Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 05-65
SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer Of Control	)	DA 05-762

RESPONSE OF T-MOBILE USA, INC.

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SUMMARY

The Commission should not approve the proposed SBC-AT&T merger without imposing certain targeted remedial conditions. Without such conditions, the proposed merger has the potential to harm U.S. telecommunications competition and the consumers who benefit from that competition. In performing its public interest analysis, the Commission should analyze the SBC-AT&T merger in the context of the larger consolidation trend in U.S. telecommunications. The SBC-AT&T merger and the pending Verizon-MCI merger, if approved as filed, would result in the two largest incumbent local exchange carriers in the United States owning the two largest interexchange carriers and controlling the two largest wireless carriers. This reflects a degree of telecommunications consolidation not seen in this country since the break-up of the AT&T-owned Bell System by an antitrust court more than twenty years ago.

T-Mobile, one of the few independent nationwide wireless providers, is especially concerned about this merger because T-Mobile is both a customer and competitor of SBC. T-Mobile relies significantly on SBC and AT&T for telecommunications services that are critical inputs to T-Mobile's downstream wireless offerings. T-Mobile competes on an intramodal basis against SBC's Cingular wireless affiliate, the largest U.S. wireless provider, and T-Mobile is beginning to compete on an intermodal basis against SBC's wireline dial-tone offerings. If the Commission does not impose adequate conditions on this merger, the post-merger SBC will have increased ability and incentives to discriminate against T-Mobile and similarly situated competitors, raising the costs and lowering the quality of the services that SBC provides to its rivals, to the detriment of competition and consumers.

In SBC's service area, SBC is T-Mobile's primary source for special access services that are critical to the operation of T-Mobile's network. Few alternatives to SBC exist in its service area for several types of high-capacity links that connect T-Mobile's facilities, especially base

station-to-central office links and interoffice transport links. In most areas where T-Mobile operates, the Commission currently imposes little effective oversight over SBC's special access services that furnish these links.

The Commission should not approve the SBC-AT&T merger without either rigorously regulating the rates for these special access services or treating them as UNEs when provided to carriers such as T-Mobile that are attempting to compete with SBC and its affiliates. To avoid the potential for discriminatory provisioning of these services, the Commission should require strict performance measures and enforcement mechanisms for SBC's special access services.

T-Mobile also urges the Commission to impose nondiscrimination safeguards on SBC's wholesale long distance offerings as a condition to approving the AT&T-SBC merger. T-Mobile purchases the majority of its switched long distance services from AT&T, both because AT&T provides excellent quality and service at competitive prices and because AT&T (unlike SBC) is not affiliated with one of T-Mobile's wireless competitors. An SBC-AT&T merger will eliminate AT&T as an independent long distance provider. This merger, considered with the proposed Verizon-MCI merger, will eliminate the *two* largest, nationwide independent providers of wholesale long distance services. T-Mobile has enjoyed a productive and mutually beneficial business relationship with AT&T, and would hope that such a relationship could continue. T-Mobile is concerned, however, that post-merger, AT&T will have the incentive and ability to discriminate against T-Mobile as a consequence of AT&T's integration into SBC, a competitor of T-Mobile.

The merger of SBC and AT&T has the potential to harm existing competition and stifle the introduction of new technologies and services. In particular, potential customers of future advanced services require cost-based broadband pipes, such as stand-alone or "naked" DSL offerings, that do not include additional charges for bundled voice services. Given the increased concentration of the wireline industry as a result of the various proposed mergers, the Commission should act to promote development of intermodal competition as an alternative to the services offered by the wireline companies. As a condition of approval of the merger, SBC should be required to make naked DSL offerings available to all customers. Naked DSL should be available on a cost-based, nondiscriminatory basis.

Without these important remedial conditions, the proposed SBC-AT&T merger would not serve the public interest. Such conditions are critical to protect existing and emerging competition to SBC's wireless and wireline businesses. Moreover, these conditions are narrowly tailored, not burdensome in content or scope, and can be implemented without great cost to either the merging parties or the Commission. Accordingly, the Commission should approve the proposed SBC-AT&T merger, but only with the remedial conditions described above.

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RESPONSE OF T-MOBILE USA, INC.

I. INTRODUCTION.

T-Mobile USA, Inc. ("T-Mobile")[1] agrees with many of the commenters opposing the applications for approval of transfer of control of AT&T Corp. and its subsidiaries ("AT&T") to SBC Communications Inc. ("SBC") (collectively, the "Applicants"). The record demonstrates that the SBC-AT&T transaction, if approved without targeted remedial conditions, could harm both competition and consumers. Moreover, this transaction is part of a larger consolidation trend in the telecommunications industry that should lead to particular vigilance on the part of the Commission. The proposed SBC-AT&T merger and the pending Verizon-MCI merger, if permitted to proceed, would result in the two largest incumbent local exchange carriers ("ILECs") in the United States owning the two largest interexchange carriers ("IXCs") and controlling the two largest

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[1] As a national wireless provider, T-Mobile owns licenses covering 253 million people in 46 of the top 50 U.S. markets. T-Mobile currently serves 17.3 million customers. Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in more than 5,000 convenient public locations, such as Starbucks coffee houses, Hyatt hotels, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world. All filings submitted in this proceeding on April 25, 2005, will hereinafter be short cited.

wireless carriers.[2] Not since the break-up of AT&T by an antitrust court more than twenty years ago has this degree of telecommunications consolidation been seen in the United States. In light of the benefits to consumers that competition brings, especially in terms of increased choice, lower prices, and innovation, the Commission must analyze such far-ranging consolidation closely.

T-Mobile is one of the few remaining independent national wireless carriers, with a rapidly growing base of mass market and business customers throughout the United States. As such T-Mobile is a large customer of both SBC and AT&T for business and wholesale telecommunications services, and it is a retail competitor of SBC and its affiliates. SBC's service area covers 13 states and SBC companies provide service for nearly 30 percent of the telephone lines in the United States.[3] In this large service area, T-Mobile depends on SBC for special access services that are critical inputs to T-Mobile's competitive wireless offerings. In particular, SBC provides the links that T-Mobile needs to connect its cellular base stations and SBC's central offices. SBC is also T-Mobile's primary provider of special access circuits for the "interoffice transport" links that T-Mobile requires for backhaul.[4]

T-Mobile also purchases wholesale long distance services, primarily from AT&T, to use in its offerings of all-distance wireless service plans. Moreover, T-Mobile is exploring the possibility of offering certain types of Internet Protocol-based ("IP-based")

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[2] SBC owns 60% of Cingular, the largest U.S. wireless provider, while Verizon owns 55% of Verizon Wireless, currently the second-largest wireless provider.

[3] *See* SBC-Investor Relations, *available at* http://www.sbc.com/gen/investor-relations?pid=5708.

[4] Attachment A is a schematic diagram of T-Mobile's network, showing these links.

advanced services. For these services to be cost-effective, potential customers need cost-based broadband pipes, such as stand-alone or "naked" DSL offerings,[5] that are available on a nondiscriminatory basis and do not include additional charges for bundled voice services.

T-Mobile is concerned about this merger because T-Mobile is not only a large customer but a competitor of SBC's. T-Mobile competes vigorously in the mobile wireless marketplace, where one of T-Mobile's competitors is Cingular, majority-owned by SBC and the nation's largest wireless carrier. T-Mobile also is poised to become an important competitor in the emerging "intermodal" marketplace for local exchange services in which SBC is the dominant provider throughout its region. T-Mobile is highly motivated to provide high-quality wireless service to the American public that allows consumers the option to "cut the cord" and rely on T-Mobile, rather than traditional wireline dial-tone providers, for their communications needs.[6] But T-Mobile's ability to become an effective force in fostering such nascent competition depends on its ability to obtain critical services and facilities from ILECs such as SBC on nondiscriminatory terms and reasonable cost-based prices.

As the petitions and comments show, the proposed SBC-AT&T merger risks harm to competitor/customers like T-Mobile - and to consumers - by increasing SBC's ability to discriminate in the provision of special access services and wholesale long

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[5] ILECs generally offer dial-tone voice service tied to DSL. In contrast, a "naked" DSL offering from an ILEC does not include the dial-tone voice service.

[6] In September 2004, the Commission staff cited estimates that 5 to 6 percent of all households have wireless phones only. *See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Ninth Report, 19 FCC Rcd 20597,

distance service, and by limiting the potential availability of cost-based broadband service, particularly naked DSL.

In sum, the Applicants have not borne their burden of demonstrating that approval of the transaction as proposed would be in the public interest.[7] If approved without conditions, the proposed SBC-AT&T merger would exacerbate the harms to consumers that result today from anticompetitive special access pricing and provisioning (including maintenance and repair) and the unavailability of naked DSL. The Commission should only approve the proposed SBC-AT&T merger subject to targeted conditions that: (i) reform special access pricing; (ii) impose performance standards on special access provisioning, maintenance, and repair; (iii) impose nondiscrimination requirements on the post-merger SBC-AT&T's provision of wholesale long distance; and (iv) ensure that SBC makes naked DSL available to consumers without discrimination and at cost-based rates.

Without these conditions, the proposed SBC-AT&T merger would not serve the public interest. Such conditions are necessary to protect existing and emerging competition to SBC's wireless and wireline businesses. These conditions are narrowly tailored and not burdensome in content or scope. They can be implemented without great cost to either the merging parties or the Commission. Accordingly, the Commission should approve the proposed SBC-AT&T merger, but only with the remedial conditions described in this response.

20683 n.575 (2004). *See also id.* at 20684 ¶ 213 ("Evidence continues to mount, however, that consumers are substituting wireless service for traditional wireline communications.").

[7] *See* section 214 of the Communications Act of 1934, as amended (the "Act"), *NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee*, 12 FCC Rcd 19985, 20007 ¶ 36 (1997).

II. THE RECORD DEMONSTRATES THAT THE COMMISSION MUST ANALYZE HOLISTICALLY THE EFFECTS OF THE MAJOR PENDINGWIRELINE MERGERS.

T-Mobile agrees with numerous petitioners and commenters that, in considering the public interest aspects of the proposed SBC-AT&T merger, the Commission must not evaluate this merger in isolation.[8] Rather, the Commission's public interest analysis must consider this transaction as an integral part of a larger transformation of the U.S. telecommunications industry evidenced by the recent wave of proposed and consummated mergers in this sector.

The proposed wireline mergers between SBC and AT&T, the subject of this proceeding, and Verizon and MCI, under consideration in WC Docket No. 05-75, would result in tremendous overall re-consolidation in the U.S. telecommunications industry. As the record indicates, if these mergers are approved as filed, Verizon and SBC would control about 80% of the U.S. wireline business market, more than 50% of all wireless subscribers nationwide, and more than 63% of all ILEC lines.[9]

After decades of pursuing policies to promote competitive entry into telecommunications and the development of competitive alternatives to the RBOC descendants of the monopolistic, AT&T-owned Bell System, the Commission risks turning back the clock if these mergers are permitted to proceed as filed. If approved, the mergers would permit SBC and Verizon to absorb the two largest IXCs, which provide

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[8] *See, e.g.,* Qwest Petition to Deny at 2-7 ("Qwest Petition"); Cbeyond at 2.

[9] *See* Qwest Petition at 2-3. *See also* BT Americas Inc. Presentation at 3 (attached to Letter from Kristen Verderame, BT, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-65, 05-75 (May 6, 2005)) ("BT *ex parte* presentation") (arguing that, if the SBC-AT&T and Verizon-MCI mergers are permitted, the combined companies would have market power over Internet backbone services and global telecommunications services).

competitive discipline for a wide variety of wireline services. As the record shows, these mergers would increase incentives for SBC and Verizon to "mutually forbear" from competing aggressively against each other for a variety of wireline services, including services purchased by business customers.[10] The potential for this behavior particularly troubles T-Mobile as a customer of such services.[11]

At the same time, the wireless industry also is undergoing consolidation, as evidenced by the recent merger of AT&T Wireless into Cingular[12] and the pending Sprint-Nextel merger (where, in contrast to the wireline mergers, Sprint has announced its intention to spin off its local wireline telecommunications business following the merger).[13]

As one of the few independent national providers of wireless voice, data, and broadband services, and as a customer of various wireline services, T-Mobile is concerned about the cumulative effects of the wireline mergers on telecommunications competition. As demonstrated with specificity below, the wireline mergers now before the Commission will, if approved as filed, increase the potential for SBC and Verizon to

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10 *See* Qwest Petition at 39-45. As Qwest indicates, SBC and Verizon have avoided competing with each other in the provision of wireline services.

11 BT also expresses concern that left unchecked, the wireline mergers would have the effect of creating a duopoly with market power in their regions, nationally, and internationally, that would be difficult or impossible for any competitor to overcome. *See* BT *ex parte* presentation at unnumbered 14.

12 *See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer of Control*, 18 FCC Rcd 21522 (2004).

13 *See* Merger Announcement, *Sprint And Nextel To Combine In Merger Of Equals* (Dec. 15, 2004), available at http://sprintnextel.mergerannouncement.com/?refurl=uhp_globalnav_merger.

harm their competitors, like T-Mobile, that rely on these companies for the inputs needed to compete with them on a retail basis.

The analysis necessary to determine the potential public interest impact of the SBC-AT&T merger requires detailed information about the Applicants' existing services, facilities, product markets, geographic markets and other data that, many parties agree, was missing from the initial application. To its credit, on April 18, 2005, the Commission staff issued an extensive information request to the Applicants, with responses due May 9, 2005.[14] T-Mobile urges the Commission to review the public interest implications of this additional information in the context of the larger changes underway in the industry.

III. THE RECORD SHOWS THAT THE SBC-AT&T MERGER HAS THE POTENTIAL TO HARM CUSTOMERS OF THE MERGING PARTIES, INCLUDING T-MOBILE.

A. The Wireline Mergers Will Further Limit Competitive Provision Of Services That T-Mobile Purchases To Compete Against ILEC-Affiliated Wireless Providers.

1. The Wireline Mergers Will Exacerbate The Existing Limited Competition In The Provision of Special Access.

In SBC's service area, SBC is T-Mobile's primary source for special access services that are essential to the operation of T-Mobile's network.[15] Because few competitive alternatives exist, T-Mobile relies on SBC's special access offerings within SBC's service area to provide several types of high-capacity (DS1 and DS3) links to

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[14] *See* Letter from Michelle M. Carey, Deputy Chief, Wireline Competition Bureau, FCC to Patrick Grant and David Lawson, Counsel, AT&T and SBC, WC Docket No. 05-65 (Apr. 18, 2005).

[15] As a general matter, for special access services in an ILEC's service area, T-Mobile relies on services provided by that ILEC, with very limited competitive alternatives available.

connect T-Mobile's facilities and create an integrated wireless network. T-Mobile agrees with Global Crossing that SBC is "by far[,] the largest provider of special access services in its BOC service territories…[i]n many geographic areas, SBC serves as one of only one or two providers of special access services essential to reach a particular end-user."[16] In those cases where AT&T and SBC are the only options for special access services, approval of the merger would result in a "merger to monopoly."[17] Even if other, smaller independent competitors remain, none would be of size sufficient to compete with SBC region-wide, and, as shown in the opposition of Broadwing/Savvis, any remaining competitors would be considerably smaller than either AT&T or MCI.[18]

Approval of the merger also will eliminate any pricing discipline that AT&T imposes on SBC as a reseller of SBC's special access services. Broadwing/Savvis estimate that as much as 75% of the special access circuits that AT&T now sells to third parties in competition with SBC and other ILECs are resold ILEC circuits that AT&T is able to purchase at substantial volume discounts.[19] These resold circuits, which a reseller often combines with circuits in its own network, are known as "Type 2" circuits, as opposed to "Type 1" circuits that a carrier provides entirely using its own facilities. T-Mobile is concerned that AT&T, as the largest independent IXC and the most likely firm

[16] *See* Global Crossing Comments at 14-15; Broadwing/Savvis Opposition at unnumbered 22 ("AT&T and MCI are the BOCs' primary, and in many cases only competitors" for special access facilities).

[17] *See* Global Crossing Comments at 17.

[18] *See* Broadwing/Savvis Opposition at unnumbered 23.

[19] *See id.*

to build special access capacity,[20] may be the sole independent special access provider large enough to fully exploit the volume discounts that SBC and other ILECs will offer to extremely large special access customers.[21] As a reseller, AT&T can pass these discounts through to its Type 2 customers, providing at least some competitive pressure on SBC and the other ILECs.[22]

Because a post-merger SBC will have no incentive to compete with itself in its service area and will face no threat from AT&T building special access capacity, any pricing discipline that AT&T now imposes as a reseller will vanish,[23] resulting over time in higher prices in SBC's service area for unaffiliated special access customers, such as T-Mobile.[24]

One type of special access service of particular concern to T-Mobile is the "last-mile" link between a T-Mobile base station or cell site and the ILEC central office serving that location.[25] In SBC's territory, T-Mobile typically purchases these links as DS1 channel terminations from SBC's special access tariffs.[26] These links - which essentially are wireline loops - are critical to T-Mobile's competitive operations against

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[20] *See* Qwest Petition at 18-19; Cbeyond at 22. ("AT&T appears to have constructed loop facilities to more buildings than any other non-ILEC with the possible exception of MCI").

[21] While MCI also may be a large enough purchaser of special access services to receive the deepest discounts, the proposed Verizon-MCI merger, if permitted, will eliminate it as an independent special access provider.

[22] *See* opposition of Broadwing/Savvis at unnumbered 23-24.

[23] *See* comments of Global Crossing at 15.

[24] Cbeyond estimate that the rates for some special access services could increase by as much as 100%. *See* Cbeyond at 30.

[25] This link is shown on the far right side of the diagram in Attachment A and identified by "CT."

SBC's wireless affiliate, Cingular, and other wireless providers. The prices that T-Mobile must pay for these links are a substantial portion of its overall costs and affect the prices it must charge for its retail services.

T-Mobile currently purchases the vast majority of these base station-to-central office links from ILECs in their service areas – that is, in SBC's service area T-Mobile purchases the links from SBC. However, as Cbeyond notes, AT&T and MCI also provide these links in some markets, either as Type 1 or Type 2 circuits, and are the most likely non-ILEC suppliers to expand in this area.[27] In the SBC service area, an SBC-AT&T merger likely will eliminate any pricing discipline that AT&T now exerts.

Another critical type of special access link used by T-Mobile is the interoffice transport connecting the ILECs' central offices.[28] T-Mobile typically purchases these links, which knit T-Mobile's network together, from ILECs as special access channel mileage services. Although competitors have deployed interoffice facilities connecting ILEC central offices on some routes, for the most part these facilities are provided by ILECs.[29]

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27 *See* Cbeyond at 22.

28 These links are those shown on Attachment A, connecting the "CO" to the "SWC" and identified by "IOT."

29 Even where competitors have deployed interoffice facilities, the petitions and comments describe how SBC, by virtue of its region-wide coverage, is able to force customers into exclusive agreements for region-wide special access services, even if competitors offer less expensive rates for specific individual routes. The record also indicates that SBC will refuse to sell circuits on non-competitive routes unless the customer also agrees to purchase circuits on the competitive routes. *See* Broadwing/Savvis Opposition at unnumbered 24-25; Global Crossing Comments at 13-14.

To the extent that competition exists for interoffice transport, the record indicates that AT&T and MCI provide much of it.[30] Even where these companies are not currently providing competitive alternatives to ILEC services, their potential to expand discourages some types of anticompetitive behavior by SBC and other ILECs. That is, if the ILECs increase the prices they charge competitors for these circuits above the costs of these links, AT&T and MCI will find it economic to provide competing facilities. An SBC-AT&T merger, however, will eliminate AT&T as an existing and potential competitor in SBC's service area.

In most areas where T-Mobile operates, the Commission currently imposes little effective oversight over SBC's special access services that furnish the base station-to-central office and the interoffice transport links. The Commission should not approve the SBC-AT&T merger without either rigorously regulating the rates for these special access services or treating them as UNEs when provided to carriers, such as T-Mobile, that are attempting to compete with SBC and its affiliates.[31] To avoid the potential for discriminatory provisioning, maintenance, and repair of these services, the Commission also should impose as a merger condition strict performance measures and enforcement mechanisms for SBC's special access services, as proposed by ACN *et al*.[32]

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30 *See* Cbeyond at 21-22.

31 *See* T-Mobile Petition for Reconsideration, WC Docket No. 04-313, at 9-10 (filed Mar. 28, 2005).

32 *See* ACN Comments at 71-72.

2. The Wireline Mergers Will Eliminate The Two Largest Independent Providers of Wholesale Long Distance Service.

T-Mobile, like other wireless carriers that are not affiliated with wireline carriers, must purchase long distance services from IXCs in order to provide their customers with nationwide calling. T-Mobile purchases the majority of its switched long distance service from AT&T, both because AT&T provides excellent quality and service at reasonable prices, and because AT&T is not affiliated with one of T-Mobile's wireless competitors.[33] An SBC-AT&T merger will eliminate AT&T as an independent provider of wholesale long distance services. This merger, combined with the merger of MCI with Verizon, will eliminate the two largest nationwide independent providers of wholesale long distance services. The third major nationwide IXC, Sprint, already is affiliated with a wireless provider and itself is merging with Nextel, leaving only smaller interexchange carriers as alternatives, such as XO and Global Crossing. With their established, reliable nationwide networks, AT&T and MCI are able to provide a broader range of high-quality long distance services to the entire geographic United States than most of their long distance competitors can.

T-Mobile has enjoyed a productive and mutually beneficial business relationship with AT&T, and would hope that such a relationship could continue. T-Mobile is concerned, however, that, following an SBC-AT&T merger, the formerly independent AT&T will be part of a major competitor of T-Mobile. As noted above, T-Mobile currently competes directly with SBC's wireless affiliate Cingular. T-Mobile also is beginning to compete for SBC's local wireline customers. The vertically integrated

[33] The United States Cellular Corporation ("USCC") offers similar reasons for its use of AT&T long distance service. *See* USCC comments at 2-3.

structure of a post-merger SBC-AT&T, with affiliates that provide essential inputs to, and compete directly with T-Mobile, provides the merged company with the incentive and the ability to discriminate against wireless competitors such as T-Mobile. A merged SBC-AT&T could attempt to increase the rates it charges T-Mobile for long distance services. A merged SBC-AT&T would have greater incentives and ability to use T-Mobile's competitively sensitive information to its own benefit and to favor its affiliates when marketing services in competition with T-Mobile and when installing, maintaining, and repairing access facilities used by those affiliates.

In earlier Commission proceedings addressing SBC's entry into the in-region long distance business, AT&T argued that a pre-merger SBC could discriminate against independent IXCs by providing lower quality access and using its market power over the local exchange bottleneck.[34] ACN *et al* observe that if SBC had such incentives and abilities before the merger, it will have greater incentives to discriminate after the merger "because it can favor its own in-house long distance network, that of AT&T. That is the precise reason it was necessary to break up AT&T in the first place."[35]

Accordingly, T-Mobile urges the Commission to impose nondiscrimination safeguards as a condition to approving the AT&T-SBC merger. T-Mobile generally supports the United States Cellular Corporation proposal for conditions that would protect wireless carriers against discrimination by the merged company.[36] The proposal

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[34] *See* ACN Comments at 30 (quoting from the comments of AT&T Corp. in *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements,* WC Docket No. 02-112, at 6, 12, 20).

[35] *Id*.

[36] *See* USCC Comments at 3-4.

includes: 1) a restriction on sharing with Cingular any competitively sensitive information obtained by SBC-AT&T in the course of its relationship with wireless carriers; 2) some form of Commission oversight of the combined company's pricing of long distance services; and 3) some formal assurances that competitive wireless carriers will receive fair and nondiscriminatory treatment.[37]

3. T-Mobile Agrees That To Encourage Intermodal Competition, The Commission Should Condition The Merger on The Availability of Naked DSL Offered on a Nondiscriminatory Basis.

The merger of SBC and AT&T has the potential to harm existing competition and stifle the introduction of new technologies and advanced services. Qwest observes that:

> SBC's proposed merger with AT&T poses additional competition concerns because independent stand-alone providers, including AT&T and MCI, have behaved as "mavericks" in introducing innovations in telecommunications that have benefited consumers, while SBC has resisted those innovations. As a result, the proposed SBC/AT&T merger is likely to stifle important innovation that has benefited customers.[38]

Qwest identifies a number of examples of SBC's refusal to innovate, including its delay in rolling out DSL and VoIP services, "probably because of the adverse impact it could have on SBC's wireline operations."[39]

T-Mobile is evaluating a number of potential new IP-based services that would compete directly with voice and other broadband offerings of wireline carriers. In order for these services to be cost-effective, potential customers would need access to cost-

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[37] *Id.*

[38] Qwest Petition at 37.

[39] *See id.* at 39. *See also* Cbeyond at 68-72 ("Indeed, dominant firms are reluctant to accept change, because it threatens to strand existing investment, erode revenues from existing services, or provide opportunities for competitors").

based naked DSL if T-Mobile and others are to provide economically viable intermodal competition. T-Mobile is not aware of any technical basis for SBC and other ILECs to refuse to provide naked DSL.[40] Rather, the refusals and restrictions appear to part of a misguided effort to restrict the use of DSL by potential competitors or limit its use in conjunction with potentially competitive services.[41] These practices will have the effect of preventing the development of intermodal competition for many new products that will rely on higher speed access lines. Because many consumers have little choice in selecting a broadband service provider, it is especially important that DSL be freely available from ILECs without the incumbents' bundled voice offerings.

Given the potentially dramatic increase in concentration of the wireline industry as a result of the various proposed mergers, the public interest requires that the Commission act to promote development of intermodal competition as an alternative to the services offered by the wireline companies. As a condition of approval of the merger, T-Mobile concurs with Vonage's recommendation that SBC should be required to make naked DSL offerings available to all customers.[42]

Naked DSL should be available on a nondiscriminatory basis at cost-based prices.[43] As Cbeyond demonstrates in its petition, SBC and the other ILECs have a

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[40] To date only Qwest among the RBOCs offers naked DSL similar to that described above, although it apparently imposes some restrictions on the offering. Verizon has announced a more limited form of this service that apparently is available only to customers in the company's Northeastern region and is offered only to existing Verizon phone and DSL customers. *See* Shawn Young, *Verizon to Offer 'Stand-Alone' DSL Web Service*, Wall St. J., Apr. 19, 2005, at D2.

[41] *See* Qwest Petition at 36-37 ("In particular, it is noteworthy that to date SBC has refused to market naked DSL, blocking that potential tool for VoIP providers to achieve customer access").

[42] *See* Vonage Opposition at 23-26.

[43] The pricing standard for naked DSL offerings should be forward-looking economic cost.

history of refusing to provide DSL service in an effort to protect their own potentially competitive services.[44] Accordingly, failure to impose this condition will permit SBC to prevent the development of potentially competitive services, thereby reinforcing its position as the dominant provider of both wireline and wireless telecommunications services.

B. As a General Matter, The SBC-AT&T Merger Will Permit Greater Discrimination By The Combined Company in Favor of Its Wireline Operations.

As noted throughout this Response, merging AT&T into SBC will permit SBC, one of the largest ILECs, to absorb one of the few companies that pose any competitive threat to it and the other ILECs. As the largest and most formidable of the competitors, AT&T's disappearance as an independent carrier will dramatically change the dynamics of the telecommunications market. Although SBC (like Verizon) already is a vertically integrated company providing a comprehensive range of wholesale and retail services to competitors and customers, SBC's ability to exploit its position is greatly constrained by AT&T's ubiquitous presence and nationwide reputation for quality service

By eliminating AT&T as a competitor if this merger is permitted to proceed without conditions, SBC will have greater ability to raise the prices and lower the quality of the services it provides to unaffiliated, independent wireless competitors such as T-Mobile, a situation that will be gravely compounded if Verizon merges with MCI. The mergers will harm nascent intermodal competition generally as well as T-Mobile specifically. Because SBC (like Verizon) owns a majority interest in its wireless

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[44] *See* Cbeyond at 70 ("Indeed, the RBOCs sat on DSL and related technologies for over 20 years and had no incentive to roll out the service until cable modem providers and DLECs began

operations, rate increases for its wireline services used as wireless inputs could affect its own wireless operations as well as unaffiliated wireless competitors. The fact that payments made by SBC's wireless affiliate remain within the SBC business organization may mitigate the effects on the organization as a whole.

If the Commission does not constrain SBC's ability to raise its rates for input services through the conditions proposed in this response, T-Mobile and other unaffiliated wireless providers will face the impossible choice of raising their end-user rates or reducing their margins, either of which would harm their ability to compete. The long-term benefits that redound to SBC if it successfully inhibits the development of competition for its wireline services, as well the potential harm to its existing wireless competition, could be substantial and therefore would not be in the public interest.

IV. CONCLUSION.

The Commission should only approve the proposed SBC-AT&T merger subject to targeted remedial conditions addressing the potential harms that the post-merger SBC could inflict on customers of special access and wholesale long distance service that are its competitors. The Commission should also condition approval of the merger on the

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to offer consumer broadband…Until then, RBOCs were content to sell T1 circuits at much higher prices").

availability of efficiently priced naked DSL. Without such conditions, the proposed merger would harm competition and U.S. consumers.

Respectfully submitted,

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May 10, 2005

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2005 a copy of the foregoing Reply Comments was served by electronic mail upon the following:

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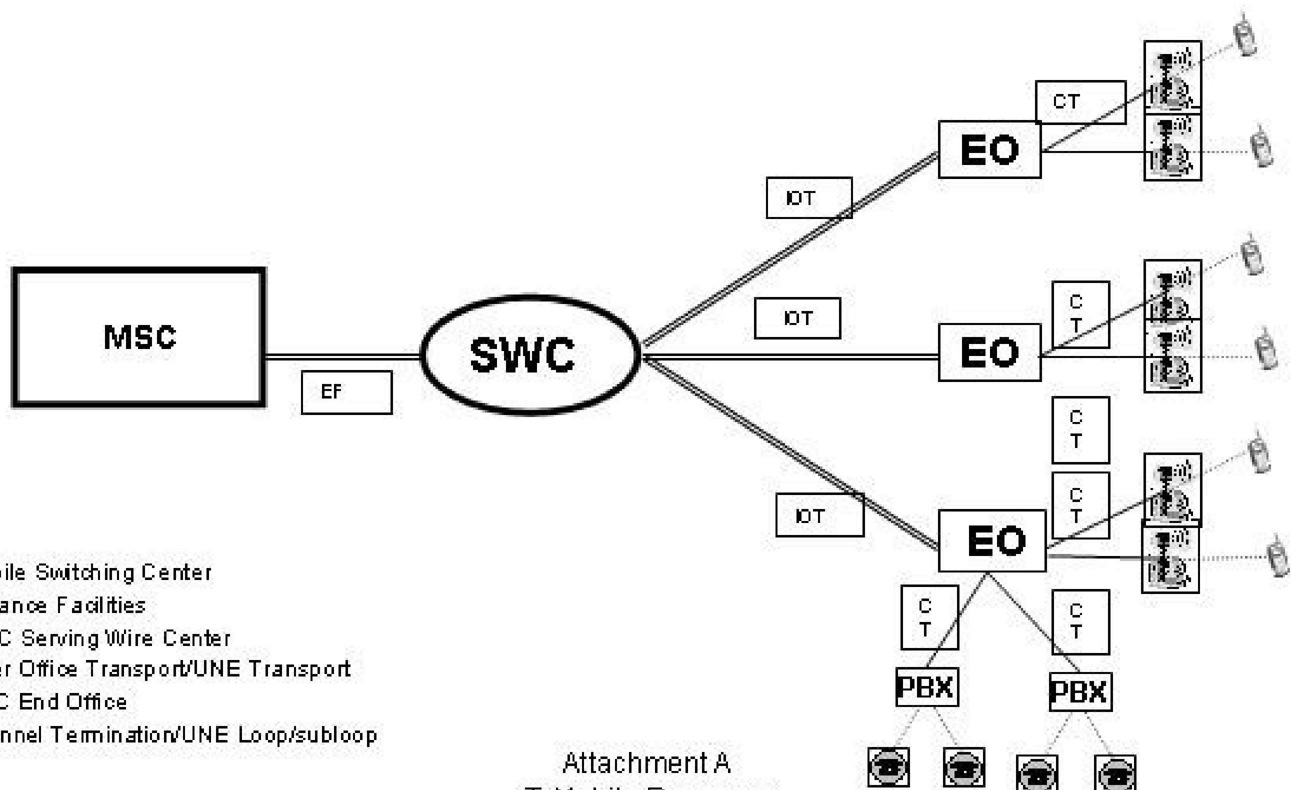
ATTACHMENT A

Schematic View of CMRS Network



MSC - Mobile Switching Center
EF - Entrance Facilities
SWC - ILEC Serving Wire Center
IOT - Inter Office Transport/UNE Transport
EO - ILEC End Office
CT - Channel Termination/UNE Loop/subloop

Attachment A
T-Mobile Response
WC Docket No. 05-65