

REDACTED – For Public Inspection

September 6, 2005

**BY ECFS**

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

Re: ***In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from AT&T Corp., Transferor, to SBC Communications Inc., Transferee, WC Docket No 05-65***

Dear Ms. Dortch:

Attached to this letter are the following materials that further demonstrate that the proposed merger of SBC and AT&T does not raise competitive concerns with respect to special access:<sup>1</sup>

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<sup>1</sup> After consultation with the Commission's Staff, SBC is filing the attached materials with the Secretary and with Gary Remondino of the Wireline Competition Bureau as copying prohibited materials pursuant to either the First Protective Order or the Second Protective Order. See *In re Applications of SBC Communications Inc. and AT&T Corp.*, WC Docket No. 05-65, Order Adopting Protective Order, DA 05-635 (WCB rel. March 10, 2005); Order Adopting Second Protective Order, *In re Applications of SBC Communications Inc. and AT&T Corp.*, WC Docket No. 05-65, Order Adopting Second Protective Order, DA 05-1322 (WCB rel. May 9, 2005). Items 1 and 2 are being filed under the Second Protective Order because they identify the exact location of many of AT&T's largest customers and, if released to AT&T's competitors, would allow them to target those customers and gain a significant advantage in the marketplace. Similarly, Item 4 and Item 5 are being filed under the Second Protective Order because they provide customer data on an MSA basis and, if released to AT&T's competitors, would allow them to target those customers and gain a significant advantage in the marketplace. Item 3 contain confidential business information and is being filed under the First Protective Order.

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- (1) a list of each building in SBC's in-region territory served by AT&T fiber and details about competitive conditions for each building;
- (2) a satellite photograph for each building in SBC's in-region territory served by AT&T fiber;
- (3) maps depicting the lit buildings and fiber of AT&T and other CLECs for each of the 19 MSAs in SBC's in-region territory in which AT&T has special access facilities;
- (4) a "Building Analysis" spreadsheet, which identifies by MSA the number of buildings served by AT&T fiber that we believe should be excluded from any analysis of the merger's competitive effects on special access; and
- (5) two sets of charts, based on databases kept in the ordinary course of AT&T business, that estimate the number of buildings served by CLEC special access facilities.

In reviewing these materials, the Commission must be mindful of their context. The number of MSAs in which AT&T has lit buildings is only a small fraction of the MSAs in SBC's territory. The Census Bureau has divided the United States into 305 MSAs. Only 140 of these MSAs are in the states constituting SBC's in-region territory. AT&T has built fiber into one or more buildings in only 19 of these 140 MSAs, spread across 13 states.

Likewise, the number of buildings lit by AT&T's fiber in SBC's territory is but a small fraction of the total number of buildings with sufficient bandwidth demand for special access services. There are over 1,000,000 buildings in the United States with demand for telecommunications services exceeding 10 DS0s or greater. Over 400,000 of these buildings are in the 140 MSAs within SBC's in-region territory, and over 240,000 such buildings are located in the 19 MSAs where AT&T has built facilities to one or more buildings. The 1,756 commercial buildings connected by AT&T are simply not competitively significant in comparison to the 1,000,000, the 400,000, or even the 240,000 buildings with 10 DS0s or greater of demand. Furthermore, in MSAs such as Austin, Columbus, Dayton, Reno, and San Antonio, the absolute number of buildings

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served by AT&T is so small that AT&T's facilities cannot be considered competitively significant.

In July, we provided the Commission with related data and a presentation that described our analysis at that time. Since then, we have continued to refine our analysis in the following ways. First, the number of "lit" commercial buildings that we show to be served by AT&T has increased from 1,691 to 1,756. This is because our original presentation was limited to buildings in the 19 relevant MSAs where AT&T has deployed local facilities. We have added buildings that are located within the SBC region but were located outside of the MSAs focused on in our initial analysis.<sup>2</sup> In many instances, these buildings are not served by AT&T's local fiber facilities but by broadband wireless or by "rifle shot" extensions of AT&T's long distance network. Second, we have supplemented our data regarding CLEC lit buildings within the 19 MSAs where additional data became available. Finally, as explained more fully below, our building cut analysis has been expanded to include other relevant categories, each of which demonstrates why no competitive issue exists with respect to the particular category of buildings.

The attachments to this letter provide even more detail as to why the AT&T access facilities are not competitively significant. The "Building Analysis" identifies categories of buildings that should be excluded from any competitive analysis. Each column shows the number of AT&T "lit" commercial buildings that remain after the previous categories of buildings have been excluded. The categories of excluded buildings are as follows:

- *Buildings in which Cingular is the only customer.* These buildings should be excluded as the combined companies, in essence, will be self-provisioning these facilities after the closing of the merger.

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<sup>2</sup> Twenty-four of those buildings are located in metropolitan areas and have thus been associated with a nearby MSA in the current data. The other 41 buildings are listed as "other" on the "Building Analysis" spreadsheet.

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- [REDACTED].<sup>3</sup>
- *Buildings served by broadband wireless connection.* These buildings should be excluded because (i) broadband wireless service is far less expensive to build than fiber connections, (ii) the FCC has licensed spectrum to a large number of companies to be used for these purposes, and (iii) the fact that AT&T is using broadband wireless to serve customers in these buildings demonstrates that others could serve them in the same way.
- *Buildings served by other CLECs.* Information regarding the CLECs serving these buildings was compiled from databases that are kept in the ordinary course of business by AT&T. This information understates the number of buildings served by CLECs because it does not include all buildings that CLECs serve in these markets and does not include any of the buildings they serve in other markets. Additionally, AT&T commissioned a manual inspection of roughly 400 buildings by a third party consultant to identify CLEC presence in those buildings as well as CLEC fiber nearby. These data undercount CLEC buildings because buildings lit by several major CLECs such as Sprint, Qwest, and Cox are not included since we have not been able to find data on these companies. Should the Commission have such information, however, and to the extent the Commission can overlay that information, it will become even clearer that the number of buildings served by AT&T is not a competitive concern.
- *Vacant and Type II-only buildings.* Buildings that are vacant were excluded, as any potential for customer harm is highly speculative. Also excluded were buildings that AT&T connected to in the past, but that are served through purchased access today. Any CLEC could offer such Type II service to the building.
- *Buildings with a demand of two or more DS3s.* The Commission found that it is “generally feasible for a carrier to self-deploy its own high capacity loops when demand nears 2 DS3s of capacity at a particular location.” Notably, no CLEC

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<sup>3</sup> [REDACTED.]

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appealed the Commission's finding. We have placed buildings into this category based on AT&T demand, which usually is only a fraction of total building demand.

- *Buildings in which the telecommunications demand is at the DS1 or DS3 level, and the Commission's test for competitive supply is met.* The Commission specifically found that CLECs could economically self-deploy even at the DS1 or DS3 level in certain of the densest commercial wire centers.
- *Buildings in which CLEC fiber is present within a tenth of a mile.* These determinations were made using GeoTel data, which understates the number of buildings that should be excluded since GeoTel has limited records of competitive CLEC fiber, as well as from the manual building inspections commissioned by AT&T.
- *Buildings served by AT&T with an IRU.* AT&T does not own a fiber lateral to these buildings, but serves them with an IRU over fiber that is owned by others.

The other materials that we are submitting further support the conclusion that the merger will have no adverse effect on special access competition. The list of each building in SBC's in-region territory served by AT&T fiber demonstrates how competitive conditions are in those buildings. The charts showing the number of building served by other CLECs demonstrate the competitive insignificance of AT&T's special access facilities. The fiber maps, which previously were filed in this proceeding, show that CLECs have deployed extensive fiber facilities in all of the relevant MSAs. The satellite photographs demonstrate that even the buildings that remain after the various exclusions are near other significant commercial buildings that either are or could be served by CLECs, and in many cases by multiple CLECs, which are using their own fiber in buildings close to the AT&T buildings. We believe that these buildings, both because they can be served by other CLECs who have fiber close to them and because of the very small absolute numbers are likewise not competitively significant.

We believe these analyses further confirm what the substantial record evidence already submitted in this docket convincingly shows: that there is no basis for competitive concern regarding special access. We want to ensure that the Commission has ample time to consider this information and are mindful that the Commission's

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internal “180-day clock” will expire on September 7. We respectfully request that the 180-day clock be extended until October 13 with a goal that the Commission’s order be issued no later than that date.

Sincerely,

SBC Communications, Inc.

AT&T Corp.

/s/ Christopher M. Heimann

/s/ Lawrence J. Lafaro

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