively be classified as non-dominant).

XIV. ADDITIONAL AUTHORIZATIONS

In addition to seeking the Commission's approval of the transfers of control of the FCC authorizations covered in these applications, the Applicants also request the additional authorizations described below.

A. After-Acquired Authorizations.

While the list of call signs and file numbers referenced in each application is intended to be complete and to include all of the licenses and authorizations held by the respective licensees that are subject to the transaction, AT&T licensees may now have on file, and may hereafter file, additional requests for authorizations for new or modified facilities which may be granted before the Commission takes action on these transfer applications. Accordingly, the Applicants request that any Commission approval of the applications filed for this transaction include authority for SBC to acquire control of:

(1) any authorization issued to the respective licensees/transferees during the pendency of the transaction and the period required for consummation of the transaction; (2) any construction permits held by the respective licensees/transferees that mature into licenses after closing; and (3) any applications that are pending at the time of consummation.

Such action would be consistent with prior decisions of the Commission.³⁸⁷ Moreover,

³⁸⁷ *Cingular/AWS*, 19 FCC Rcd. at 21626 ¶ 275; *SBC/SNET*, 13 FCC Rcd. at 21317 ¶ 49; *Bell Atlantic/NYNEX Corp.*, 12 FCC Rcd. at 20097-98 ¶¶ 246-56; *In re Applications of Pac. Telesis Group & SBC Communications Inc.*, Memorandum Order and Order, 12 FCC Rcd. 2624, 2665 ¶ 93 (1997); *In re Applications of Craig O. McCaw & AT&T*, Memorandum Opinion and Order, 9 FCC Rcd. 5836, 5909 ¶ 137 n.300 (1994), *aff'd sub nom. SBC Communications Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995), *recons. in part*, 10 FCC Rcd. 11786 (1995).

because SBC is acquiring AT&T and all of its FCC authorizations, SBC requests that Commission approval include any authorizations that may have been inadvertently omitted.

B. Trafficking.

To the extent any authorizations for unconstructed systems are covered by this transaction, these authorizations are merely incidental, with no separate payment being made for any individual authorization or facility. Accordingly, there is no reason to review the transaction from a trafficking perspective.³⁸⁸

C. Blanket Exemption to Cut-Off Rules.

The public notice announcing this transaction will provide adequate notice to the public with respect to the licenses involved, including any for which license modifications are now pending. Therefore, no waiver needs to be sought from Sections 1.927(h) and 1.929(a)(2) of the Commission's rules to provide a blanket exemption from any applicable cut-off rules in cases where the Applicants file amendments to pending applications to reflect the consummation of the proposed transfers of control.³⁸⁹

³⁸⁸ 47 C.F.R. § 1.948(i) (2004) (noting that the Commission *may* request additional information regarding trafficking if it appears that a transaction involves unconstructed authorizations that were obtained for the principal purpose of speculation); *id.* § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities that are “incidental to a sale of other facilities or merger of interests”).

³⁸⁹ *Ameritech/GTC*, 15 FCC Rcd. at 6668 ¶ 2 n.6 (1999); *In re Applications of Comcast Cellular Holdings, Co. & SBC Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd. 10604, 10605 ¶ 2 n.3 (1999).

XV. CONCLUSION

For the foregoing reasons, the Commission should conclude that the merger of SBC and AT&T serves the public interest, convenience, and necessity and should expeditiously grant the applications to transfer control of AT&T's FCC authorizations to SBC.

APPENDIX A

DESCRIPTION OF APPLICANTS

AT&T:

AT&T operates through two principal divisions, its business services division and its consumer services division. AT&T Business Services (“ABS”) provides a variety of communications services to domestic and multi-national businesses and government agencies. These services include retail and wholesale domestic and international voice services, and a wide range of retail and wholesale IP and other data transport and managed data services. AT&T is one of the most important providers of communications services to the U.S. government, and provides services that include capabilities for the highest levels of security, reliability, recoverability, and global coverage. Based on these capabilities, AT&T is also an established provider to many of the largest businesses and wholesale customers, including those with requirements in multiple, widely dispersed locations in this country and around the globe. More than 65% of 2004 ABS revenue came from sales to AT&T’s 400 largest customers. According to the Yankee Group and other sources, large business customers rank AT&T as a leader in corporate reputation, sales and marketing expertise, service and support, and technical competence.

Revenues from services provided by ABS were \$22.6 billion in 2004, compared to \$25.1 billion in 2003 and \$26.6 billion in 2002. Revenue declines have reflected decreases in prices as well as declines in retail volumes.

AT&T Consumer Services provides a variety of communications services to mass market customers. These services include traditional long distance voice services such as domestic and international dial and toll-free services, as well as operator-assisted

services. In addition, AT&T Consumer Services provides dial-up Internet services and all-distance services, which bundle AT&T's facilities-based long distance services with local services provided through "UNE-P" arrangements with incumbent local exchange carriers.

As described in greater detail above, AT&T announced in mid-2004 that it would no longer actively compete for new mass market customers.¹ As a result of AT&T's strategic repositioning, decreases in AT&T's revenues and customers in this segment have accelerated. Revenue was \$7.9 billion for 2004, compared to \$9.4 billion in 2003 and \$11.5 billion in 2002. Stand-alone long distance services revenue was approximately \$5.2 billion in 2004, compared to \$7.4 billion in 2003. Revenues from bundles of basic local and long distance services were approximately \$2.7 billion in 2004, compared to \$2.0 billion in 2003.

AT&T provided long distance service (including both stand-alone and bundled) to approximately 24.6 million residential customers at the end of 2004, compared to 34.4 million customers at the end of 2003. There were approximately 9.1 million AT&T long distance customers in states in SBC's region at the end of 2004 (compared to 12.9 million at the end of 2003). AT&T provided local service (through UNE-P arrangements) to approximately 4.2 million customers at the end of 2004 and 4.0 million at the end of 2003. AT&T provided local service to 1.8 million customers in states in SBC's region at the end of 2004, compared to 2.0 million customers at the end of 2003.

¹ Polumbo Decl. ¶¶ 2, 9; Horton Decl. ¶¶ 2, 7.

AT&T also provides a mass market voice over IP (“VoIP”) service, called the AT&T CallVantage service, to a modest number of residential customers throughout the U.S.² AT&T provides its AT&T WorldNet ISP service to approximately 1.2 million customers throughout the world.

SBC:

SBC is a voice, data, and Internet services provider for residential, business, and government customers, mostly in a 13-state region. SBC serves 52.4 million access lines. SBC is the nation's leading provider of DSL Internet, with 5.1 million DSL lines in service.

SBC holds a 60% economic and 50% voting interest in Cingular Wireless, the largest wireless carrier in the United States, serving 49.1 million wireless customers. Cingular has the largest wireless network in the United States, with spectrum in 49 states and coverage in all of the top 100 markets. Through alliances with GSM-based providers, Cingular offers coverage in 170 countries worldwide, creating the largest global presence of any U.S. wireless carrier.

SBC has unveiled Project Lightspeed, which will bring next-generation integrated video, superhigh-speed broadband access, and voice over IP (Internet Protocol) services via a new fiber-rich network. Through this \$4 billion investment, SBC expects to bring these services to 18 million households in its 13-state region by the year 2007.

² Polumbo Decl. ¶ 13; *see* Carlton & Sider Decl. ¶ 42.

SBC operates its own research and development organization known as SBC Labs, which focuses on products and services geared to consumers and small and medium-sized businesses who make up SBC's existing customer base.

In 2004, SBC's revenues were approximately \$40.8 billion, compared to \$40.5 billion in 2003. Revenues for local voice services were approximately \$20.8 billion for 2004, compared to \$22.0 billion for 2003. Full-year long distance voice revenues were \$3.3 billion, compared to \$2.6 billion for 2003. Data services revenues were approximately \$11.0 billion, compared to \$10.2 billion in 2003. SBC's capital expenditures for 2004 were approximately \$5.1 billion, compared to \$ 5.2 billion in 2003. SBC's projected capital expenditures are \$5.4 billion to \$5.7 billion in 2005. Cingular Wireless capital expenditures are expected to be \$6.8 billion to \$7.2 billion.

APPENDIX B

DESCRIPTION OF COMPETITORS

This Appendix provides general descriptions of leading competitors for medium and large business telecommunications services in a number of categories: IXC's (other than AT&T), other network providers, foreign-based carriers, CLECs, cable providers, ILECs (other than SBC), system integrators, and equipment vendors and value-added resellers.

Inter-Exchange Carriers (IXCs)

Having recently emerged from bankruptcy with a new financial footing, **MCI's** principal strength correlates with one of SBC's most significant weaknesses: its robust national and international network. MCI has the largest and most interconnected IP backbone in the world, in terms of company-owned POPs, with over 4,500 POPs; 2,400 ATM, frame relay, and voice switches; and 130 data centers in 22 countries.¹ It has been repeatedly recognized as the most connected network in the world, and its service level agreements lead the industry.² With its network strength, MCI offers enterprise and business customers a wide range of sophisticated managed network services, including

¹ About MCI: Our Network, *available at* <http://global.mci.com/about/network/>; About MCI: MCI Fast Facts, *available at* <http://global.mci.com/about/company/facts>.

² Press Release, MCI, MCI Ranked #1 As Most Connected Internet Network Provider For Fourth Consecutive Year (Oct. 13, 2004) *available at* <http://global.mci.com/news/news2.xml?newsid=12072&mode=long&lang=en&width=530&root=/&langlinks=off>; Press Release, MCI, MCI Unveils New Network Management Capabilities (Feb. 7, 2005) *available at* <http://global.mci.com/news/news2.xml?newsid=13371&mode=long&lang=en&width=530&langlinks=off> (discussing a mean repair time of 3.5 hours, and a global force of 5,400 technical service and support technicians).

managed WANs and LANs, network performance monitoring throughout the system, and consulting services.³ It serves much of the Fortune 100 and more than 75 U.S. federal government agencies.⁴ MCI has been very aggressive in preserving its customer base.⁵

As with MCI, **Sprint** has a robust national network. In addition, Sprint complements its wireline and IP offerings with its wireless services. Sprint is one of the largest carriers of Internet traffic, is the third-largest provider of long distance services (based on revenue), provides local service through its own access lines in 18 states, local service through leased facilities in 18 others, and provides wireless services nationwide, a network that will only be made stronger and broader by the proposed merger with Nextel.⁶

Sprint has signaled its commitment to the enterprise and business segment in several ways. First, it dedicated approximately \$1.6 billion to capital expenditures in its business divisions, primarily to support the growth in demand for enterprise services.⁷ Second, it has expanded its international reach, most recently through offering MPLS VPN to over 100 countries, and expanding its global network into India.⁸ Sprint now has

³ See MCI Enterprise: Managed Network Services, *available at* <http://global.mci.com/us/enterprise/managed/>.

⁴ About MCI: Our Company, *available at* <http://global.mci.com/about/company/>.

⁵ See UBS Investment Research, "MCI Communications," at 1 (April 20, 2004) ("We expect MCI's emergence from bankruptcy to put increasing pressure on prices for voice and data services in the business market as the company seeks to gain share from rivals.").

⁶ SEC Form 10-K, Sprint Corp. at 1 (2003).

⁷ *Id.* at 43.

⁸ News Release, Sprint, Sprint extends MPLS VPN benefits globally (Oct. 27, 2004) *available at* <http://www.sprintworldwide.com/english/about/success/mplsvnp.pdf>; News Release, Sprint, Sprint Teams with Reliance Infocomm to Expand IPNetwork to India (Jan. 11, 2005), *available at* http://www.sprintworldwide.com/english/about/success/India_Node_PR_ENG.doc.

1,100 global POPs across six continents.⁹ Third, Sprint has offered business customers products once reserved for the government, such as “peerless” IP VPN systems, which are not connected to the public Internet. Sprint was the first to offer such a closed, native IP intranet to government and business customers, and the security of this type of network has attracted interest from a variety of industries, such as manufacturing, financial institutions, and insurance companies, as well as government agencies.¹⁰ For example, peerless networks have been used by companies such as BMW to link dozens of locations throughout North and South America.¹¹

Similarly, **Qwest** offers everything from local service – for those businesses based within its 14-state region – to long distance, data, Internet access, and managed solutions. It also offers wireless service, with nationwide coverage, through a wholesale arrangement with Sprint. Qwest’s most notable asset, however, may be its worldwide fiber optic network, extending over 180,000 miles.¹² Qwest offers a variety of network-based products, including hosting, managed VPN, integrated access, and security services. In terms of innovation, the company recently offered a nationwide commercial VoIP service to business customers, an innovation that has led to industry recognition and

⁹ News Release, Sprint, Sprint Teams with Reliance Infocomm to Expand IP Network to India (Jan. 11, 2005) *available at* http://www.sprintworldwide.com/english/about/success/India_Node_PR_ENG.doc.

¹⁰ News Release, Sprint, Sprint Network ‘Built for the Government’ Also Gains Momentum Among Security-Conscious Businesses (July 22, 2004) *available at* http://www2.sprint.com/mr/news_dtl.do?id=2083.

¹¹ News Release, Sprint, Luxury Auto Maker BMW Selects Sprint to Provide Network Services for Operations in the Americas (Dec. 6, 2004) *available at* http://www2.sprint.com/mr/news_dtl.do?id=5041.

¹² SEC Form 10-K, Qwest Communications Int’l Inc. at 4 (2003).

awards.¹³ While the initial rollout was more modest, Qwest's VoIP for business has been expanded to more than 100 cities.¹⁴ This VoIP offering is strengthened by the industry's best service level agreement for "jitter," which refers to delay in streaming media and VoIP transmission over a network.¹⁵ Qwest's low transmission delay ensures higher voice and media quality and makes applications such as VoIP more attractive.

Data/IP Network Providers

Savvis Communications is a leading Managed Services Provider that delivers private IP VPNs, hosting, IP voice, and application services to enterprises. The company operates a global IP network delivering IP VPN, voice services, managed hosting, and managed Internet solutions.¹⁶ Its network spans 110 cities in 45 countries.¹⁷ Savvis has focused on industries with demanding IP requirements, such as legal, media, retail, professional services, healthcare, manufacturing, and financial services.¹⁸ Savvis was ranked as #2 provider in the provision of VPNs, trailing only AT&T, and it has won

¹³ Qwest's OneFlex VoIP Service Receives Industry Accolades (Nov. 5, 2004) *available at* http://www.qwest.com/about/media/pressroom/1,1281,1617_archive,00.html.

¹⁴ Qwest Launches Expanded Nationwide VoIP Service for Businesses (Dec. 8, 2004) *available at* http://www.qwest.com/about/media/pressroom/1,1281,1627_archive,00.html.

¹⁵ Qwest's Jitter Service Level Agreement Enhances iQ Networking Performance (Apr. 21, 2004) *available at* http://www.qwest.com/about/media/pressroom/1,1281,1511_archive,00.html.

¹⁶ Savvis Products & Services: Managed Network Services, *available at* http://www.savvis.net/services/managed_network/.

¹⁷ *Id.*

¹⁸ *See* Press Release, Savvis, SAVVIS Communications Selected to Acquire Cable & Wireless America Assets (Jan. 23, 2004) *available at* <http://www.savvis.net/company/newsroom/pressdetails.php?newsID=476>.

awards for network reliability, customer service, and for innovation.¹⁹ The company has been able to acquire network assets inexpensively, and it is enjoying rapid growth.²⁰ Savvis has moved from web-hosting into full-scale outsourced IT solutions, serving as the managed network provider for over 400 customers in the retail industry, such as Virgin Entertainment, Albertsons, Ann Taylor, Gucci, and others.²¹

Broadwing owns a technologically advanced fiber-optic network that connects 137 cities nationwide and spans the continental United States.²² Through this network, it offers data, Internet, broadband transport, and voice services to business customers.²³ Broadwing has expanded its service offering through the recent acquisition of Focal Communications Corp., a CLEC, on September 1, 2004.²⁴ Focal competes in a number of SBC local areas, including California, Texas, and Chicago, and offers metropolitan fiber in nine major metropolitan areas.²⁵ Once Focal is fully integrated into the company, Broadwing expects a number of benefits, including an expanded customer base, greater network reach, lower network and transport costs, and the ability to offer a single supplier

¹⁹ IDC recently reported Savvis as the second largest IP VPN provider in the United States, edging past MCI and behind only AT&T. *See* IDC, “SAVVIS Now Trails Only IBM in Hosting and AT&T in IP VPN Market Share” (July 27, 2004).

²⁰ *See* Olga Kharif, *Web Hosts: The Life of the Party*, Business Week online (July 16, 2004) *available at* http://www.businessweek.com/technology/content/jul2004/tc20040716_0950_tc055.htm.

²¹ Press Release, Savvis, Virgin Entertainment Group 27 Corporate and Megastore Locations In U.S. with SAVVIS Managed Network, (July 28, 2004) *available at* <http://www.savvis.net/company/newsroom/pressdetails.php?newsID=586>.

²² SEC Form 10-Q, Broadwing Corp. at 22 (Sept. 30, 2004).

²³ *Id.* at 21.

²⁴ *Id.*

²⁵ About Focal: Service Areas, *available at* http://www.focal.com/about/service_areas.html (network map); SEC Form 10-Q, Broadwing Corp. at 40 (Sept. 30, 2004) (discussing metropolitan fiber in nine major markets).

for a strong suite of voice, data, and video services.²⁶ This process of integration is expected to last into 2005. Broadwing currently offers a range of products, including traditional voice, VoIP, WAN, Media transport, and public and private IP networking. Broadwing has reported that regional telephone companies are among its competitors, as well as AT&T, MCI, Sprint, Level 3, Qwest, and others.²⁷

While it offers legacy services such as private line, frame/ATM and direct dial, **Global Crossing** has focused on delivering IP-based products, such as IP VPN, VoIP Services, Managed Services, and Collaboration Services (Audio, Video and Web).²⁸ Global Crossing has a large worldwide network, with over 100,000 route miles of optical cable, directly connecting more than 300 cities in 30 countries.²⁹ The network has approximately 800 POPs in 200 major cities throughout the world.³⁰ Global Crossing has approximately 19,000 route miles of fiber in the United States and Canada, together with 170 POPs, 22 integrated service platform sites, three submarine cable landing stations, and three international voice gateway sites.³¹ After emerging from bankruptcy in December 2003, Global Crossing expressly shifted its emphasis toward enterprise customers, and it has realigned its distribution system in an effort to secure and service such accounts.³²

²⁶ SEC Form 10-Q, Broadwing Corp. at 40 (Sept. 30, 2004).

²⁷ SEC Form 10-K, Corvis Corp. at 8 (2003).

²⁸ Global Crossing: Enterprise, *available at* <http://www.globalcrossing.com/xml/services/index.xml>.

²⁹ *Id.*; SEC Schedule 14A, Global Crossing Ltd. at B-8 (Feb. 5, 2005).

³⁰ SEC Form 10-K, Global Crossing Ltd. at 7 (2002).

³¹ *Id.*

³² SEC Form 10-K/A, Global Crossing Ltd. at 9 (2003).

Level 3 has built an advanced, IP backbone with reach throughout the United States and Europe, with a network that includes nearly 1 million miles of metro fiber in 99 metro areas including Europe.³³ Level 3 is a leading wholesale provider of IP services, carrying data and increasing VoIP traffic for, among others, the 6 largest U.S. cable companies and the 10 largest Internet service providers in the United States.³⁴ Level 3 is a wholesale VoIP leader, reporting that it carries over 30 billion minutes of VoIP traffic per month, and that it can offer a local connection to over 300 metro areas and 93% of U.S. population.³⁵ More than 20 resellers use Level 3's technical capabilities to offer VoIP service.³⁶ Moreover, Level 3's network is used frequently by systems integrators in providing outsourced telecommunications needs. For example, Level 3 recently won a large IP-VPN contract for Sears, which Computer Services Corporation (CSC) had put out to bid.³⁷

Foreign-Based Carriers

Equant is part of the France Telecom Group, and asserts that it is the world leader in communications solutions for multinational business.³⁸ It claims to operate the world's largest global network in terms of geographic coverage, extending to 220

³³ The Level 3 Network, *available at* <http://www.level3.com/673.html>.

³⁴ Level 3 Customers, *available at* <http://www.level3.com/3382.html>.

³⁵ Level 3 Presentation to 5 & Company Seventh Annual Growth Conference at 5, 12 (Jan. 13, 2005) *available at* http://www.level3.com/userimages/dotcom/pdf/Needham_conference_1_12_05.pdf.

³⁶ *Id.* at 14.

³⁷ Carolyn Duffy Marsan, *Level 3 snares major IPVPN deal*, Network World Fusion (Aug. 16, 2004) *available at* <http://www.nwfusion.com/news/2004/081604level.13html>.

³⁸ Equant: Communications solutions to enable global business (2004) *available at* http://www.equant.com/content/pdf/Com/Library/Corporate/corporate_brochure.pdf.

counties and territories, and 1,100 cities and towns throughout the world.³⁹ Although Equant's network density is greatest in Europe, greater penetration of the North American marketplace is one of the company's top priorities and "is a focal point for its growth and expansion."⁴⁰ Equant offers a host of managed services, VPN, Internet connectivity, security, and consulting products. Because of its global reach, Equant is an attractive option for an enterprise business with international needs.

British Telecom ("BT") is one of Europe's leading providers of telecommunications services. Its principal services include local, national, and international telecommunications, higher-value broadband and Internet products and services, and IT solutions.⁴¹ BT's global network operates in over 200 countries across five continents, and it owns POPs in 14 major U.S. metropolitan areas (as well as Toronto and Mexico City), with expansion to seven more in 2005.⁴² BT's strategy is to target multi-site global organizations in the Americas, particularly U.S.-based multinational corporations with global requirements and extensive operations throughout Europe. BT's efforts to capture a greater share of the U.S. marketplace have been aided by its

³⁹ Equant: About Equant, Network Coverage, *available at* http://www.equant.com/content/xml/about_network.xml.

⁴⁰ Equant: Around the World: North America, *available at* http://www.equant.com/content/xml/north_america.xml.

⁴¹ BT Group plc: An Overview at 3 (Nov. 2004) *available at* <http://www.btplc.com/Thegroup/Companyprofile/InvestorInsight.pdf>.

⁴² BT: Our Network, *available at* http://www.btglobalservices.com/business/global/en/about_us/our_network/index.html; Press Release, BT, Convergence of Communications and IT drives growth for global service provider (May 28, 2004) *available at* <http://www.btplc.com/News/Articles/Showarticle.cfm?ArticleID=0c0ed0d8-0c1f-478f-8ba3-dab75f9fe87d> (current POPs: Atlanta, Boston, Chicago, Dallas, Denver, Detroit, Houston, Los Angeles, Mexico City, Miami, New York, Philadelphia, Seattle, San Francisco, Toronto, and Washington, DC; planned POPs: Charlotte, Cincinnati, Cleveland, Minneapolis, Phoenix, St. Louis, and Tampa).

acquisition of Infonet, one of the world's leading providers of international managed voice and data network services.⁴³ This acquisition recently received antitrust clearance from the U.S. Department of Justice and is expected to be cleared by other agencies, including the European Commission. The combination of the two companies should be complete by mid-2005.

Deutsche Telekom (DT), a Fortune Global 100 company, is Europe's largest telecommunications company and asserts that it is "a truly global player with a presence in about 65 countries on six continents, in all major markets,"⁴⁴ including Europe, the Middle East, Asia, and North and South America. Although DT's network density is greatest in Europe, it has achieved significant penetration of the North American marketplace with its **T-Systems Inc.** (T-Systems) and **T-Mobile** subsidiaries. T-Systems offers many managed information and communications technology services tailored to the specific needs of Global and Enterprise customers within and without North America, including infrastructure, industry-specific solutions or entire business processes. T-

⁴³ Press Release, BT, Infonet acquisition receives U.S. antitrust clearance (Dec. 23, 2004) available at <http://www.btplc.com/News/Articles/Showarticle.cfm?ArticleID=6e08e01c-3f74-4a99-8c1d-c8c9a6390c12>. Infonet was founded in 1970, is based in the United States and has local operations in 70 countries, network access in about another 180 countries, and points of presence in about 3,000 cities. Infonet provides extensive project management capabilities to thousands of multinational corporate entities, including broadband, Internet, intranet, multimedia, videoconferencing, wireless/remote access, local provisioning, application, and consulting services. Infonet is a single-source partner for its customers; in particular its IP VPN solutions offer multinationals both private and public Internet protocol services as well as a full set of managed security and mobility services. Infonet services a key market for global IP based services in the United States, with \$182 million of sales. BT's acquisition of Infonet will significantly deepen BT's presence in the United States and strengthen its ability to provide IT and networking services to multi-site companies and organizations based in this country. *Id.*

⁴⁴ Deutsche Telekom: Company, available at <http://www.telekom3.de/enp/comp/home/cc-startseite.html>.

Systems “provides single-source information technology and telecommunications convergence solutions for Global 2000 corporations, . . . [offering] a portfolio of integrated solutions including network and carrier services, managed services, hosting, desktop and asset management services, systems integration as well as business process and continuity consulting, enabling companies to increase profits, improve performance and increase productivity.”⁴⁵

T-Systems recently launched Layer 2 IP VPN service, created “in response to carrier and ISP demand for global networks.”⁴⁶ The MPLS-based Layer 2 service VPN solution “provides Ethernet access into any of ICSS’ global points of presence, . . . [and] delivers on the growing need for ISPs and carriers to fulfill their international aspirations by delivering a ‘virtual global presence’ without the capital outlay.”⁴⁷ T-Systems markets this service as a solution providing the necessary flexibility “to rapidly address the growing VoIP and managed services market, without needing to invest in the backbone infrastructure.”⁴⁸

In 2004, T-Systems partnered with Level 3 to provide T-System’s MPLS-based service portfolio to customers across the entire Level 3 fiber network, spanning approximately 30,400 km in North America, including multi-conduit metropolitan

⁴⁵ T-Systems: Business flexibility *available at* http://www.t-systemsus.com/index_frame_ie.html.

⁴⁶ Press Release, Deutsche Telekom, T-Systems launches Layer 2 IP VPN in response to carrier and ISP demand for global networks (June 28, 2004) *available at* http://www.t-systemsus.com/site/Private_line.html.

⁴⁷ *Id.*

⁴⁸ *Id.*

networks in 27 American cities and over 100 points-of-presence in 68 U.S. cities.⁴⁹ T-Systems claims that its MPLS data service allows corporate customers to use a complete solution for a variety of applications, including corporate WANs, voice applications, disaster recovery networks, data overflow networks, video distribution networks and IP backbones, and is “ideal” for building multi-location, point-to-point networks that are scalable, secure, reliable and cost-effective.⁵⁰

Because of its global reach, financial security and U.S. customers’ name brand recognition,⁵¹ DT is an attractive option for U.S. business customers with international needs, or for international business customers with locations in the United States.

Telefónica is one of the largest European telecommunications companies, and asserts that it is “a multi-domestic operator” with a “global scope.”⁵² Telefónica is present on three continents, and offers corporate international services in over 70 countries.⁵³ Although Telefónica’s presence is concentrated on Spanish and Portuguese speaking countries, it provides enterprise services in the United States through its subsidiary **Telefónica U.S.A.**, headquartered in Miami, Florida. Telefónica USA

⁴⁹ Press Release, T-Systems, T-Systems expands reach of MPLS-based network (Mar. 4, 2004) *available at* <http://www.t-systems.com/coremedia/generator/www.t-systems.com/en/Home/Press/templateId=renderNormal/iPageContentID=7714/.HomePos=1/id=15862.html>.

⁵⁰ *Id.*

⁵¹ T-Systems: Welcome to T-Systems North America, *available at* http://www.t-systemsus.com/index_frame_ie.html.

⁵² Telefónica: About Telefónica: Description of the Group: International Presence, *available at* <http://www.telefonica.es/acercadetelefonica/eng/1descripcion/2presencia.html>.

⁵³ *Id.*; Telefónica: International Services, *available at* <http://www.us.telefonica.com/internationalservices/index.htm>.

delivers business solutions for U.S. and Puerto Rico-based multinational firms requiring network connectivity services in throughout Latin America and the Caribbean.

Telefónica's KeyCenter, located in Miami, and its globally interconnected DataCenters provide telecommunications connectivity between the U.S., Latin America and Europe, permitting customers to locate data at a central location while enhancing the users' global network reach, bandwidth, and data access.⁵⁴ Specific solutions offered by the company include service integrating management of virtual private networks with management of local wireless networks, IP VPN based on new MPLS standards, integration of the Telefónica Internet Center into clients' private virtual networks, storage, processing and security resources, and Service Level Agreements.⁵⁵ Telefónica also provides communication solutions for small and medium enterprises, including multimedia services, and suites of business solutions and applications (particularly the ADSL solutions).⁵⁶ In October 2004, Telefónica partnered with Alcatel to offer Enterprise network services, focusing on IP telephony, contact centers and unified communications.⁵⁷

In September, Unisys, a provider of managed services for the IT infrastructure, selected Telefónica USA for the connection of its Latin America telecommunications

⁵⁴ Telefónica: Hosting & Asp's, *available at* http://www.us.telefonica.com/hostingasps/hosting_services/housing/keycenter/index.html.

⁵⁵ Telefónica Annual Report 2003: Corporate Information, *available at* <http://www.telefonica.es/informeannual/infome2003/ing/mtml/home>.

⁵⁶ *Id.*

⁵⁷ Matthew Friedman, *Alcatel and Telefonica Ally To Offer Enterprise Network Services*, webservices pipeline (Oct. 13, 2004) *available at* <http://informationweek.webservicespipeline.com/management/49901325>.

network.⁵⁸ As part of the agreement, Telefónica will provide telecommunications connectivity to Unisys between facilities in Pennsylvania and Minnesota and eight locations throughout Latin America as part of the overall Unisys-designed global network.⁵⁹ The U.S.-based facilities will be interconnected with locations in Argentina, Brazil, Chile, Mexico, Colombia, Venezuela, Peru and Costa Rica.⁶⁰

Nippon Telegraph and Telephone (NTT) is the largest telecommunications company in the world.⁶¹ NTT's presence in the U.S. is through two subsidiaries in the United States: NTT America, and Verio. NTT/Verio provides traditional business telecommunications services, such as voice, frame relay, ATM, and VPN, together with IP services, such as hosting and high-bandwidth connectivity.⁶² When NTT paid \$5.5 billion to acquire Verio in September 2000, Verio was the largest domain-based Web hosting provider in the world, with customers in more than 170 countries.⁶³ NTT/Verio is expanding its U.S. operations, creating a U.S. to Asia ATM network⁶⁴ and offering

⁵⁸ Press Release, Telefónica, Unisys Selects Telefonica USA for Latin America Network, available at http://www.us.telefonica.com/press/press_04.htm.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Verio: Corporate Information, available at <http://www.verio.com/about/corporate/> (“Verio is a wholly owned subsidiary of NTT Communications, the world’s largest telecommunications company.”); Chris Diceman, *Nippon Telegraph and Telephone Corporation: Credit Rating Report*, Dominion Bond Rating Service, (Jan. 19, 2005) available at <http://www.dbrs.com/web/sentry?COMP=2900&DocId=146991> (discussing Japanese government ownership).

⁶² See <http://www.nttamerica.com/arcstar/network/bandwidth.html> (discussing NTT product offerings); <http://www.verio.com> (discussing Verio services).

⁶³ Verio: Background Information: VERIO, an NTT Communications Company, CORPORATE PROFILE, available at <http://www.verio.com/about/corporate/background.cfm>.

⁶⁴ See NTT America, *Together with StarHub, Completes Installation of ATM Network to Asia for SingAREN; Trouble-free installation up and running far ahead of anticipated*

new IP VPN nodes,⁶⁵ and it currently is the world's largest operator of websites for business, through its world-class global IP network.⁶⁶

NTT/Verio's competitive strength has been enhanced by two recent developments: NTT was recognized as the "Best Global Carrier" at the World Communications Awards 2004, and it has been lauded for the development of a new Internet Protocol – Ipv6.⁶⁷ IPv6 is a new protocol for carrying information over the Internet, and NTT/Verio's advantage lies in the fact that it is the first to offer services using IPv6 in the United States.⁶⁸

One potential customer that is very interested in services utilizing IPv6 is the Department of Defense.⁶⁹ Other potential government customers have also expressed interest, including the Departments of Homeland Security, Commerce, and Transportation.⁷⁰ Using its competitive advantage and an early adopter of the IPv6

Footnote continued from previous page
due date, business wire (Apr. 2, 2002) available at <http://www.businesswire.com/webbox/bw.040202/220920235.htm>.

⁶⁵ See NTT America Opens Chicago IP VPN Node, The Whir (Jan. 16, 2003) available at <http://findvpn.com/news/ntt011603.php>.

⁶⁶ About Verio, available at <http://www.verio.com/about/>.

⁶⁷ NTT Communications: Recent News: NTT Comm Named "Best Global Carrier" at World Communications Awards 2004 (Oct. 13, 2004) available at http://www.nttverio.com/en_US/news/index.cfm?fuseaction=press&date=home&id=806081098774471.

⁶⁸ *Id.*; see also *supra* n.23.

⁶⁹ See Carolyn Duffy Marsan, *IPv6 Fears Seem Unfounded*, Network World Fusion (Dec. 15, 2003) available at <http://www.nwfusion.com/news/2003/1215ipv6.html> ("[Maj. Roswell Dixon, who oversees IPv6 testing for the Joint Interoperability Test Command at Ft. Huachuca in Arizona] says the military is migrating to IPv6 because of the mobility and security benefits that it offers. 'We need IPv6 for network-centric warfare,' he says.").

⁷⁰ Dennis McCafferty, *IPv6: Defense's New Mechanism*, varbusiness (July 26, 2004) available at <http://www.varbusiness.com/nl/government/showArticle.jhtml?articleId=23901815>.

technology, NTT/Verio has announced its intention to pursue government contracts, especially with those entities that are required to employ IPv6.⁷¹ With some government customers, Verio has moved beyond mere interest. For instance the Library of Congress uses Verio to host the U.S. Law Library's Global Legal Information Network.⁷²

In addition to government customers, NTT/Verio is also developing products to serve enterprise businesses. As a complement to its web-hosting services, Verio is developing products specifically for the financial sector⁷³ and is competing for enterprise VPN services.⁷⁴ Verio is reported to have a very low churn rate in the enterprise sector.⁷⁵

⁷¹ See Matt Villano, *Verio Launches Government Channel Program*, CRN (Jan. 23, 2004) available at <http://www.crn.com/sections/breakingnews/breakingnews.jhtml?articleId=18826212&pritableArticle=true>; Verio, *ATS Team On Government Services*, theWhir (Oct. 22, 2004) available at <http://thewhir.com/marketwatch/ver102204.cfm>.

⁷² See Verio Partners With ATS To Provide Managed Hosting Solution To U.S. Law Library Of Congress Global Legal Information Network, HOSTREVIEW (Aug. 4, 2004) available at <http://www.hostreview.com/news/news/040804Verio.html>.

⁷³ See Verio Delivers Managed Hosting and Security Solutions To Financial Marketplace Provider Opt 4, Business Wire (July 27, 2004) available at <http://www.hosttrail.com/web-hosting-news/07-04/verio-0727.php>.

⁷⁴ See Verio Launches Enhanced Virtual Private Network Services, Offers Optimal Security For Enterprises, dbusinessnews, available at <http://www.verio.com/about/newsroom/articles/index.cfm?fuseaction=article&Year=04&id=243891096637516>; Matt Villano, *Verio Expands Managed VPN Service*, CRN (Sept. 28, 2004) available at <http://www.crn.com/sections/breakingnews/breakingnews.jhtml?articleId=47903575>; Stephen Swoyer, *Verio Unveils VPN Managed Service for the Enterprise*, ENTERPRISE SERVICES JOURNAL (Mar. 25, 2003) available at <http://www.esj.com/news/article.aspx?EditorialsID=467>; Verio Enterprise Hosting Solutions Recognized For Product Innovation, HOST BYTE (Oct. 12, 2004) available at <http://www.hostbyte.com/hosting-news/1144/>.

⁷⁵ Chris McKinzie, (VP Business Management & Finance, Enterprise Hosting Business Unit, Verio), *Determining the Stability of a Service Provider*, ASPNEWS.COM (Sept. 15, 2003) available at <http://www.aspnews.com/trends/article.php/3077521> ("Verio's Enterprise Hosting business unit, for example, has a churn rate of less than 0.01% for customers leaving due to dissatisfaction with service, which demonstrates the company's commitment to providing exemplary customer service and dedicating ample resources to its product offerings.").

Singapore Telecom (“SingTel”) is the second largest telecommunications provider in the Asia-Pacific region, providing voice and data services over fixed-line, wireless and Internet platforms in more than 20 countries around the world.⁷⁶ The company’s main footprint is in Southeast Asia and Australia (through its wholly-owned subsidiary SingTel Optus); however, “SingTel’s ability to support multi-national corporations (MNCs) on a cross-border basis is anchored by its extensive network of SingTel Global Offices (SGOs). Found in 34 cities in 16 countries and territories across Asia Pacific, Europe and the United States, the SGOs provide MNCs with a single point of contact.”⁷⁷ SingTel penetrated the United States telecommunications marketplace in 1993 through the establishment of its subsidiary **SingTel USA**, which provides direct links from the U.S. to countries throughout the Asia Pacific and Europe and offers an extensive suite of telecommunications services to U.S. business customers, including International Toll-Free Service (ITFS), International Private Leased Circuit, Frame Relay, ATM, IP-VPN, Internet access and Managed Hosting Services.⁷⁸ SingTel is an attractive option for U.S. companies seeking seamless, single-carrier connections to Asia.

Competitive Local Exchange Carriers (CLECs)

Although a complete enumeration of CLEC competitors providing voice and/or data service in competition with SBC and/or AT&T would be beyond the scope of this Appendix, several examples suffice to illustrate their presence as competitors in the

⁷⁶ SingTel: Company Profile, *available at* http://home.singtel.com/about_singtel/company_profile/default.asp.

⁷⁷ *Id.*

⁷⁸ SingTel: SingTel USA, *available at* http://business.singtel.com/singtel_us/default.asp.

business marketplace. **XO Communications** is the largest facilities-based CLEC in the U.S., with substantial coverage of SBC's in-region territory and SBC's out-of-region MSAs.⁷⁹ Its network features direct connections to thousands of buildings, multiple data centers, over 100 peering POPs, and a footprint of fixed wireless licenses covering 95% of the top U.S. businesses.⁸⁰ XO offers a broad portfolio of voice products, dedicated Internet, scalable private data networking, IP VPN, web hosting services, and integrated product bundling.⁸¹

Time Warner Telecom provides data and voice services to businesses of all sizes via a nationwide fiber network.⁸² Its network extends to 44 metropolitan areas and offers lit fiber to more than 5,000 buildings.⁸³ Time Warner Telecom competes in numerous parts of SBC's in-region area, including California, Illinois, and Texas.⁸⁴ Its services include a wide array of voice and data services, from simple network transport to advanced network management services.⁸⁵ The company reports more than 10,000

⁷⁹ See XO: Complete Network Assets *available at* http://www.xo.com/about/network/maps/complete_normal.html.

⁸⁰ XOXO Network, *available at* <http://www.xo.com/about/network/>.

⁸¹ XO: Our Story: Extensive Product Portfolio, *available at* <http://www.xo.com/about/ourstory/portfolio.html>.

⁸² See New Paradigm Research Group, "CLEC Report 2005: Time Warner Telecom Inc.," at 5.

⁸³ See Time Warner Telecom Investor Presentation at 4 (Feb. 5, 2005).

⁸⁴ See New Paradigm Research Group, "CLEC Report 2005: Time Warner Telecom Inc.," at 15.

⁸⁵ See Time Warner Telecom Investor Presentation at 8 (Feb. 5, 2005).

customers, and over \$650 million in annual revenue.⁸⁶ Time Warner Telecom plans in 2005 to aggressively push a VoIP solution aimed at larger business customers.⁸⁷

McLeodUSA is one of the largest CLECs in the U.S., catering to small and medium businesses.⁸⁸ It offers local service in 25 Midwest, Northwest, Southwest and Rocky Mountain states, and it also provides Internet services throughout most of the continental U.S.⁸⁹ It offers a host of voice and data products, from traditional local and long distance to VoIP on the voice side, and everything from dial-up and broadband Internet access to public and private VPNs, web hosting, and managed services on the data side.⁹⁰ In terms of VoIP, McLeod has completed customer trials in four of its cities – Denver, Dallas, Detroit and Chicago – and is launching a business VoIP offering in those immediately.⁹¹ There are plans to expand the offer to 35 metropolitan areas within the company’s 25-state footprint by the end of second quarter 2005.⁹² McLeod is

⁸⁶ See Press Release, Time Warner, Time Warner Telecom Announces Strong Fourth Quarter 2004 Results (Feb. 10, 2005) available at <http://investor.news.com/Engine?Account=cnet&PageName=NEWSREAD&ID=1730789&Tucker=TWTC&SOURCE=LATU11302022005-1>

⁸⁷ See New Paradigm Research Group, “CLEC Report 2005: Time Warner Telecom Inc.,” at 4.

⁸⁸ Communications Markets Analysis, Telecommunications, United States: Major Operators, ESPICOM Business Intelligence Ltd. (Oct. 28, 2004).

⁸⁹ McLeod USA: Large Business FAQs available at <http://www.mcleodusa.com/Support/DisplayMarketFAQs.do;jsessionid=0000ZSD4yUqBN85ZG971P10WHQ:uqqeh5mv?faqTypeId=3#34>.

⁹⁰ McLeod USA Large Businesses, available at http://www.mcleodusa.com/MarketSegment.do?com.mcleodusa.req.MARKET_SEGMENT=ENTERPRISE.

⁹¹ *McLeod, Skype & Vonage Up The VoIP Ante*, TELECOMWEB NEWS DIGEST (Dec. 23, 2004).

⁹² *Id.*

offering its VoIP service over standard T1 lines in combination with 1.544 Mb/s Internet access.⁹³

Currently, **Covad** provides a host of broadband services, including DSL, VoIP, T-1, hosting, managed security, and bundled voice and data.⁹⁴ Its broadband services are available in 44 states and 235 MSAs, reaching over 50% of U.S. homes and businesses.⁹⁵ The company's focus is on small to medium-sized business and home consumers,⁹⁶ but Covad sees considerable promise in offering VoIP to "distributed enterprises," especially franchise businesses and retail stores with multiple locations.⁹⁷ To support its VoIP service, Covad recently purchased GoBeam, a VoIP provider. Covad recently completed a nationwide roll-out of business-class VoIP, with availability in 125 major metropolitan areas, covering 900 cities.⁹⁸ Covad is looking to VoIP as a means to transform it from a broadband company into an integrated voice and data communications provider.⁹⁹

⁹³ *Id.*

⁹⁴ Press Release, Covad, Covad Responds to FCC Remand Order (Feb. 7, 2005) *available at* http://www.covad.com/companyinfo/pressroom/pr_2005/020705a_news.shtml.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Press Release, Covad, Covad releases white paper on future of Voice-Over-Internet-Protocol (VoIP) Service Offerings (July 20, 2004) *available at* http://www.covad.com/companyinfo/pressroom/pr_2004/072004_news.shtml; *see also* Communications Daily, July 21, 2004.

⁹⁸ Press Release, Covad, Covad Completes Nationwide Rollout of Business-Class VoIP (Dec. 9, 2004) *available at* http://www.covad.com/companyinfo/pressroom/pr_2004/120904_news.shtml.

⁹⁹ Covad Commits to Acquisition of GoBeam, Accelerates VoIP Launch, telecom web news digest, (Mar. 8, 2004.) *available at* <http://www.telecomweb.com/news/1078346294.htm>.

Birch Telecom targets small and mid-sized businesses,¹⁰⁰ and it has 140,000 customers in more than 50 metropolitan areas across 12 states in the South and lower Midwest, including Texas, Missouri, Oklahoma, and Kansas. Birch owns and operates an integrated voice and data network, and offers a broad portfolio of local, long distance and Internet services.¹⁰¹ The company positions itself as being a low-cost provider.¹⁰² For example, it offers a low-cost IP-based VPN service, called “Teleworker,” that is designed to be simple to use and inexpensive, describing it as “a fraction of normal cost.”¹⁰³

Cable MSOs

Time Warner Cable offers customers a national IP network and extensive local fiber networks in its territory. In attracting enterprise customers, the company highlights its expertise in establishing Metro Ethernet networks within the 22 states and 44 cities in

¹⁰⁰ Birch Telecom: About Birch: Company Profile, *available at* http://www.birch.com/about_birch/ (“Throughout its history — from start-up to its evolution as one of the largest competitive providers in the central and southern United States — Birch has consistently focused on the small and mid-sized business segment.”).

¹⁰¹ Press Release, Birch Telecom, Birch Telecom Focuses on Larger Texas Markets (Nov. 9, 2004) *available at* <http://www.birch.com/newsreleases/2004/110904.shtml>.

¹⁰² Press Release, Birch Telecom, Increased Network Efficiency Enables Birch Telecom to Lower Price of Business-Class DSL (Nov. 18, 2003) *available at* <http://www.birch.com/newsreleases/2003/111803.shtml> (“This is the second major price reduction involving high-speed Internet service that Birch has announced in a little more than a year. In August of 2002, Birch jolted the industry by cutting the price of a full T-1 to \$399. SBC had been charging \$1,000 or more for a comparable product.”).

¹⁰³ Press Release, Birch Telecom, Birch Telecom Launches Low-Cost Remote Access, Networking Services Across 5 States (Feb. 26, 2004) *available at* <http://www.birch.com/newsreleases/2004/022604.shtml> (The five new states are: Kansas, Louisiana, Missouri, Oklahoma and Texas. Birch had already offered the service in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee).

which it has a presence. Time Warner's broadband network offerings feature point-to-point connectivity, point-to-multipoint connectivity, teleworker aggregation, or Internet access to business customers,¹⁰⁴ and it currently offers teleworker connectivity to approximately 500 enterprise customers, connecting remote workers and branch offices to their main facilities.¹⁰⁵

Time Warner has aggressively targeted enterprise customers, especially through a variety of Ethernet business services, such as private line, private LAN, and broadband Internet connections. Time Warner's products take advantage of its extensive metropolitan fiber networks, which are independent of existing telecom providers.¹⁰⁶ Some of its products, such new storage solutions, cater to the specific disaster recovery needs of the financial sector.¹⁰⁷ Cable companies like Time Warner are increasingly seen by others in the industry as viable competitors, especially for business data.¹⁰⁸

¹⁰⁴ Time Warner Cable: Products and Solutions: Enterprise Technology, *available at* <http://www.twcbroadband.com/solutions/enterprise.cfm>.

¹⁰⁵ *Road Runner Business Class Further Penetrating Growing Business Market With Customized Offerings: Time Warner Cable Introduces New Enterprise Solutions for Largest Companies* (July 8, 2004) *available at* <http://www.TimeWarnercable.com/InvestorRelations/PressReleases/TWCPressReleaseDetail.ashx?PRID=139&MarketID=>.

¹⁰⁶ International Telecommunications, Intelligence Telecommunications, ESPICOM Business Intelligence Ltd. (Feb. 8, 2005.) ("Time Warner Cable of New York and New Jersey offers Optical Ethernet and Storage Services using Nortel Solutions").

¹⁰⁷ *Id.*

¹⁰⁸ Communications Daily, Nov. 12, 2004, *available at* 2004 WL 60707756 ("To the contrary, cable companies are actively competing in the high-speed data market for business customers," BellSouth said: "Cable companies are presently providing high-speed data services to several hundred thousand business customers across the nation ranging from one-employee home offices to Fortune 500 companies and are actively expanding their range of data services to small, medium and enterprise business customers").

Time Warner has gained ground in the enterprise segment, even as traditional carriers were hard hit by competition.¹⁰⁹ Time Warner reported a 13%, \$9.3 million year-over-year rise in enterprise revenue for the second quarter of 2004.¹¹⁰ This continues the 24% jump in Internet and data growth the company reported in fourth quarter 2003, largely due to improved Ethernet and IP product sales to enterprise customers.¹¹¹ The company's broadband networking products are already serving hundreds of enterprise customers, providing remote access for connecting remote workers and branch offices to the main locations.¹¹²

Similarly, **Cox Communications** competes to supply voice and data services through its Cox Business Solutions organizations. It provides local and long distance voice, toll-free services, data services (including Internet access) to over 100,000 businesses.¹¹³ While it has traditionally focused on small and mid-sized business customers, it has increasingly focused on larger customers.¹¹⁴ Like others, Cox plans to use VoIP as a way to leverage its network to provide competitive voice services to business.¹¹⁵

¹⁰⁹ Ed Gubbins, *Enterprise Prices Plummet, Competition Takes Its Toll*, telephony, (Aug. 16, 2004) available at <http://www.keepmedia.com/pubs/Telephony/2004/08/16/528201?3xtID=10026>.

¹¹⁰ Communications Daily, Feb. 3, 2004.

¹¹¹ *Id.*

¹¹² Communications Daily, May 5, 2004.

¹¹³ Frost & Sullivan, Cable Telephony Services Markets at 1-29 (2004).

¹¹⁴ See Press Release, Cox Enterprise Presents Even "Bigger" Opportunity for Cox Business Services in 2004 (Mar. 29, 2004) available at <http://www.coxbusiness.co/PR/04-0329.html>.

¹¹⁵ See Press Release, Cox, Telco Convert Stemper has Given Cox's Commercial Prospects a Solid Boost (July 7, 2004) available at www.coxbusiness.com/

Comcast's business offerings focus solely on its network capability. It offers Internet access, managed network services, VPN to connect smaller offices, branch locations, and off-site employees.¹¹⁶ Comcast delivers service in 41 states, including presence in 22 of the top 25 MSAs, and has over 90,000 miles of fiber-optic cable nationwide.¹¹⁷

Incumbent Local Exchange Carriers (ILECs)

Verizon offers services in its incumbent region and out-of-region through CLEC Verizon Avenue, a subsidiary.¹¹⁸ The strategy of Verizon's Enterprise Solution Group (ESG) has focused on serving the out-of-region network requirements of its in-region enterprise customers: "ESG is now building an infrastructure that allows it to support enterprise customers on a broader basis. Verizon has built-out metro rings in key cities across the country and connected these locations through a national MPLS-based backbone network that was completed earlier in 2004. Verizon's Enterprise Advance network reaches 56 metropolitan areas and as of April 2004, Verizon claims to have signed over 1,800 national contracts with more than 900 customers (90 of which are Fortune 500 companies)."¹¹⁹ "Verizon targets large enterprises for their VPN services,

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PR/recentmedia/204_07_07_ced.asp ("[VoIP] will open up new reach and new opportunities with minimal capital").

¹¹⁶ Comcast: Medium and Large Enterprises: Robust and Reliable Internet and Network Services, *available at* <http://www.comcastcommercial.com/index.php?option=content&task=view&id=20>.

¹¹⁷ Comcast: Our Network: Leading-Edge Network From A Trusted Provider, *available at* <http://www.comcastcommercial.com/index.php?option=content&task=view&id=4&Itemid=34>.

¹¹⁸ New Paradigm Resources Group, Inc., "VoIP Report: Verizon," at 2 (2004).

¹¹⁹ Stratecast Partners, "Assessment of Verizon ESG," at 12-13 (June 2004) *available at* http://www.stratecast.com/pdf/t1sp_1-04_toc.pdf.

particularly from the financial services, government, health care, and education sectors. They are particularly striving to provide national MPLS VPN service for their strong base of customers in the Northeast, but also have customers from other parts of the country.”¹²⁰

BellSouth has offered VoIP services of some form to business customers since 2001, “ensuring that its relative strength in the enterprise data market would not be eroded by others bringing IP PBX solutions to the table.”¹²¹ Moreover, as one industry analyst has noted, “BellSouth has been very successful this past year with their MPLS VPN service. They have sold their Network VPN to over 500 customers. Most of these customers come from the health care, financial services, retail, manufacturing and government sectors.”¹²² Although most of these customers are headquartered in BellSouth’s nine-state region, some operate nationally.¹²³ BellSouth has also focused on small-medium businesses by offering a VoIP package that includes network transport and integration and managed services.¹²⁴

System Integrators

EDS is recognized as the largest independent systems management and services firm in the United States.¹²⁵ EDS focuses mostly on large business customers, such as

¹²⁰ *Id.*

¹²¹ New Paradigm Resources Group, Inc., “VoIP Report,” at 2 (2004).

¹²² In-Stat, High Growth and Lots of Opportunity: The US IP VPN Services Market, at 21 (Jan. 2005).

¹²³ *Id.* at 2 (Customers include Sy’s Supplies, Alagasco, Brasfield & Gorrie, Alacare and Florida Hospital.).

¹²⁴ *Id.*

¹²⁵ EDS Investor Guide, available at <http://www/investorguide.com/cgi-bin/research.cgi?name=EDS>.

the communications, financial services, healthcare, energy, manufacturing, transportation, and consumer and retail industries; and also foreign governments.¹²⁶ EDS offers IT outsourcing, business process outsourcing, custom applications, operations solutions, and consulting. EDS is also a pioneer in the VoIP arena and has further bolstered its cost competitiveness in VoIP by signing a November 2003 contract with 3Com for switches, routers, and VoIP products.¹²⁷ SBC frequently encounters EDS as a serious competitor on significant bids.

Over the past decade, **IBM Global Services** has been a leader in the IT marketplace's shift of focus from selling hardware, software and services, to the creation of solutions to clients' businesses.¹²⁸ IBM Global Services generated \$55 billion in services signings in 2003, making up 48% of its total revenue.¹²⁹ IBM's acquisition of Systemcorp on October 12, 2004 makes IBM an ever stronger competitor in the enterprise solutions marketplace.¹³⁰

Similarly, **SAIC** is a major telecom consultant, with over 30 years of consulting and systems integration experience to the telecommunications market: "SAIC helps enterprises and service providers realize the power of converging voice, data, and video

¹²⁶ SEC Form 10-K, Electronic Data Systems Corp. at 2 (Mar. 15, 2004).

¹²⁷ Press Release, EDS, 3COM and EDS Launch New Relationship; EDS To Include 3COM Products Into Its Solutions (Nov. 25, 2003) *available at* http://www.eds.com/news/news.aspx?news_id=1789.

¹²⁸ IBM Annual Report, at 43 (2003).

¹²⁹ *Id.* at 5.

¹³⁰ *See Yankee Group, "IBM Buys into Business Technology Optimization,"* at 1 (Nov. 1, 2004) ("Canadian-based Systemcorp, which already was an IBM partner, provides some of the applications required to move IBM into the IT governance (ITG) arena, a key component to developing a full business technology optimization (BTO) solution.").

across a single communications network.”¹³¹ SAIC offers a wide variety of services ranging from value assessment, IT strategy, and planning. It is a leading provider of systems integration, engineering, and R&D services to the U.S. government.¹³²

Accenture is a global provider of management consulting, technology and outsourcing services for high-performance businesses and governments.¹³³ The company generated \$13.67 billion of net revenues for fiscal year 2004.¹³⁴ Analysts perceive Accenture as “a ‘blue chip’ IT services name, with a strong management team [and] entrenched client relationships Accenture’s business is over 60% consulting and just under 40% outsourcing, with BPO/BTO (business process and transformational outsourcing) segments serving as key growth areas.”¹³⁵ On February 2, 2005, Accenture and BT entered a 10-year, \$575 million business process outsourcing (BPO) and transformation contract for human resource administration resources.¹³⁶ According to David Clinton, president of Accenture Services, this deal represents “a tremendous vote of confidence in the industry, in the business value of outsourcing, and in Accenture’s

¹³¹ SAIC: Value Assessment for the Next Generation, *available at* <http://www.saic.com/telecom/telephony/ValueAssess.pdf>.

¹³² SAIC: Feature Articles: SAIC Provides Converged Voice and Data Solutions to Enterprise Customers, *available at* <http://www.saic.com/cover-adrchive/telecom/ngin.html>.

¹³³ News Release, Accenture, BT and Accenture Sign 10-Year Outsourcing Contract to Transform and Expand HR Services, (Feb. 2, 2005) *available at* http://www.accenture.com/xd/xd.asp?it=enweb&xd=_dyn\dynamicpressrelease_802.xml.

¹³⁴ *Id.*

¹³⁵ Bernstein Research Call, “Improving Cycle and Upcoming Spending Themes Create Opportunity, Though Secular Challenges Remain,” at 8 (May 4, 2004).

¹³⁶ News Release, Accenture, BT and Accenture Sign 10-Year Outsourcing Contract to Transform and Expand HR Services, (Feb. 2, 2005) *available at* http://www.accenture.com/xd/xd.asp?it=enweb&xd=_dyn\dynamicpressrelease_802.xml.

ability to deliver a consistent level of global support to multinational clients aiming to achieve high performance in their businesses.”¹³⁷

Computer Sciences Corporation provides telecommunications solutions including front-end consulting and planning; systems design and integration; IT and business process outsourcing; applications software development; Web and application hosting; and management consulting.¹³⁸ CSC has positioned itself to meet the specific challenges of the government as well as large businesses. With the 2003 acquisition of DynCorp, for example, CSC strengthened its position as a leading federal government contractor. CSC now ranks number three on *Washington Technology's* Top 100 providers of IT services to the government.¹³⁹ To serve large businesses, CSC has secured global alliance partnerships with leading Enterprise Resources Planning providers – SAP and Oracle.¹⁴⁰ The company reported \$17.2 billion in major business awards in 2004.¹⁴¹ These awards include a 20-year, \$1.1 billion award to provide simulator-based flight training and related support to the U.S. Army Aviation Center at Fort Rucker, Alabama and a 10-year, \$250 million agreement to provide IT services to Providian Financial Corporation, one of the leading financial services companies in the United States.¹⁴² CSC recently signed a five-year global IT management services

¹³⁷ *Id.*

¹³⁸ CSC Annual Report (2004) available at http://www.csc.com/investorrelations/uploads/CSC_AR04.pdf.

¹³⁹ *Id.*

¹⁴⁰ See CSC: Enterprise Solutions, available at <http://www.csc.com/solutions/enterprisesolutions/>.

¹⁴¹ CSC Annual Report (2004), available at http://www.csc.com/investorrelations/uploads/CSC_AR04.pdf.

¹⁴² *Id.*

agreement with Sun Microsystems valued at \$360 million, in which CSC will manage Sun's full portfolio of internal business systems applications in the U.S., Europe and Asia Pacific.¹⁴³ The Company stated: "The depth and breadth of our experience in applications support, combined with our ability to operate seamlessly around the world, make CSC ideally suited to help Sun achieve transformational results."¹⁴⁴

Equipment Manufacturers and Value-Added Resellers

Cisco is a leading IP-telephony vendor.¹⁴⁵ Although Cisco primarily distributes its products through telecommunication service providers, it has also focused on selling straight to enterprise customers by offering its suite of management tools.¹⁴⁶ With respect to IP-telephony equipment, the Yankee Group reports: "Cisco dominates the market because enterprises have chosen to deploy and manage VoIP networks internally. Enterprise testing VoIP are doing so within the enterprise data network department – the domain of Cisco. This has given Cisco a tremendous head start."¹⁴⁷ Cisco also has products designed for small and medium businesses. For example, the Cisco Mobile Office solutions offer high bandwidth and complete access to corporate LANs, through both wired and wireless solutions.

¹⁴³ Press Release, CSC Signs \$360 Million Managed Applications Services Agreement with Sun Microsystems (Feb. 2, 2005) *available at* <http://www.csc.com/newsandevents/news/3421.shtml>.

¹⁴⁴ *Id.*

¹⁴⁵ Yankee Group, "The Promising Outlook for Managing Enterprise VoIP, Part 2," at 5 (May 25, 2004).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* ("Enterprises are also intrigued by the ability to run Cisco Call Manager on a Windows or Linux environment within the enterprise network. Although this requires careful management, it also offers unique flexibility and a more apparent path to complete voice and data convergence").

Avaya is also a significant IP-based telephony vendor, offering products and consulting services. Avaya focuses primarily on serving enterprise customers directly. Its Global Services organization, the support group for Avaya equipment, provides enterprise customers with a host of management options including in-house, remote and hosted telephony solutions.¹⁴⁸ “Avaya Global Services has built many of its own network and equipment management tools. . . . The company’s strength is its number two position (first in IP among legacy TDM vendors). Avaya has an advantage when enterprises are migrating from TDM to IP-enabled PBX systems.”¹⁴⁹

Nortel is a major vendor of broad-based networking solutions, and like Cisco is a direct competitor for large business customers: “Leveraging the skills it honed serving carriers, Nortel continues to provide strong service and support to large enterprises.”¹⁵⁰ “Like most of its competitors, Nortel’s long-term enterprise strategy is focused on data, voice and application convergence.”¹⁵¹ The Yankee Group reports: “Nortel has a renewed commitment to enterprise networking, a slew of new products, channel leverage, a credible end-to-end solution and migration story of IPT, and improving finances.”¹⁵² Moreover, Nortel has been successful in offering attractive new products to SMBs, including IP-PBX packages.¹⁵³

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Yankee Group, “Enterprises Should Keep Nortel on Their Network Infrastructure Vendor Short Lists,” at 1 (Sept. 29, 2004).

¹⁵¹ *Id.*

¹⁵² *Id.* at 2.

¹⁵³ *Id.*

Alcatel designs, supplies and installs telecommunications infrastructure (voice, data and video) and voice-data enterprise networks while providing associated applications and services.¹⁵⁴ In 2003, Alcatel consolidated its share in several key segments, such as broadband access, wireless infrastructures, and IP telephony.¹⁵⁵ Alcatel's enterprise division is rapidly moving in the direction of IP; during the first quarter of 2004 Alcatel shipped 35 percent of its large PABX lines as IP Telephony.¹⁵⁶ Products and services Alcatel provides to enterprises include converged IP telephony and contact center solutions as well as a comprehensive suite of enterprise switch products.¹⁵⁷ Alcatel's portfolio of products for service providers includes broadband access, optical transport, class/4 switching – with over 310 million lines positioned world-wide – and intelligent networks.¹⁵⁸ Alcatel also develops and supplies satellite based communications systems.

Lucent is committed to augmenting its presence in converged network solutions services, particularly mobile high-speed data, VoIP, next-generation optical networking and broadband access.¹⁵⁹ Lucent develops and supplies DSL services, enhanced business

¹⁵⁴ Alcatel Business Highlights (2003) available at http://www.alcatel.com/apropos/report/?jsessionid=ASXGR1VYI0HXSCTFR0GU1DYKMWHI23GC?_requestid=40531.

¹⁵⁵ *Id.*

¹⁵⁶ *Competition in the Communications Marketplace: How Convergence Is Blurring the Lines Between Voice, and the Internet Video, and Data Services: Hearing Before the Subcomm. on Telecommunications and the internet of the House Comm. on Energy and Commerce, 108th Cong. 85 (2004) (Statement of Jack Jachner Senior Director, Research and Innovation of Alcatel North), available at <http://www.access.gpo.gov/congress/house/house05ch108.html>.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ See Lehman Brothers, "Lucent Technologies Company Update," at 1 (May 25, 2004).

services, enhanced frame Relay and ATM Services, Ethernet over SONET ("EoS"), IP Centrex Services, managed contact center and managed wavelength services.¹⁶⁰ The company's customer base includes communications service providers, governments and enterprises worldwide. Lucent reported over \$9 billion in revenue for fiscal year 2004, \$2.98 billion of which came from its Integrated Network Solutions.¹⁶¹ In 2004, Lucent acquired Telica, a privately held company that provides VoIP communications switching equipment for delivering enhanced voice services over both IP and legacy networks.¹⁶² Analysts predict that this acquisition "materially helps Lucent be more competitive" in providing converged network solutions to the business customers: "Lucent bolsters its product portfolio in the rapidly growing voice-over-packet, VOP, systems market and is expected to add more than 60 carrier customers to its client base, which is a meaningful increase from the company's current base of around 15 announced customers."¹⁶³

Siemens Communications Group supplies enterprises, carriers and service providers a broad range of telecommunications products and services for wireless, fixed and enterprise networks.¹⁶⁴ Siemens Enterprise Networks, a division of Siemens Communications, is a strong competitor for converged communications solutions. Its

¹⁶⁰ See Lucent Techs: Solutions for Enterprises, *available at* <http://www.lucent.com/enterprise/> (discussing Lucent services).

¹⁶¹ Press Release, Lucent Techs, Lucent Technologies Reports Results for the Fourth Quarter and Fiscal Year 2004 (Oct. 20, 2004) *available at* <http://www.lucent.com/press/1004/041020.coa.html>.

¹⁶² See Lehman Brothers, "Lucent Technologies Company Update," at 1 (May 25, 2004).

¹⁶³ *Id.*

¹⁶⁴ Press Release, Siemens, Siemens and Microsoft Announce Worldwide Alliance to Bring Real-Time Communication and Collaboration Solutions to Market (Jan. 11, 2005) *available at* http://www.siemens.com/index.jsp?sds_p=c23su001237202pHPnflmi1171893&sdc_bcpaht=1077883.s_0%2c&.

customer base includes Howard University, Kodak, Dole, AOL, AT&T, BellSouth, Ford, U.S. Army, NASA, Coca Cola, BP Amoco, Bayer, and Lufthansa.¹⁶⁵ In January 2005, the company aligned with Microsoft in a multi-year agreement to deliver enterprise-grade, presence-enhanced calling, video and Web conferencing, and collaboration solutions to business customers in the U.S. and abroad.¹⁶⁶ According to analysts, “this is a smart move that can help a very broad customer base transition smoothly to next generation Voice over IP solutions.”¹⁶⁷

¹⁶⁵ See Siemens Corporate Overview, available at <http://enterprise.usa.siemens.com/company/news/corporate.html> (Siemens enterprise networks corporate overview).

¹⁶⁶ Press Release, Siemens, Siemens and Microsoft Announce Worldwide Alliance to Bring Real-Time Communication and Collaboration Solutions to Market (Jan. 11, 2005) available at http://www.siemens.com/index.jsp?sds_p=c23su001237202pHPnflmi1171893&sdc_bcpth+1077883.s_0%2c&.

¹⁶⁷ Id. (quoting Dr. Brent Kelly, a senior partner at Boston-based Wainhouse Research).