

June 1, 2005

**By ECFS**

Marlene H. Dortch  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street, NW  
Washington, DC 20554

***Re: WC Docket No. 05-65  
WC Docket No. 05-75***

Dear Ms. Dortch:

SBC and AT&T respectfully submit this response to Qwest's May 18, 2005 *ex parte* submission in the above-captioned proceedings.<sup>1</sup> As shown below, Qwest's agenda is transparently improper, and the arguments it conjures up to support that agenda are meritless.

Qwest argues that the Commission should require that AT&T's "entire" in-region "local networks" between its POPs and its customers be divested, that AT&T's customers should be forced to "follow the divested facilities," and, even then, that the Commission should withhold its approval unless the purchaser is "able to achieve maximum scale" – in other words, unless the purchaser is Qwest.<sup>2</sup> Qwest urges a similar exercise in industrial reorganization in the Verizon/MCI license transfer proceeding.<sup>3</sup>

Qwest's agenda is clear. Having failed in its attempts to merge with MCI, Qwest has now shifted to a new acquisition strategy that turns on convincing the Commission to do for Qwest what Qwest was unable to do for itself. Qwest hopes to persuade the Commission that these proceedings should not be confined to determining whether the mergers that have been proposed are in the public interest, but instead should be viewed as opportunities to force a government-mandated reorganization of the industry and to redirect assets that SBC and Verizon propose to purchase to others – namely, Qwest – that purportedly would make "better" use of them. Even Qwest's own Chairman has acknowledged that its advocacy in this proceeding is all about "creating opportunities for Qwest to pick up assets."<sup>4</sup>

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<sup>1</sup> See May 18, 2005 *ex parte* Letter from Melissa E. Newman to Marlene H. Dortch ("Qwest Ex Parte").

<sup>2</sup> See, e.g., Qwest Ex Parte at 18.

<sup>3</sup> *Id.*

<sup>4</sup> See Yuki Noguchi, "After MCI Miss, Qwest Aims at Other Targets," Washington Post, p. E5 (May 25, 2005) (quoting Qwest Chairman Richard Notebaert as stating that SBC-AT&T and Verizon-MCI mergers "creat[e] other opportunities for Qwest to pick up assets"); Matt Richtel, "Rebuffed, Qwest Ponders the Next Move," New York Times, p. C5 (May 4, 2005) ("Qwest, [Notebaert] said, may be able to acquire some of the network assets and customer lists that federal regulators may require Verizon-MCI and SBC . . . to divest").

The Commission should reject this improper attempt to subvert the real purpose of a merger review proceeding. Under its public interest standard, the Commission assesses the likely impacts of the transaction at hand, not hypothetical, or even other pending, transactions. And the public interest standard manifestly does not, as Qwest would have it, permit the Commission to second guess the marketplace and use “conditions” effectively to exchange one acquirer for another.<sup>5</sup> To the contrary, the Commission must determine whether the merger presented is, on its own terms, in the public interest.

To that end, the Commission should focus on the legitimate merger-specific issues, including the enormous consumer benefits that SBC and AT&T have demonstrated that their merger will enable.<sup>6</sup> On that score, Qwest has nothing to offer. Indeed, Qwest confirms as much by conjuring and then attacking a straw man merger of four parties – SBC, Verizon, AT&T and MCI – rather than addressing on the merits the actual proposed combination of SBC and AT&T. As detailed below, the few unsupported claims that Qwest does direct at the SBC-AT&T merger are all rebutted in the SBC/AT&T Joint Opposition, which Qwest simply ignores.<sup>7</sup> Indeed, in the majority of Qwest’s presentation which is devoted to tooting its own horn – and to describing the in-region and out-of-region public interest benefits of its own earlier combination of a Baby Bell and a global enterprise customer-focused competitive carrier – Qwest does a fair job *itself* of rebutting its unsupported attacks on the proposed merger of SBC and AT&T.

**Mutual Forbearance.** For all of its talk of “concentration” and competitive “harms,” Qwest barely attempts to show that the combination of SBC and AT&T raises any competitive concerns. Instead, the entirety of Qwest’s competitive analysis is based on its claim that the SBC/AT&T merger must be evaluated “in conjunction with the Verizon/MCI merger” and on the

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<sup>5</sup> See 47 U.S.C. § 310(d) (in conducting its public interest review of a license transfer application, “the Commission may not consider whether the public interest, convenience and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee”); *General Motors Corp. and Hughes Electronics Corp. (Transferees) and News Corp. Ltd. (Transferee) For Authority to Transfer Control*, 19 FCC Rcd. 473, ¶ 170 (2004) (“an application for a transfer of control of Commission licenses is not an opportunity to correct any and all perceived imbalances in the industry”).

<sup>6</sup> See, e.g., *Bell Atlantic Mobile Sys., Inc. and NYNEX Mobile Communications Co.*, 12 FCC Rcd. 22,280, ¶ 16 (1997) (the Commission’s “statutory duty is to protect efficient competition, not competitors”); *SBC Communications v. FCC*, 56 F.3d 1484, 1491 (D.C. Cir. 1995) (“[t]he Commission is not at liberty . . . to subordinate the public interest to the interest of ‘equalizing competition among competitors’”); *Competitive Telecommunications Ass’n v. FCC*, 87 F.3d 522, 531-32 (D.C. Cir. 1996); *Western Union Tel. Co. v. FCC*, 665 F.2d 1112, 1122 (D.C. Cir. 1981); *Hawaiian Tel. Co. v. FCC*, 498 F.2d 771, 776 (D.C. Cir. 1974). Even Qwest knows that the public interest standard cannot be stretched so far. See Qwest Comments at 5-6 (“We also understand that *under law* the Commission may not reject the SBC-AT&T and Verizon-MCI transactions merely because the public would be better served by a different deal”) (emphasis added)).

<sup>7</sup> See Joint Opposition of SBC Communications, Inc. and AT&T Corp. to Petitions to Deny and Reply to Comments, WC Docket No. 05-65 (filed May 10, 2005) (“Joint Opposition”).

suggestion that after spending billions to acquire the nationwide and global assets of AT&T and MCI, SBC and Verizon will “mutually forbear” from using them to compete against one another.<sup>8</sup>

That suggestion is patently absurd. The very *point* of the merger from SBC’s perspective is to enhance its ability to compete in the enterprise market, particularly in out-of-region locations where SBC today finds itself at a competitive disadvantage.<sup>9</sup> The combined SBC/AT&T thus will have strong and indisputable economic incentives to continue to make productive use of and expand upon the out-of-region facilities and customer relationships that it is acquiring from AT&T.<sup>10</sup> Indeed, in illogically claiming otherwise, Qwest fails completely to explain why if Qwest would use AT&T’s assets to “compete[] aggressively” with Verizon, as it claims, SBC would not. The obvious reason is that Qwest is just blowing smoke at the Commission, and that SBC has every bit as much reason as Qwest to compete vigorously and aggressively with the out-of-region assets it acquires.

But apart from the fact that the mutual forbearance policy postulated by Qwest would be fundamentally incompatible with the goals of the merger, it would also be doomed to fail, even if tried. There are a host of reasons why a mutual forbearance policy could not work – and thus would not be tried – in the enterprise customer market. Foremost among those reasons is that the market is vigorously competitive, a fact that the Commission has recognized for almost *fifteen* years.<sup>11</sup> Thus, even if Verizon could be induced to mothball the facilities that MCI has deployed in SBC’s territory, and *vice versa*, both companies would still face stiff competition from the many other active market participants, including but not limited to Qwest. Beyond that, the characteristics of buyers and sellers of enterprise services and of the manner in which those services are provided would doom any attempt at mutual forbearance. The companies providing retail services in the enterprise space are heterogeneous, and they offer differentiated products and services using different types of networks with different cost structures. What is more, enterprise services are generally provided pursuant to term contracts with substantial value that are negotiated by highly sophisticated customers with multiple locations who play suppliers off against each other by confidentially negotiating, combining or dividing requirements in ways that would ensure competitive market outcomes. As the Department of Justice’s *Horizontal Merger Guidelines* recognize, it is highly unlikely that SBC/AT&T and Verizon/SBC could

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<sup>8</sup> Qwest Ex Parte at 2, 3.

<sup>9</sup> SBC/AT&T Joint Opposition at 150-59.

<sup>10</sup> This is amply confirmed by SBC, AT&T, and Time Warner Telecom’s recent extension of a long-term service agreement in which Time Warner Telecom will provide out-of-region last-mile special access services to the merged company through 2010. See News Release, “Time Warner Telecom, AT&T, SBC Extend Long-Term Service Agreement,” June 1, 2005; see also News Release, “SBC, AT&T Reach Services Agreements with Covad,” May 5, 2005 (post-merger Covad will provide broadband access that will allow the merged company to provide VoIP and other IP-enabled services to consumers and businesses out of region).

<sup>11</sup> See, e.g., Report and Order, *Competition in the Interstate, Interexchange Marketplace*, 6 FCC Rcd. 5880 (1991); Order, *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd. 3271 (1995).

tacitly reach and police an agreement to refrain from competing for certain customers under these conditions.<sup>12</sup>

Ironically, even as Qwest advances its implausible and speculative mutual forbearance theories, it inadvertently refutes those very theories. Specifically, in its zeal to tout the national scope of its own operations (and thereby suggest that the Commission bolster those operations with divested assets), Qwest refutes its own theory that a Bell Company with national assets will decline to use those assets. Qwest, like the proposed combination of SBC and AT&T, was formed through the merger of a regional Bell holding company (U S WEST) and a national interexchange carrier with a national and global enterprise business (Qwest). Qwest defended its merger on the ground that it would *strengthen* the new firm's ability to compete out of region.<sup>13</sup> And that is exactly what happened: after the merger closed, the combined Qwest firm did not turn inward or "mutually forbear" from competing in other RBOCs' regions. Rather, the combined firm had every incentive to use and build upon the extensive facilities and customer relationships that the legacy Qwest had established out of region. Thus, as Qwest asserts in its *ex parte* presentation, the post-merger Qwest – which already has the very combination of assets SBC and AT&T are attempting to create – has been and continues to be a very active and important competitor throughout the country.<sup>14</sup> Qwest has offered no reason why SBC-AT&T and Verizon-MCI would not have exactly the same incentives.<sup>15</sup>

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<sup>12</sup> See generally United States Department of Justice/Federal Trade Commission, *Horizontal Merger Guidelines* § 2.11 ("reaching terms of coordination may be limited or impeded by product heterogeneity or by firms having substantially incomplete information about the conditions and prospects of their rivals' businesses, perhaps because of important differences among their current business operations. In addition, reaching terms of coordination may be limited or impeded by firm heterogeneity, for example, differences in vertical integration or the production of another product that tends to be used together with the relevant product."); *id.* § 2.12 ("If orders for the relevant product are frequent, regular and small relative to the total output of firm in a market, it may be difficult for the firm to deviate in a substantial way without the knowledge of rivals and without the opportunity for rivals to react. If demand or cost fluctuations are relatively infrequent and small, deviations may be relatively easy to deter. . . . Where large buyers likely would engage in long-term contracting, so that the sales covered by such contracts can be large relative to the total output of a firm in the market, firms may have the incentive to deviate"). See generally SBC/AT&T Joint Opposition at 150-160.

<sup>13</sup> See *Applications for Transfer of Control, In the Matter of Merger of Qwest Communications and US West, Inc.*, CC Docket No. 99-272, Qwest and U S WEST Response to Comments, pp. 15-16 (filed October 18, 1999).

<sup>14</sup> See Qwest Ex Parte at 9 ("Qwest aggressively competes outside of its core region").

<sup>15</sup> Qwest is also wrong in suggesting that the Commission must consolidate its review of the SBC-AT&T and Verizon-MCI mergers. The Commission has consistently held that license transfer applications are ordinarily treated as "mutually exclusive" and are subject to "simultaneous consideration" only where "the grant of one application would require the denial of the other." *Applications for Consent to Transfer Control from MediaOne Group, inc. to AT&T Corp.*, 15 FCC Rcd. 9816, ¶ 181 (2000). Thus, for example, the Commission flatly rejected

**Wholesale and Retail Competition.** Examining the actual merger before the Commission – as opposed to the fictitious four firm merger postulated by Qwest – makes clear that there is no foundation to Qwest’s claims that the combination of SBC and AT&T will substantially lessen either “wholesale” or “retail” competition.

A. Qwest claims that AT&T offers “the most ubiquitous wholesale alternatives to SBC”<sup>16</sup> and that the loss of this competition will cause SBC to reduce or withdraw the special access “discounts” it currently offers.<sup>17</sup> Qwest can advance this claim only by ignoring the evidence proffered by the applicants in the Joint Opposition showing the limited nature of AT&T’s local facilities deployment. AT&T’s local network – which was deployed to support its own retail offerings and not wholesale offerings – serves only a tiny fraction of the commercial buildings in SBC’s region. Moreover, many of the buildings AT&T serves are already served by other competitive carriers, and all or virtually all of the rest are capable of competitive supply by the Commission’s own standards.<sup>18</sup> Indeed, Qwest touts the existence of its own robust local networks serving many of SBC’s largest cities, including Austin, Cleveland, Chicago, Columbus, Dallas, Detroit, Fort Worth, Houston, Indianapolis, Kansas City, Los Angeles/Orange County, St. Louis, Sacramento, San Antonio, San Diego, San Francisco, and San Jose. In addition to Qwest, there are literally scores of facilities-based competitive carriers in SBC’s states, which collectively serve many more buildings than AT&T.<sup>19</sup> These carriers typically serve the same dense business districts as AT&T,<sup>20</sup> and, unlike AT&T, many of them are heavily focused on

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requests that the AT&T-MediaOne merger proceeding be “consolidated” with the AOL-Time Warner merger proceeding on the theory that the “AT&T-MediaOne merger would fundamentally change the nature of the relevant markets of the applicants in the AOL-Time Warner merger.” *Id.* ¶ 179. Similarly, the Commission considered the Ameritech-SBC merger independently of the contemporaneous Bell Atlantic-GTE merger.

<sup>16</sup> *Id.* at 14.

<sup>17</sup> *Id.* at 15.

<sup>18</sup> SBC/AT&T Joint Opposition at 34-48. Contrary to Qwest’s speculation, AT&T is not a significant “expansion threat” to SBC. AT&T plans to add only a small number of buildings to its local network. Response of AT&T to FCC’s Apr. 18, 2005 Information and Document Request, Response 6(e) (“AT&T FCC Information Response”).

<sup>19</sup> SBC/AT&T Joint Opposition at 35-38; AT&T FCC Information Response, Response 6(d).

<sup>20</sup> SBC/AT&T Joint Opposition at 43-44 & Fea *et al.* Reply Dec. ¶ 13 & Carlton-Sider Reply Dec., Table 8. The data available to SBC and AT&T significantly *understates* the number of buildings served by other CLECs. AT&T’s information about buildings that are already “lit” by other competitive carriers, for example, includes only a subset of carriers that provide wholesale local services. The AT&T database does not include *any* Qwest buildings in SBC’s states, despite the fact that Qwest has deployed local facilities in many of SBC’s largest metro areas. Indeed, AT&T’s data includes information on the competitive facilities of only *three* of the 25 competitive carriers that have challenged the merger on the grounds that it will lessen competition for dedicated access services.

providing wholesale local private line services that compete directly with SBC's special access services.<sup>21</sup>

Further, other competitive carriers have the clear ability to serve buildings where AT&T is today the only competitive provider. AT&T provides OCn-level (or near OCn-level) facilities to the majority of buildings that are directly connected to AT&T's local network. As the Commission has found, such buildings offer substantial revenue opportunities that are generally sufficient to support competitive supply.<sup>22</sup> In fact, virtually all of the bandwidth that AT&T provides through direct connections to buildings in SBC territory is in buildings in which other carriers would not be "impaired" under the Commission's *Triennial Review Remand Order* in building their own facilities.<sup>23</sup>

This is presumably not news to Qwest. Indeed, while Qwest argues that it relies predominantly on SBC for its access needs in SBC's region, Qwest is notably *silent* in discussing non-SBC sources of special access.<sup>24</sup> The reason is simple: AT&T is not a substantial supplier of dedicated access services to Qwest, and the loss of AT&T's supposedly "most ubiquitous" facilities will have no material competitive impact on Qwest (or any other competitor).

Unable to show that AT&T's local network facilities are of material competitive importance, Qwest renews a claim raised by other competitive carriers that AT&T is a "key reseller" of SBC's special access services and that this "force[s]" SBC to offer discounts.<sup>25</sup> As SBC and AT&T demonstrated in the Joint Opposition, there is absolutely no basis for this claim. Contrary to Qwest's implicit suggestion, AT&T does not receive unique discounts from SBC, nor is AT&T a significant reseller of SBC access service. To the contrary, AT&T deploys wholesale facilities primarily for the purpose of providing retail services, and its small wholesale sales are purely incidental and competitively insignificant.<sup>26</sup>

B. Qwest's retail competition claims are similarly based on fantasy rather than fact. In claiming that AT&T is "the largest retail wireline competitor to SBC" for mass market

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<sup>21</sup> SBC/AT&T Joint Opposition, Fea *et al.* Reply Dec. ¶ 36.

<sup>22</sup> Order on Remand, *Unbundled Access to Network Elements*, WC Docket No. 04-313, CC Dkt. No. 01-338, 2005 WL 289015, ¶¶ 12, 20, 30 ("*Triennial Review Remand Order*").

<sup>23</sup> SBC/AT&T Joint Opposition, Carlton-Sider Reply Dec. ¶ 36.

<sup>24</sup> *International Union v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972) ("when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him").

<sup>25</sup> *Id.* at 11.

<sup>26</sup> SBC/AT&T Joint Opposition at 31-34. As explained in the applicants' Joint Opposition, AT&T's "Type II" local private line service uses AT&T facilities for two of three links in the private line (one tail and the transport) and obtains one of the tails from another carrier. In other words, AT&T does not provide a wholesale local private line if it requires obtaining more than one tail from another carrier. For that reason, AT&T's sales of "Type II" wholesale local private line service are insignificant. *Id.* at 34 & Fea *et al.* Reply Dec. ¶ 43.

customers,<sup>27</sup> Qwest simply ignores the key fact that AT&T made an irreversible decision last year to stop actively marketing traditional mass market services.<sup>28</sup> This omission is particularly remarkable given that Qwest has otherwise publicly acknowledged that AT&T is no longer an active participant for mass market services and that mass market prices are constrained today and will continue to be constrained by other existing and emerging active competitors whose competitive activities are unaffected by the merger.<sup>29</sup> Thus, the proposed merger plainly can have no significant effect on either the scope or intensity of mass market competition.

Qwest's assertions that the merger will "eliminate emerging intermodal retail competition" for VoIP, wireless, and cable are frivolous.<sup>30</sup> Qwest can claim that AT&T is a "significant VoIP competitor[]" only by willfully blinding itself to the facts.<sup>31</sup> AT&T is not a significant VoIP provider today, and it made the pre-merger business decision to scale back its VoIP marketing efforts.<sup>32</sup> In stark contrast, cable firms added 600,000 VoIP customers in the first quarter of this year alone - up 40% from the previous quarter. Industry analysts agree that the introduction of VoIP, especially by cable companies, represents the largest long-term competitive threat to the ILECs.<sup>33</sup>

Qwest does not even attempt to show how the loss of AT&T – which has no significant wireless operations – could reduce wireless competition.<sup>34</sup> Indeed, Qwest candidly concedes that "[c]onsumers have demonstrated that they are increasingly willing to replace our wireline service

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<sup>27</sup> Qwest Ex Parte at 12.

<sup>28</sup> Public Interest Statement at 44-67 & Polumbo Dec. ¶¶ 11-30.

<sup>29</sup> See Matt Richtel, "The Diminishing Bell: The Industry; Bells Win a Battle, But Not Necessarily the War," New York Times (July 23, 2004) ("The fact that a company like AT&T chooses to retreat does not change the state of competition. . . . There isn't a vacuum. . . . Competition is alive and real") (quoting Qwest's Chairman). See also *United States v. General Dynamic Corp.*, 415 U.S. 486, 503-04 (1974) (where a "firm's future ability to compete" is negligible, its disappearance as an independent competitor could not affect the market); *Lektro-Vend Corp. v. Vendo Co.*, 660 F.2d 255, 276 (7<sup>th</sup> Cir. 1981) (rejecting merger challenge where the acquired company's "deteriorating market position prior to the acquisition" demonstrated that "its potential effectively to compete in the future was weak[]" and thus the merger as unlikely to have "anticompetitive effects"); *FTC v. National Tea Co.*, 603 F.2d 694, 700 (8<sup>th</sup> Cir. 1979) (upholding refusal to enjoin merger, observing that because the acquired grocery chain was "probab[ly]" going to exit the market, it "was an insignificant factor as a competitor").

<sup>30</sup> *Id.* at 13.

<sup>31</sup> *Id.*

<sup>32</sup> SBC/AT&T Joint Opposition at 107.

<sup>33</sup> See, e.g., Public Interest Statement, Carlton-Sider Declaration ¶ 29 & n.38.

<sup>34</sup> Qwest Ex Parte at 13.

with the wireless services of our competitors.”<sup>35</sup> Rather, Qwest suggests that SBC, because of its ownership interest in Cingular, has a “reduce[d] . . . incentive to drive substitution between wireline and wireless services.”<sup>36</sup> First, that claim not only has no relevance in this merger review, which “is limited to consideration of merger-specific effects,”<sup>37</sup> but it is false. SBC has every incentive to ensure that Cingular remains strongly competitive, because otherwise customers would simply migrate to other established wireless carriers such as Verizon, Sprint, Nextel, T-Mobile, U.S. Cellular, Metro PCS, Leap Wireless, and others, which is why the Commission rejected this argument in approving the Cingular/AT&T Wireless merger.<sup>38</sup>

With respect to business customers, Qwest makes no attempt to argue that the retail enterprise business – in which Qwest is a significant supplier – is not today vigorously competitive. Nor could it. Qwest has repeatedly stated to federal regulators and investors that it faces vigorous and increasing competition for enterprise services.<sup>39</sup> Instead, it suggests in passing that somehow other carriers cannot compete at retail without “AT&T . . . as [an] underlying wholesale provider.”<sup>40</sup> But this claim, too, is entirely derivative of Qwest’s false assertion that AT&T has unique and extensive local facilities used to provide wholesale access to

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<sup>35</sup> Petition to Deny of Qwest Communications Int’l, Inc., filed in WC Docket No. 05-65 at 35 (April 25, 2005). *See also Eighth CMRS Report*, 18 FCC Rcd 14783, ¶ 102 (2003) (“[o]ne analyst estimates that wireless has now displaced about 30 percent of total wireline minutes”).

<sup>36</sup> *Id.*

<sup>37</sup> Order, *Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. and AT&T Corp to AT&T Comcast Corp.*, 17 FCC Rcd. 22633, ¶ 11 (2002).

<sup>38</sup> *See Memorandum Opinion and Order, Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp.*, 19 FCC Rcd. 21522, ¶¶ 247-48 (2004).

<sup>39</sup> *See, e.g.*, Qwest, 2004 Form 10-K, at 10-11 (“In providing [data and Internet] services to our business customers, we compete with national long-distance carriers (such as AT&T, Sprint and MCI), cable operators, ILECs, CLECs and large integrators (such as International Business Machines Corporation and Electronic Data Systems Corporation). Large integrators are also competing in a new manner, providing customers with managed network services, which takes inter-site traffic off our network. . . . We also compete with cable operators who offer high-speed broadband facilities over cable modem, a technology directly competitive with the DSL modems that we employ.”); Press Release, Qwest, Qwest Improves in Key Growth Areas and Sees Margin Expansion in Fourth Quarter 2004 (Feb. 15, 2005) (“Revenue gains in consumer and wholesale long-distance, data and Internet were offset by local losses and competitive pressures in the enterprise market.”); Qwest, 2004 Form 10-K, at 62 (“We compete in a rapidly evolving and highly competitive market, and we expect competition to intensify. We have faced greater competition in our core local business from cable companies, wireless providers (including ourselves), facilities-based providers using their own networks as well as those leasing parts of our network (unbundled network elements), and resellers.”); Qwest, 2003 Annual Report at 9 (“Advances in wireless, cable and Internet technologies have created an environment in which there are more companies competing for the same customers.”).

<sup>40</sup> Qwest Ex Parte at 12.

third-parties. As we have shown, that claim is untrue, and the merger will in no way affect competition in enterprise services.

**Qwest's Own Data Confirm That the Merger Will Not Affect Competition.**

Although it fails to confront the marketplace facts or the record in this proceeding, Qwest's *own* factual showings starkly confirm that there is robust competition that will be unaffected by the merger in the relevant markets and are sufficient to demonstrate that its claims here have no merit. For example, Qwest notes that it has a full "IXC/CLEC Retail Business Out-of-Region."<sup>41</sup> It "[s]ells a complete solution to small, medium, and large businesses," and "[h]as a certified sales force of over 1700 employees with technical support engineers across the U.S. serving all segments of businesses," including "global, major, key, federal [and] local government and education."<sup>42</sup> Qwest offers "domestic and international" long distance service, and has "major POPs in 44 on-net cities across the U.S.," with "additional presence in 54 more cities."<sup>43</sup> Qwest also claims IXC customers in 184 LATAs in all 50 states.<sup>44</sup> Qwest sells a full range of data and IP-enabled services: frame relay, private line, ATM, "[dedicated Internet access], hosting, iQ WAN, hosted VOIP, [and virtual private networks]."<sup>45</sup> Qwest claims that it is carrying more than 2 billion VoIP minutes per month.<sup>46</sup> And Qwest has a full "IXC/CLEC Wholesale Business Out-of-Region."<sup>47</sup> It sells "Dedicated Internet Access (DIA), Frame Relay, ATM, Private Line," and its customers include "CLECs, ESPs, ISPs, IXCs, resellers, [and] wireless carriers."<sup>48</sup>

Qwest also clearly maintains an impressive *facilities-based* presence out of region. As Qwest notes, it has a facilities-based presence in "25 out-of-region cities," including many cities in SBC's incumbent territory (*e.g.*, Chicago, Cincinnati, Cleveland, Columbus, Dallas, Detroit, Fort Worth, Indianapolis, Kansas City, Los Angeles/Orange County, Sacramento, San Antonio, San Diego, San Jose, San Francisco, and St. Louis).<sup>49</sup> Qwest concedes that it has deployed extensive metro fiber facilities out of region, along with its "nationwide fiber network with the newest technology and features" and "28,000 national route miles of lit fiber."<sup>50</sup>

This "unique combination of local and long-haul assets allows [Qwest] to offer a broad range of services to customers in our local region and across the country."<sup>51</sup> In particular,

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<sup>41</sup> Qwest Ex Parte at 5.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 6.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 5.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 7.

<sup>50</sup> *Id.*; *see also id.* at 8 (map of Qwest's out of region metro network locations).

<sup>51</sup> Qwest, 2003 Annual Report at 7.

Qwest's "unique set of network assets is compelling for medium- to large-size business and government customers."<sup>52</sup> None of this competition – or the competition from the many other existing wholesale and retail competitors – will be affected by the proposed merger. The Commission should approve the proposed license transfers and reject the baseless claims of Qwest and other competitors that seek only to serve their own narrow interests and to delay the substantial consumer benefits that the merger will bring.

Sincerely,

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/s/ Gary L. Phillips

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Scott Bergmann  
Jonathan Levy  
Thomas Navin  
Julie Veach  
Bill Dever  
Marcus Maher  
Gary Lytle

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<sup>52</sup> *Id.* at 13.