Before the
Federal Communications Commission
Washington, DC

In the Matter of	)	
	)	
SBC Communications Inc. and AT&T Corp.	)	WC Docket No. 05-65
Applications for Consent to	)	
Transfer of Control	)	

COMMENTS OF COX COMMUNICATIONS, INC.

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April 25, 2005

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Cox Communications, Inc.("Cox"), by its attorneys, hereby submits its comments in the above-referenced proceeding.[1]

I. Introduction and Executive Summary

In this proceeding, SBC Communications, Inc. ("SBC") and AT&T Corp. ("AT&T") are asking the Commission to approve the combination of (i) a Regional Bell Operating Company ("RBOC") covering a 13-state region and (ii) the majority owner of the nation's largest mobile carrier, Cingular Wireless, with (iii) the nation's largest competitive local exchange carrier ("competitive LEC"), (iv) the nation's largest interexchange carrier ("IXC") and (v) a Tier I Internet backbone provider. Each of these ownership interests standing alone represents a major force in the telecommunications marketplace. Together, they loom over virtually every aspect of communications in the lives of American consumers. For the reasons set forth below, the public interest mandates the adoption of specific merger conditions to protect consumers against the negative effects of such an overwhelming concentration of power and resources in one entity.

SBC and AT&T contend that such horizontal and vertical integration does not present any public interest concern. Five years ago, SBC also noted that "[a] broadband leviathan is

[1] *See Public Notice*, "Commission Seeks Comment on Application for Consent to Transfer of Control Filed by SBC Communications Inc. and A&T Corp.," DA 05-656 (released Mar. 11, 2005).

nothing new."[2] But SBC then urged the Commission to protect the public interest from the combination of Time Warner and AOL by imposing merger conditions, *first*, to preserve and strictly enforce existing legal requirements designed to prevent that entity from suppressing competition and, *second*, to prevent the combined companies from "try[ing] it [market domination] again in the extremely important new market space defined by high-speed Internet access services."[3] The same principles apply to this proceeding.

The proposed combination of SBC and AT&T not only recreates "Ma Bell" for consumers in SBC's 13-state region. It also extends this behemoth's reach to the Internet. And the anticompetitive threat posed by this combination will multiply with the prospective RBOC acquisition of MCI, Inc. ("MCI"), driving the nation to a future where these two surviving giants will control and manipulate the telecom framework to the detriment of competition and consumers unless the Commission takes decisive action now.

SBC and AT&T contend that the elimination of AT&T as an independent competitor has little market effect. In reality, of course, the merger permanently removes AT&T as a competitor against incumbent local exchange carriers ("incumbent LECs"), particularly the powerful RBOCs, in the marketplace for local telephone services. Once AT&T joins forces with SBC, it will no longer play a critical role in promoting and protecting the emergence of robust competition in the local telephone marketplace. To the contrary, the merged company will have every incentive to focus its attention on the few remaining competitors in the market and to adopt strategies that utilize its ubiquitous local networks to create additional anticompetitive delays and further raise costs for competitors. With this transaction, SBC also is buying AT&T's

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[2] Comment of SBC Communications Inc., *In the Matter of Applications of America Online, Inc. and Time Warner Inc. for Transfers of Control*, at 1, CS Docket No. 00-30 (filed Apr. 26, 2000).

[3] *See, e.g., id.* at 3, 17-18, 30-32, 37-38.

membership in the exclusive club of Tier I Internet backbone providers and its position as a key provider of medium- and short-haul transport services for competitive service providers. This combination similarly presents concerns about the ability of, and incentives for, the merged company to harm its competitors and their customers by raising costs and engaging in other anticompetitive conduct.

AT&T has long competed with SBC and other incumbent LECs, both through traditional and IP-based means, and SBC has every economic reason to acquire AT&T as a means of bolstering its local telephone market dominance and extending its reach in the Internet sector. Absent decisive Commission action, however, the promotion of SBC's economic interest will be at the expense of the public interest.

Accordingly, the Commission should adopt specific merger conditions to address the removal of AT&T as an independent entity in the telecom and Internet sectors. *First*, the Commission should adopt conditions to ensure that SBC/AT&T provides facilities-based competitors such as Cox with nondiscriminatory and efficient interconnection and collocation on just and reasonable rates and terms, whether such competitors negotiate or arbitrate their own agreements or adopt the agreements of other competitors. *Second,* the Commission should adopt conditions, for a reasonable transition period, to ensure that the merged firm does not raise costs or otherwise act anticompetitively toward competitors that have Internet backbone peering arrangements with or purchase transport services from SBC and/or AT&T.

II. Merger Conditions Are Necessary To Ensure That SBC/AT&T Provide Interconnection And Collocation On Just And Reasonable Rates And Terms.

The Telecommunications Act of 1996 ("1996 Act") established a statutory framework for the introduction of telecommunications competition through three potential means – resale, use of incumbent LECs' unbundled network elements ("UNEs"), and facilities-based competition.

Recent Commission and court decisions have curtailed competitive LECs' cost-based access to incumbent LEC UNEs and UNE platform ("UNE-P") offerings. The demise of UNE-P and the restrictions on certain UNEs make it all the more important for policy makers to preserve the interconnection rights of facilities-based competitive providers such as Cox. In this environment, facilities-based carriers (including wireless carriers) and voice over Internet Protocol ("VoIP") service providers will offer the only meaningful competitive alternatives to the incumbent LECs' local telephone services. Indeed, SBC has relied on the promise of competition from these new entrants in its successful demands to regulators that access to UNEs be significantly restricted.[4]

But facilities-based competitive LECs and VoIP service providers cannot reasonably be expected to provide service without efficient collocation and interconnection with the incumbents' networks for the exchange of calls between their customers and those of the incumbents. SBC and other incumbent LECs own the country's only ubiquitous local telephone networks and are the only carriers to interconnect directly with all other incumbent LECs, competitive LECs, rural LECs, IXCs and wireless carriers. Their unique position in the marketplace creates strong incentives for them to impede and delay the introduction and expansion of competitive choices and to inflate interconnection and collocation costs for facilities-based competitors. Since these incentives will only increase now that the country's largest competitive LECs – AT&T and MCI – are permanently leaving the local telephone market as independent players, decisive Commission action is required to prevent the merged

[4] How meaningful this competition proves to be will depend on the success of surviving competitors in the face of the present expansion of the incumbents' market shares as many UNE-reliant competitors withdraw from the local telephone market.

companies from thwarting competition by crippling the remaining competitors' ability to obtain efficient interconnection on just and reasonable rates, terms and conditions.

A. Cox's Experience in the Local Telephone Market Demonstrates the Importance of Protecting Facilities-Based Competitors' Interconnection Rights in the Wake of the Proposed Merger.

Cox's extensive experience in providing fully facilities-based competitive local phone services underscores the importance of efficient interconnection arrangements to local phone competition. Since the mid-1990s, Cox has invested more than $12 billion to upgrade its cable networks to permit it to offer new and advanced services to consumers in its service footprint of roughly 10 million households. As a result of those investments, more than 97 percent of Cox's networks can carry two-way communications, including Cox High Speed Internet service, circuit-switched telephony and voice over IP services. Cox currently offers telephone service to more than 60 percent of the homes passed by Cox cable systems and that percentage will continue to grow as Cox brings telephone services to new markets.

Cox's success in deploying local phone services to both residences and commercial establishments over its own state-of-the art broadband networks is notable. Over 1.3 million residential customers and over 140 thousand business locations receive their local phone services from Cox Digital Telephone, which provides a direct, high-quality substitute for incumbent LECs' primary services. Cox's efforts to provide a reliable, cost-effective, customer-friendly local telephone experience have not gone unnoticed by consumers. In fact, for two consecutive years, Cox has received highest honors in J.D. Power and Associates' Local Residential Telephone Customer Satisfaction Study in the Western Region (2003 and 2004)– beating SBC and Qwest, among others.[5] Nationwide, customers ranked Cox highest in Customer Satisfaction

[5] J.D. Power and Associates 2003 Local Residential Telephone Customer Satisfaction Study[SM] and 2004 Local Residential Telephone Customer Satisfaction Study[SM]. 2003 Study conducted

in J.D. Power and Associates' 2004 Residential Long Distance Telephone Service study for bundled services.[6]

Cox could not have achieved these results without smooth, seamless and efficient interconnection to other carriers. Since the enactment of the 1996 Act, Cox has negotiated, arbitrated or adopted more than 70 incumbent LEC interconnection agreements and amendments to enable Cox to serve its customers. As part of that process, Cox has evaluated literally hundreds of agreements from all of the RBOCs and has brought eight Section 252 arbitrations before state commissions. And, Cox successfully litigated a variety of issues in an arbitration resolved by the Commission through pre-emption of the authority of the Virginia State Corporation Commission.[7]

When the Commission adopted its initial local competition rules in 1996, it analyzed the incentives of incumbent LECs to negotiate interconnection agreements in light of the requirements of the 1996 Act. The Commission concluded that incumbent LECs had little or no reason to negotiate with competitive LECs:

> [T]he requirements in Section 251 obligate incumbent LECs to provide interconnection to carriers that seek to reduce the incumbent's subscribership and weaken the incumbent's dominant position in the market. Generally, the new entrant has little to offer the

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among 8,560 residential users of local telephone services. 2004 Study conducted among 10,500 residential users of local telephone services. The Western Region includes 16 states. http://www.jdpower.com.

[6] J.D. Power and Associates 2004 Residential Long Distance Customer Satisfaction Study[SM]. Study conducted among 10,500 residential long-distance users. Bundled segment includes residential long-distance customers who are billed for other telecom services on the same statement. http:// www.jdpower.com.

[7] Petitions of WorldCom, Inc. et al. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, *Memorandum Opinion and Order*, 17 FCC Rcd 27039, 27078-9 ("Virginia Arbitration").

> incumbent. Thus an incumbent LEC is likely to have scant, if any economic incentive to reach agreement.[8]

Nothing has happened in the last eight years to change that conclusion. Indeed, it is widely recognized that, except for the most trivial issues, incumbent LECs are generally unwilling to negotiate the terms of interconnection with competitive LECs. Cox's own experience bears this out. In negotiating with incumbent LECs, Cox typically is presented with a proposed agreement drafted by the incumbent, and any request for substantive change to that template is rejected out of hand. There is no give and take, no "horse trading" and no real negotiation. If Cox deems a particular provision of the agreement to be unacceptable, there is little Cox can do in the negotiation process because the incumbent LEC is unwilling to change (and because Cox has nothing to offer the incumbent to motivate its assent). Cox has experienced resistance even when the incumbent LEC has proposed terms that explicitly conflicted with the 1996 Act and the Commission's rules. For instance, in the Virginia Arbitration mentioned above, Cox was required to arbitrate, among other things, Verizon's demand that Cox provide physical collocation to Verizon – an issue on which Cox, not surprisingly, ultimately prevailed.

Further, a cursory review of SBC's performance in California in this regard reveals a disturbing truth: SBC has forced competitive LECs to <u>re-</u>arbitrate issues previously resolved through arbitration when the California Public Utilities Commission's ("California Commission") orders did not originally support SBC's position. Following are three examples:

In March, 2002, Pac-West, (a competitive LEC in California) included in its arbitration

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[8] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order,* 11 FCC Rcd 15499, 15570 (1996) (the *"First Local Competition Order"*).

with Pacific Bell (Application 02-03-059[9]) an issue regarding Pacific Bell's insistence that the competitor establish direct trunking to third-party carriers once such "transit" traffic reached the capacity of only 24 trunks. In resolving this issue, the administrative law judge ruled in favor of Pac-West, establishing a threshold of 72 trunks for transiting traffic, the threshold that PacWest had proposed. The judge noted that this 72-trunk level was previously established by the California Commission in a 2001 arbitration between Pacific Bell and MCI (Application 01-01-010[10]).

In January, 2001, MCI included in its arbitration with Pacific Bell (Application 01-01-010[11]) an issue regarding Pacific Bell's insistence that interconnection trunks could only be two-way. In resolving the issue, the administrative law judge ruled in favor of MCI, granting it the option of using one-way or two-way trunks, as MCI had proposed. The judge noted that the use of one-way trunks was previously approved by the California Commission in a 2000 arbitration between Pacific Bell and AT&T (Application 00-01-022[12]).

In January, 2001, MCI included in its arbitration with Pacific Bell discussed above an issue regarding Pacific Bell's insistence that competitive LECs should pay for the incumbent LEC's costs associated with NXX migrations. In resolving the issue, the administrative law judge held in favor of MCI and ruled that the cost of such migrations be borne by each carrier, as MCI had proposed. The judge noted that Pacific Bell's proposal for such compensation had already been rejected by the California Commission in a 1999 arbitration between Pacific Bell and MFS WorldCom (Application 99-03-047[13]).

It goes without saying that competitive LECs such as Cox would prefer to obtain interconnection through negotiation, rather than arbitration, because arbitration is expensive, time consuming and needlessly diverts resources that would better be deployed bringing

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[9] In the Matter of Application of Pacific Bell Telephone Company (U-1001-C) for Arbitration with Pac-West Telecomm, Inc. (U5266-C) Pursuant to Section 252(b) of the Telecommunications Act of 1996.

[10] Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996.

[11] *Ibid.*

[12] Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996.

[13] In the Matter of the Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/Worldcom Pursuant to Section 252(b) of the Telecommunications Act of 1996.

competitive services to market.[14] In some cases, Cox has found that the better course is to adopt the previously arbitrated agreements (and/or sections of such agreements) of AT&T and MCI. (For example, Cox has adopted AT&T's and/or MCI's arbitrated agreements in four of the six states served by SBC within Cox's telephony footprint.[15]) This course is often preferable from a cost-benefit analysis, because these agreements usually include state commission decisions that have resolved key issues important to Cox. In a number of cases, these issues have been resolved in a way that promotes local competition over the objections of the incumbent LEC. Yet even where the arbitrated result is not ideal from Cox's perspective, Cox will nonetheless sometimes adopt an arbitrated term because it is uneconomic for the company re-arbitrate an issue that already has been resolved.

In short, as two large telephone companies with longstanding experience in the interconnection wars, AT&T and MCI have been at the forefront in enforcing, through arbitration and litigation, incumbent LEC compliance with Sections 251 and 252 of the 1996 Act, particularly the crucial provisions of Section 251(c).[16] As a result of their efforts, smaller and less experienced competitive LECs have been aided significantly in their own attempts to achieve efficient interconnection arrangements. The loss of AT&T and MCI as independent voices in the competitive marketplace will inevitably change the dynamics by which competitive LECs secure efficient interconnection arrangements. And, the effects of their proposed mergers will extend well beyond the states in which their RBOC partners serve as the incumbent LEC.

[14] As noted above, however, Cox was forced to arbitrate in eight proceedings where negotiations failed and adoption of another carrier's agreement was not a tenable alternative.

[15] Cox has adopted agreements arbitrated by AT&T and/or MCI in California, Connecticut, Kansas and Oklahoma. In Arkansas and Texas, Cox adopted the "x2A" agreements put in place in conjunction with SBC's Section 271 applications in those states.

[16] 47 U.S.C. §§ 251, 252.

B. Post-Merger, SBC Would Have Greater Capabilities and Incentives to Increase the Interconnection Costs of Its Remaining Competitors.

Stripped of the ability to rely on AT&T's and MCI's arbitrated interpretations of the requirements of Sections 251 and 252 and forced to arbitrate (and re-arbitrate) these terms, Cox and other competitive providers' costs of dealing with SBC and other incumbent LECs would increase significantly, thereby undermining their ability to provide efficient service to customers. Indeed, the negative effect on Cox and other competitive providers would grow exponentially following the proposed merger as SBC and the other RBOCs become even more relentless in their efforts to resist the requirements of Sections 251 and 252 and to maintain their market dominance.

AT&T's and MCI's technical, operational, financial and legal expertise and resources have provided a measure of balance against the extensive resources and network advantages of SBC and the other RBOCs. The independent existences of AT&T and MCI have been vital to the regulatory framework of checks and balances established since the break-up of Ma Bell. Yet, even with its superior experience and resources, AT&T has found competition against the RBOCs to be so costly and difficult that it has been forced to sell itself to SBC, just as MCI is about to sell itself to another RBOC. Without the balance provided by AT&T and MCI, survival for the competitive providers remaining in the market will be more difficult and costly. SBC and other RBOCs will face much less opposition, both in their push before federal and state legislatures and agencies for the relaxation or outright elimination of their legal obligations to interconnect efficiently with local competitors, and in their efforts to raise barriers and costs for competitors in individual interconnection negotiations. When such roadblocks force a competitor to succumb, consumer choice is reduced, to the detriment of the public.

It would be naïve and dangerous to expect that market forces alone will cause SBC and other RBOCs to voluntarily provide efficient and nondiscriminatory collocation and interconnection on just and reasonable rates and terms to competitive providers. In just the past three years, SBC has been required to pay more than $10 million in fines and settlements for the following anticompetitive conduct:

- Failing to provide competitors with shared transport under conditions imposed by the Commission;
- Refusing to provide verified responses to inquiries about discrimination in the provisioning of DSL services;
- Failing to update public information regarding available collocation space; and
- Prematurely entering the interLATA toll market in several states.[17]

Commission action to streamline the procedures, including negotiation, arbitration and adoption, by which facilities-based competitors obtain interconnection agreements with incumbents is essential to prevent SBC/AT&T from overwhelming the remaining competitors in the market. If SBC and AT&T are to gain approval for their combination, the Commission must impose conditions to protect local telephone customers from the anticompetitive ramifications discussed above.

Perhaps anticipating these very concerns, SBC and AT&T argue that the removal of AT&T as an independent competitor would have no negative effect on the mass market because, following the D.C. Circuit's decision vacating the Commission's unbundling rules in March

[17] SBC Communications, Inc., *Forfeiture Order*, 17 FCC Rcd 19928 (2002) ($6.3 million fine for violation of merger conditions); SBC Communications, Inc., *Forfeiture Order*, 17 FCC Rcd 7589 (2002) ($100,000 forfeiture for failure to cooperate with investigation into DSL provisioning practices); SBC Communications, Inc., *Order*, 18 FCC Rcd 19880 (2003) ($3.6 million consent decree for making false statements in Section 271 proceeding and premature entry into the market for interLATA toll service in several states); SBC Communications, Inc., *Order on Review*, 17 FCC Rcd 4043 (2002) ($84,000 fine for failure to update publicly available information regarding available collocation space).

2004,[18] AT&T abandoned its reliance on a UNE-based approach to providing local phone service to residential customers. Putting aside the irony that the litigation compelling this result was funded and rigorously pursued by the RBOCs, SBC's and AT&T's economic experts acknowledge that "[t]his decision did not affect the AT&T CallVantage service, which was introduced in 2004."[19] In formally launching this service in February of 2004 (even before the D.C. Circuit Court vacated the FCC's UNE rules), AT&T emphasized that it was refocusing from UNE-P to a VoIP platform and would be a leading VoIP provider in both the mass market and the business market.[20]

Experts have rated AT&T's CallVantage as one of the most promising VoIP services offered to consumers.[21] As SBC and AT&T state in their Application, "AT&T Labs is a global leader in many areas, but is perhaps the best known for its work on network systems based on Internet protocol ('IP')."[22] It is disingenuous to pretend that AT&T's decision to move away from the UNE platform – a decision stemming directly from its unsuccessful litigation with the RBOCs – permanently removed AT&T as a factor in the mass market. Absent this merger, AT&T would have remained as an independent player well-equipped among competitive service providers to negotiate and arbitrate interconnection terms, drive regulatory and technology

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[18] *USTA v. FCC*, 359 F. 3d 554 (D.C. Cir. 2004)

[19] Application of SBC Communications, Inc. and AT&T Corp. for Consent to Transfers of Control (the "SBC/AT&T Application" or the "Application"), Declaration of Dennis W. Carlton and Hal S. Hider, p.9 n.12 (filed Feb. 21, 2005).

[20] *See, e.g.*, Dina C. Sharma, *AT&T Looks for an Image Makeover,* CNET News (Feb. 4, 2004) http://news.com.com/AT38T+looks+for+an+image +makeover/2100-1037_3-5153517.html. Of course, once AT&T was set on merger with an RBOC, it no longer expended the same level of resource to promoting CallVantage and gaining subscribers in competition against the RBOCs.

[21] *See, e.g.,* CNET *Editors Rating of AT&T CallVantage,* New York Times online 2005 http://cnet.nytimes.com/ATT_CallVantage/4505-9238_7-30923419.html.

[22] *See, e.g.,* SBC/AT&T Application at 29, Declaration of Thomas Horton at 3-4.

changes, and serve as a model or an ally for Cox and others seeking to compete against SBC and other incumbent LECs in the provision of residential phone services. In light of the merger, the Commission must take concrete steps to protect the rights of the remaining facilities-based competitors to economically efficient interconnection, for the benefit of consumers who deserve a choice in their service provider.

III. Merger Conditions Are Necessary to Ensure that the Combined SBC/AT&T Entity Does Not Take Anticompetitive Actions Such as Raising Costs for Internet Backbone Peering or Transport Services.

While the consolidation of the retail telephone market has captured more public attention, SBC's acquisition of AT&T and Verizon's potential acquisition of MCI also will result in a sea change in the Internet sector and in the provision of wholesale transport services. When the two largest RBOCs merge with the two largest Tier I Internet backbones and providers of wholesale transport, the Commission should take prophylactic action to protect competition.

A. Internet Backbone.

As SBC/AT&T's economist explains, by the Justice Department's prior definition, there are today six Tier I Internet backbone providers that other providers must ultimately pay for Internet transit – MCI, AT&T, Sprint, Level 3, Qwest and Global Crossing.[23] The Tier I providers can extract payment from others because, like the incumbents in the local exchange market, they alone interconnect directly with all other Internet backbones. Thus, for example, Cox has a transit agreement with AT&T under which Cox pays AT&T to exchange traffic with customers on the AT&T backbone and on the backbones of other providers with which Cox does not have a peering arrangement. By contrast, non-Tier I Internet backbone providers such as

[23] SBC/AT&T Application, Declaration of Marius Schwartz at 9.

Cox and SBC enter economic arrangements with other non-Tier I players, by which they exchange traffic on a settlement-free basis because they are mutual beneficiaries of peering.

Following the merger and the integration of the SBC backbone into the AT&T backbone, SBC/AT&T will obtain a substantial cost advantage over its competitors. By purchasing one of the six Tier I backbones, SBC will no longer need to pay any transit costs to other Tier I backbones. Non-Tier I players that used to exchange traffic with SBC on a settlement-free basis, however, will now have to pay SBC transit rates to carry that traffic. In this fashion, the balance will tip toward SBC and away from the remaining non-Tier I companies.

The issue, however, is not that non-Tier I companies seeking to exchange backbone traffic with the merged SBC/AT&T backbone will face higher transit costs post-merger. Rather, the concern is that the merged company would have increased capability and incentive to raise or maintain its transit rates at supra-competitive levels or engage in other anticompetitive conduct, because such actions would have the external effect of raising Cox and other IP service providers' costs to compete against SBC's core retail services. Whereas a pre-merger AT&T would be concerned about a potential loss in wholesale revenue if other Tier I Internet providers offered lower transit rates, SBC could afford to sacrifice such wholesale revenue to protect its core retail service revenues. Cox and other customers of AT&T's transit services could not readily respond by switching to another Tier I Internet backbone provider and certainly could not switch without suffering a loss, given that they already have spent substantial time, money and resources to install connections to AT&T's backbone facilities. Consequently, to protect competition and prevent SBC/AT&T from obtaining an unfair cost advantage by imposing supra-competitive transit rates on Cox and other IP service providers, the Commission must adopt merger conditions to preserve the existing settlement-free Internet peering arrangements during a reasonable transition period.

B. Transport Services.

In the market for transport services, AT&T is very often the only available cost-efficient provider of medium- and short-haul services in certain local geographic markets. While Cox has spent millions to install local fiber and to build its Internet backbone, it still leases AT&T facilities and has no effective alternative to AT&T for medium- and short-haul facilities in a number of areas. For example, between Virginia and North Carolina, Cox has no substitute for the POP-to-POP transport provided by AT&T between Hampton Roads, VA and Greenville, NC and between Hampton Roads, VA and Rocky Mount, NC. For the connection between Cleveland, Ohio and Providence, Rhode Island, Cox must rely on AT&T for both POP-to-POP transport and local transport, because the costs of construction to reach another provider's POP is prohibitive. Moreover, AT&T and SBC are the only providers of local transport on this route, and their merger will move this local market from a duopoly to a monopoly as Cox and other competitive service providers must turn to their direct competitor SBC/AT&T as the sole source of local transport services.

Post-merger, SBC/AT&T could stop leasing such AT&T facilities to Cox and other parties, either because SBC wants to use those facilities for its own needs or because it wants to deny its competitors the use of such resources. Alternatively, SBC/AT&T could engage in anticompetitive conduct such as raising rates to handicap its competitors. Because AT&T wholesale transport services are essential to many competitive providers' ability to provide services at reasonable rates, particularly in smaller or rural communities where alternative facilities do not exist, SBC's acquisition of AT&T could directly raise costs or eliminate competitive services for consumers. Consequently, the Commission should not approve SBC's acquisition of AT&T without ensuring that AT&T's transport facilities and wholesale services will continue to be available on reasonable rates and terms in these communities.

The importance of such action in this proceeding is only heightened by other developments in the telecommunications marketplace. The strongest and most established transport providers such as AT&T and MCI are entering mergers, while newer providers are in precarious financial condition and are ever-more likely to be forced out of the market as their competitors grow more dominant through mergers. Any dearth in alternative sources of transport services would enable SBC/AT&T and other remaining providers to raise or maintain their rates at supra-competitive levels. Like other competitive consumer service providers, Cox would have to accept inflated transport service rates because, as a reasonably efficient competitor, Cox cannot afford the prohibitive expense of building facilities to replicate those of wholesale transport service providers in every area where it provides service. The increased costs ultimately would be borne by consumers in the form of higher service rates, slower roll-out of new and improved services, and potentially fewer service providers

IV. Conclusion

The proposed combination of SBC and AT&T will harm the public interest unless it is subject to merger conditions consistent with these comments.

Respectfully submitted,

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April 25, 2005

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I, Jason E. Rademacher of Dow, Lohnes & Albertson, PLLC do hereby certify that on this 25th day of April 2005, copies of the foregoing Comments of Cox Communications, Inc. were served via electronic mail or first-class mail postage prepaid (denoted by *), upon the following:

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