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**Melissa E. Newman**  
Vice President-Federal Regulatory

**REDACTED – FOR PUBLIC INSPECTION**

EX PARTE

September 22, 2005

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Room TW B-204  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

RE: WC Docket No. 05-65, DA 05-656, *In the Matter of SBC/AT&T Applications for Approval for Transfer of Control*

Dear Ms. Dortch:

On September, 21, 2005, Melissa Newman, Steve Davis and Bob Connelly -- all of Qwest -- met, in separate meetings, with Michelle Carey, Legal Advisor to Chairman Kevin Martin; Russ Hanser, Legal Advisor to Commissioner Jonathan Adelstein; Scott Bergmann, Legal Advisor to Commissioner Kathleen Abernathy; Jessica Rosenworcel, Legal Advisor to Commissioner Michael Copps; and, Thomas Navin, William Dever, Terri Natoli and Donald Stockdale, all of the Wireline Competition Bureau. Additionally, Gary Lytle of Qwest attended the meetings with Michelle Carey, Russ Hanser and Thomas Navin.

The attached letter, dated September 21, 2005, from Robert L. Connelly, Jr., of Qwest to FCC Secretary Marlene H. Dortch, including the attachments thereto, and the attached PowerPoint presentation were used as the basis for discussions at these meetings. The purpose of this correspondence is to submit these documents to the FCC so that they can be included in the record of the above-captioned proceeding.

As is required by the March 10, 2005 *Order and Protective Order* (DA 05-635) in WC Docket No. 05-65, each page of the redacted version of the letter and accompanying attachments has been marked with the following language: "REDACTED – FOR PUBLIC INSPECTION". The redacted version of the Connelly letter reflects markings indicating in the text where the confidential information has been removed. As to the letter's attachments that are confidential, these have been removed from the redacted version of the submission; the non-redacted version of the submission contains a complete set of the attachments (both confidential and non-confidential). Regarding the PowerPoint presentation, since this document contains no confidential information, it does not include any markings (but it is attached to both versions of this correspondence).

Marlene H. Dortch  
September 22, 2005

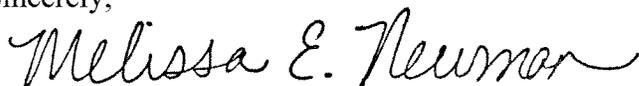
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In addition, under separate cover, Qwest is simultaneously submitting today a non-redacted version of this correspondence. As is also required by the March 10, 2005 *Order and Protective Order* (DA 05-635) in WC Docket No. 05-65, each page of the non-redacted version of the letter and accompanying attachments (that contain confidential information) has been marked with the following language: "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 05-65 before the Federal Communications Commission".

Enclosed are an original and five copies of this correspondence, including one STAMP AND RETURN copy. Pursuant to the March 11, 2005 *Public Notice* (DA 05-656), a copy of this correspondence is also being provided to the following FCC personnel: Marcus Maher and Gary Remondino of the Wireline Competition Bureau, Jeff Tobias and Mary Shultz of the Wireless Telecommunications Bureau, David Krech and JoAnn Lucanik of the International Bureau, Charles Iseman of the Office of Engineering and Technology, James Bird of the Office of General Counsel, and Jonathan Levy of the Office of Strategic Planning and Policy Analysis. In addition, a copy of this correspondence is being provided to the FCC's duplicating contractor, Best Copy and Printing, Inc.

This ex parte submission is being filed pursuant to 47 C.F.R. § 1.1206(b)(2).

Sincerely,



Melissa E. Newman  
Vice President-Federal Regulatory  
Qwest

Attachments

Copy to:

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Marlene H. Dortch  
September 22, 2005

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Robert L. Connelly, Jr.  
Vice President – Deputy General Counsel

**REDACTED VERSION**

September 21, 2005

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth St., SW  
Washington, D.C. 20554

**RE: SBC/AT&T Applications for Approval of Transfer of Control –  
WC Docket No. 05-65**

Dear Ms. Dortch:

This letter discusses evidence that SBC already is using its increased market power arising from its acquisition of AT&T to create new barriers to competition. SBC's actions appear targeted to foreclose any other party from emerging to replace the competition lost when SBC eliminates its primary in-region competitor. These actions underscore why the merger should be conditioned on full divestiture of overlapping AT&T operations and related restrictions on terms and conditions under which SBC provides special access.

**Introduction**

The record in this proceeding demonstrates that SBC, by acquiring AT&T, would substantially increase its market power over special access by eliminating the competitor with by far the greatest scale and scope to constrain wholesale special access prices. 1/ SBC already is flexing its resulting increased market power “muscle” to take advantage of the weakened

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1/ AT&T operates the largest independent local network facilities in the SBC region, and is best positioned to avoid SBC special access by overbuilding new plant, cost-justified by its larger customer base and more extensive existing local network. AT&T provides use of its network to third party carriers, and also constrains SBC special access prices for other carriers due to its purchasing leverage insofar as SBC must give other carriers similar rates. Moreover, AT&T can constrain SBC retail prices for business services where special access is a material input. *See, e.g.,* Declaration of B. Douglas Bernheim, attached to Qwest Petition to Deny, WC Docket No. 05-65 (filed Apr. 25, 2005); *Ex Parte* Letter filed by Global Crossing North America, Inc., WC Docket No. 05-65 (filed Sept. 1, 2005); Declaration of Simon Wilkie, attached to Cbeyond Communications, et al., Petition to Deny, WC Docket No. 05-65 (filed Apr. 25, 2005); Simon Wilkie, “Proposed Mergers of SBC/AT&T and VZ/MCI: Preliminary Analysis of Competitive Effects,” attached to *ex parte* letter filed by Cbeyond Communications, et al., WC Docket Nos. 05-65 and 05-75 (filed June 15, 2005). *Cf.* New York State Department of Public Service Staff, *White Paper*, Case No. 05-C-0237, *Joint Petition of Verizon New York and MCI, Inc.*; Case No. 05-C-0242, *Joint Petition of SBC Communications, Inc. and AT&T Corp.* (N.Y. PSC, filed July 6, 2005).

bargaining position of special access customers negotiating deals that will apply in a post-merger world. These anticompetitive actions raise problems individually. Collectively, they serve as a *de facto* “poison pill” precluding transactions that would permit a new competitor to grow to the scale and market-checking scope of AT&T today.

1. *Grooming Restrictions*. SBC is imposing severe new limits on the ability of Qwest (and presumably other special access purchasers) to reduce the special access costs they incur by shifting to more cost efficient configurations – known as “grooming” circuits.
  - SBC is limiting the ability of customers that are AT&T competitors to leave SBC service and substitute other providers, and to replace less efficient SBC special access with more efficient and less costly SBC configurations.
  - These grooming restrictions make it harder for SBC/AT&T competitors to lower their access costs. They also reduce smaller CLECs’ ability to compete by preventing customers from migrating service to them.
2. *UNE/Access Service Ratio Restriction*. SBC is also exercising its increased market power to force Qwest to maintain at least 95% of its total SBC local facility spending on higher priced special access services, and no more than 5% on Unbundled Network Elements (“UNEs”). Significantly, SBC also is requiring that this restriction apply to local spending by companies that Qwest may acquire in the future.
  - This so-called 95/5 “access service ratio” requirement imposes added costs on SBC/AT&T competitors by effectively precluding them from purchasing high-capacity UNEs for which the FCC continues to require unbundling due to competitive “impairment.”
  - The access service ratio requirement also effectively deters Qwest (and others) from acquiring a CLEC that uses UNEs to a material extent. The requirement imposes a “Hobson’s choice” on companies considering acquiring such CLECs: either (i) forego the benefits of SBC’s optimal special access pricing plans (and possibly incur significant repayment penalties), or (ii) convert the CLEC’s circuits from SBC UNEs to higher-priced special access, thereby eviscerating much of the business case for the acquisition.
3. *Veto on CLEC Consolidation*. In significant commercial transactions with other carriers, SBC appears to be expressly prohibiting those carriers from entering into mergers with certain specified competitors, upon pain of SBC canceling those contracts. SBC has taken steps to prevent the public from knowing the identity of the “blacklisted” competitors. However, the practical result is to confine the ability of such competitors to consolidate and achieve sufficient scale to compete effectively with SBC/AT&T.

In a competitive market SBC would not have the ability to impose these onerous conditions on its rivals. Its proposed elimination of AT&T both increases its ability to do so, and increases its incentives to preserve the market power it is gaining.

These actions present issues under the Communications Act and the antitrust laws. However, our primary purpose for bringing them to the Commission's attention here is to underscore how SBC already is exploiting the increased market power it will receive from the elimination of an independent AT&T in its region. It is imposing conditions governing the post-merger world to create barriers to the replacement of AT&T's current competitive position. Third parties aware of that increasing market power are being forced to accept these terms. It is incumbent on this Commission to remedy this situation through adequate conditions on the merger.

We describe these anticompetitive practices in greater detail below.

#### **I. SBC Grooming Restrictions.**

Certain of the most significant volume and term discount plans covering the special access services that Qwest's long distance and enterprise service affiliate, Qwest Communications Corp. ("QCC"), purchases from SBC expired on Sept. 1, 2005 (in the Ameritech region) and will expire on Nov. 1, 2005 (in the PacTel and SWBT regions). Over the past several months SBC and Qwest have been in discussions regarding a replacement discount plan for the future, post-merger period.

Over the past 18 months QCC has been taking actions to reduce its special access costs through grooming. In the course of the current negotiations, however, SBC announced plans to impose new and extraordinarily stringent limits on the number of facilities that QCC could groom in the future. Specifically, SBC proposed not to allow QCC to groom any more than [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] circuits per month nationwide, or [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] per year – and not a single circuit more. <sup>2/</sup> These restrictions would apply both to grooms from SBC to other CLECs, and to grooms from less efficient to more efficient (and less costly) configurations of circuits that QCC buys from SBC. At the same time, in a July 2005 meeting with Qwest personnel, SBC staff members stated that SBC would be willing to perform the necessary services to enable QCC to move *over*

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<sup>2/</sup> See Exhibit 1 [BEGIN CONFIDENTIAL]

[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]; Exhibit 2  
[END CONFIDENTIAL], at 1. Under SBC's methodology, in some circumstances grooming one DS3 circuit containing 28 DS1s would count as 29 grooms (1 for the DS3 and 1 for each of the DS1s). See Exhibit 3 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL], at 1. SBC proposed further restrictions allocating the monthly grooms among the four SBC regions (Ameritech, PacTel, SWBT and SNET). These regional and monthly allocations could not be transferred between regions or months – so QCC must use its allocations or lose them, regardless of whether it has greater needs or shortfalls in a different region or month. See Exhibits 1 & 2.

[BEGIN CONFIDENTIAL] [END CONFIDENTIAL] *times* as many circuits – [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] per month – when the grooms related to the transfer of service *from* other CLECs *to* SBC (rather than the other way around). 3/ In other words, SBC was much more willing and apparently able to groom circuits where that grooming would result in increased, rather than decreased revenue.

To put these limitations in perspective, during 2004, QCC achieved annual cost savings of approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] million by grooming [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] circuits either from SBC to CLECs or from less efficient to more efficient SBC configurations. 4/ This is more than [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] the number of circuits that QCC would be permitted to groom under SBC’s newly imposed limitation. Through July 2005, QCC has already groomed [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] circuits away from SBC, and had anticipated grooming away even more circuits – approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] by year-end – amounting to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] times the number that would be permitted under SBC’s restrictive policy. 5/

During the negotiations, Qwest expressed its unwillingness to accept SBC’s proposed grooming limitations. 6/ Subsequently, SBC told Qwest that it would have to accept the grooming limitations whether it wanted to or not. SBC planned to impose them unilaterally outside the tariff by embodying them in SBC’s standard operating Methods and Procedures document, rather than in an agreement with QCC. 7/ SBC has informed Qwest that the new grooming guidelines were effective September 1, 2005.

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3/ See Exhibit 2.

4/ See Exhibit 5 [BEGIN CONFIDENTIAL]

[END

CONFIDENTIAL] at 2.

5/ See Exhibit 6 [BEGIN CONFIDENTIAL]  
[END CONFIDENTIAL] at 1.

6/ See *id.* at 1 (“Qwest made it clear that they don’t agree with these guidelines and are only here to understand the process”).

7/ See Exhibit 4 [BEGIN CONFIDENTIAL]  
[END CONFIDENTIAL] at 1 (noting that, while SBC might “remove the grooming language altogether from the current [contract tariff] offer, . . . SBC still plans to implement this in practice during the 3rd or 4th qtr.”); Exhibit 1 at 5-11 (detailing SBC’s proposed grooming restriction in a non-tariffed “Grooms Process Information” document). See also Exhibit 1 at 7 (specifying that the applicable groom limits “include, but are not limited to, Qwest-initiated moves from an existing CFA [“Circuit Facility Assignment”] to another CFA. New installs and customer initiated moves from Location A to Location B submitted via the project process will not be counted against the groom quantity allotment.”).

The fact that SBC is imposing these restrictions on Qwest via a non-tariffed standard operating procedures document indicates the likelihood that SBC is applying such restrictions to other special access purchasers as well. These grooming restrictions will have an enormously harmful impact on SBC's facilities-based local customers/competitors because, even if those CLECs succeed in attracting business from Qwest or other special access purchasers, those purchasers cannot, as a practical matter, migrate their business over to the CLECs in a timely manner. The restrictions also impose serious harm on Qwest and other AT&T competitors that must purchase special access from SBC. They are prevented from taking action to reduce their special access expense even when viable, more cost-effective alternatives are available.

SBC's apparent willingness to groom a far greater number of circuits from CLECs to SBC than from SBC to CLECs provides convincing evidence that SBC's restrictions on QCC's ability to migrate special access circuits to competitors have less to do with any technical provisioning limitations than with preserving SBC revenue while also undermining competition. <sup>8/</sup> Indeed, Qwest understands that SBC's Methods and Procedures effectively impose no fixed grooming restriction on circuits coming over from CLECs because they would qualify as "new." In effect, SBC is willing to devote major resources to handle service on orders that shift additional revenue to itself, but it is slow-rolling service on orders that would reduce revenues, even though both types of orders involve essentially similar work functions.

Moreover, SBC's grooming restrictions will have an even more harmful and anticompetitive effect if SBC is allowed to purchase AT&T. Qwest recognizes that reasonable non-discriminatory grooming policies are necessary to permit orderly processing of orders, consistent with the ILEC's technical capabilities. Now, however, with the merger in prospect, SBC is creating arbitrary limits that tie QCC (and presumably others) more tightly to the SBC local network. The result is to increase QCC's costs, and to hamper its ability to meet customer requirements. The restrictions also effectively reduce the market opportunity for CLECs to the extent they provide a competitive alternative to SBC in particular locations. Not coincidentally, they also reduce the value of any divested local AT&T facilities in the SBC region because the buyer (and third parties) would be less free to move off SBC's own ubiquitous network onto the divested assets.

Finally, and importantly, the grooming restrictions create a barrier to merger among CLECs trying to replicate AT&T's scale and scope. Such merging CLECs would be hamstrung by these limits as they sought to complete grooms from SBC local facilities to themselves (or to local facilities acquired in the merger), in order to timely capture the synergies of a more efficient local network operation in the SBC region.

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<sup>8/</sup> Qwest has on several occasions asked SBC to provide a technical or other justification for the arbitrary cap on the number of circuits that SBC will groom for Qwest, but SBC has never provided any detailed basis for how it came up with the cap. *See, e.g.*, Exhibit 1 at 3; Exhibit 6 at 2 (in response to Qwest's request for explanation of the formula used to derive restriction imposed on Qwest, representative of "SBC says this is a business decision.").

In that regard, one may wonder whether a side rationale for the new grooming restrictions on competitors is to permit SBC to devote more resources to the combination and optimization of SBC and AT&T customers and networks post-merger. Such preferential treatment would clearly violate the anti-discrimination requirements of Sections 201, 202, and 272 of the Communications Act (“Act”) <sup>9/</sup> But for present purposes such concerns underline the need for adequate remedies to address the problems created by the merger itself. <sup>10/</sup>

## **II. SBC Restrictions on Special Access Purchasers’ Use of UNEs.**

SBC also is tying another anticompetitive restriction to the new volume special access plan under negotiation with Qwest. Such special access pricing plans are common in the industry, and typically provide for a discount off the ILEC’s special access rates in exchange for a specified purchase commitment. Virtually all carriers that purchase significant amounts of special access do so pursuant to volume and/or term discount plans. Here, however, SBC is insisting in negotiations over the new QCC volume plan that QCC agree to limit the purchase of those high-capacity UNEs that SBC continues to be required to offer pursuant to the FCC’s rules. SBC is also insisting upon commitments that QCC will never “commingle” special access and UNE facilities, even insofar as ILECs are required to make such commingling available. QCC does not currently use UNEs in the SBC region. However, the SBC restrictions would prevent QCC from reevaluating that strategy. More important, however, they also would act as a “poison pill,” raising – potentially prohibitively – the cost to QCC of acquiring a CLEC that does use UNEs. QCC would be forced either to move that CLEC off UNEs, or suffer a large financial penalty.

Specifically, SBC is tying its volume discount offer for special access to a so-called “access service ratio” requirement that QCC at all times purchase at least 95% of the SBC facilities used for dedicated local connectivity as tariffed special access service, rather than UNEs. Put another way, Qwest may spend no more than 5% of its total SBC purchases on UNEs – under penalty of losing its eligibility for substantial discounts on the special access

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<sup>9/</sup> “A Bell operating company . . . (1) shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates . . . .” 47 U.S.C. § 272(e)(1). Other provisions of Section 272(e), which do not sunset with other provisions of Section 272, similarly require BOCs to provide exchange access services, including special access, at nondiscriminatory terms and conditions to unaffiliated carriers.

<sup>10/</sup> It would be virtually impossible for the Commission or competing carriers to detect these discriminatory practices or enforce the Act’s requirements (absent appropriate merger conditions). Moreover, even if SBC were to impose the *same* grooming restrictions on post-merger AT&T as it imposes on AT&T’s competitors, the net effect would still seriously harm competing carriers. The increased amounts that AT&T might have to spend on SBC special access would be a “pocket-to-pocket” transfer that would have no bottom line impact on the merged company, but Qwest and other competing carriers would be forced to spend more on SBC special access, harming their bottom lines and making it substantially more difficult for them to compete with AT&T.

services that make up the vast majority of its spending on local dedicated connectivity, as well as substantial termination liability under the plan. <sup>11/</sup>

These UNE restrictions create a “poison pill” that would substantially if not prohibitively increase the cost for Qwest – and any other AT&T competitor subject to a similar SBC policy – to acquire a CLEC that purchases any significant amount of UNEs from SBC. Specifically, SBC is requiring that, if Qwest acquires control of a CLEC, the new “access service ratio” and commingling restrictions on the use of UNEs also would apply to that CLEC, or QCC would lose its special access discounts. <sup>12/</sup> Unless Qwest converted the acquired CLEC’s UNEs to special access sufficient to satisfy the 95/5 access service ratio, QCC would be in violation of the plan, would be disqualified from any further discounts under the plan, and would be liable to SBC for substantial early termination penalties.

As with the grooming restrictions discussed above, SBC has made clear that the application of the access service ratio to an acquired embedded UNE base is non-negotiable – a “take it or leave it” proposition. SBC has included the restriction in the draft tariff that it proposed to file for the discount term plan terms it offered Qwest. This now confronts Qwest with a “Hobson’s choice” when considering CLEC acquisitions: either continue the CLEC’s purchase of UNEs, which would require Qwest to forego the substantial cost savings of QCC’s SBC special access discount plan and subject QCC to substantial penalties, or migrate the CLEC’s service from SBC UNEs to higher-priced special access, which would likely undermine Qwest of a significant part of the benefits of the business case for acquiring the CLEC in the first place. <sup>13/</sup> Thus, SBC’s application of the “access service ratio” restriction – not only to QCC itself (and others) but also to their possible future merger partners – effectively reduces the ability of Qwest (and other special access purchasers) to combine to achieve the necessary scale and scope economies to compete more effectively with SBC/AT&T.

SBC is violating the Communications Act on its own terms, unlawfully precluding competitors from obtaining access to SBC’s UNEs, in violation of Sections 201 and 251(c) of the Act, and unlawfully raising competitors’ costs. For present purposes, however, our point is that SBC’s unilateral imposition of this condition is evidence of how it is asserting its increased market power for the post-merger period, and doing so before that merger even has closed.

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<sup>11/</sup> See Exhibit 8 [BEGIN CONFIDENTIAL]  
[END CONFIDENTIAL] at 4. SBC has established similar “access service ratios” in the context of past generic discount plans. But now SBC is doing so with an express application of the ratio to any firm that Qwest may acquire in the future.

<sup>12/</sup> See *id.* at 5-8 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].

<sup>13/</sup> See Exhibit 9 [BEGIN CONFIDENTIAL]  
[END CONFIDENTIAL].

### **III. SBC Use of Contract Conditions To Restrict CLEC Mergers.**

Finally, Qwest believes that the Commission should investigate recent contracts between SBC and other carriers that appear to condition SBC-granted benefits on a restriction on those carriers' ability to engage in merger activities with certain specified "blacklisted" companies. For example, based on redacted versions of contracts that have been disclosed publicly (or summaries of which have been disclosed publicly) it appears that both Time Warner Telecommunications, in its contract to sell local services outside SBC's region to SBC and AT&T, and WilTel Communications, LLC, in its contract to sell wholesale long-distance service to SBC and AT&T, may have been forced to accept terms of this nature. <sup>14/</sup>

WilTel Communications, LLC., for example, recently entered into a new Master Services Agreement with SBC to replace a long-standing supplier arrangement with that company. The Agreement provides for SBC to purchase \$600 million in services from WilTel during the period through December 31, 2007, and an additional \$75 million in subsequent years. <sup>15/</sup> However, Section 7.2 of that Agreement also provides that if WilTel is sold to a "SBC Restricted Company" prior to the end of 2007, SBC may terminate this very sizable contract. Given the importance of this contract to WilTel, this provision effectively gives SBC a veto right over a sale of WilTel to any company specified as a "SBC Restricted Company." <sup>16/</sup> Public filings of the contract redact the exhibit identifying which "blacklisted" companies are specified as falling into the category of "SBC Restricted Company."

Similarly, in June 2005 SBC and AT&T entered into a services agreement with Time Warner Telecom Holdings Inc. in which the merger parties agreed to acquire a significant

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<sup>14/</sup> See Exhibit 10 (WilTel Press Release, 6/16/05, available at <http://www.wiltel.com/overview/content/pressreleases/2005/06-16.htm>; Exhibit 11 (Excerpts from Redacted Version of SBC/Leucadia/WilTel Contract, 6/15/05, filed with the SEC as an attachment to Form 8-K/A and available at [http://www.sec.gov/Archives/edgar/data/96223/000090951805000501/jd7-7ex99\\_1.txt](http://www.sec.gov/Archives/edgar/data/96223/000090951805000501/jd7-7ex99_1.txt); Exhibit 12 (Time Warner Telecom Press Release, 6/1/05, available at [http://www.twtelecom.com/Documents/Announcements/News/2005/TWTC\\_ATT\\_SBC\\_Renewal2005.pdf](http://www.twtelecom.com/Documents/Announcements/News/2005/TWTC_ATT_SBC_Renewal2005.pdf); Exhibit 13 (Excerpts from Redacted Version of SBC/AT&T/Time Warner Telecom Contract, 6/1/05, filed with the SEC as an attachment to Time Warner Telecom Form 10-Q, and available at <http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex102.htm>. While only the redacted versions of these contracts are publicly available, Qwest urges the Commission to use its merger review authority, as well as its authority under Sections 211 and 218, to review these contracts and ascertain the content of these potentially anticompetitive contract provisions.

<sup>15/</sup> See Exhibit 11 at Section 3.1.A.1.

<sup>16/</sup> Specifically, Section 7.2.C of the Agreement provides that SBC may terminate during this period in the event of a "Change of Control," but as defined in Section 1.29 of the Agreement a "Change in Control" is not any corporate change in control, but only the sale of WilTel to an "SBC Restricted Company." Section 1.170 of the Agreement defines an "SBC Restricted Company" as "any Person identified on Appendix A." However, Appendix A has been withheld from the public filing. See *id.*

amount (not publicly disclosed) of services between 2005 and 2009. <sup>17/</sup> However, when the parties filed this contract with the SEC, they curiously redacted in full one provision dealing with termination issues: Section 6.4 titled "Change in Control Event." <sup>18/</sup>

In the absence of full access to these contracts, the Commission is not in a position to determine the extent to which SBC may be utilizing the conditions in these transactions to preclude these leading companies (and possibly others) to join with others in order to create a robust substitute for the competition lost due to the elimination of an independent AT&T. However, in the context of the other recent SBC actions discussed above, the Commission should investigate whether SBC and AT&T are using their massive marketplace clout to make it difficult or impossible for major competitors such as Qwest and others to combine in order to compete more effectively against the merged company.

\* \* \* \* \*

The effects of these patterns of conduct are not only harmful to competition, they are also unmistakably merger-related – and will become more harmful if and when the merger is consummated. While AT&T will benefit from integration with SBC, the largest and most dominant provider of local connectivity in its region, AT&T's competitors will not be able to achieve similar integration. SBC will enjoy the full benefits of eliminating a competitor of AT&T's scale and scope.

Qwest is concerned that these SBC actions are just the beginning of its actions to exploit the anticompetitive market power it is gaining through the merger. Based on the factual evidence presented here, Qwest urges that, assuming the Commission does not reject the proposed merger, it at least must impose robust conditions – including divestitures of AT&T's in-region facilities and customers, and safeguards against abuse of increased SBC market power over special access. Such conditions are crucial to the public interest if the merger otherwise is to be allowed. <sup>19/</sup>

Respectfully submitted,



Robert L. Connelly, Jr.  
Vice President and Deputy General Counsel

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<sup>17/</sup> See Exhibit 13 at Section 3.1.1.

<sup>18/</sup> See *id.*, Section 6.4.

<sup>19/</sup> See *Qwest Ex Parte*, WC Docket No. 05-65 (filed Sept. 1, 2005); *Qwest Ex Parte Presentation Regarding Remedies*, WC Docket No. 05-65 (filed Sept. 21, 2005).



## **WilTel, SBC Communications Inc. Announce New Master Services Agreement**

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News Release June 16, 2005

### ***Agreement Designed to Ensure Consistent, High-Quality Services for SBC Customers Throughout AT&T Acquisition and Integration Process***

### ***WilTel to Continue to Provide SBC Companies with Long-Distance Voice, Data Services Through 2009; Will Be a Preferred Diversity Provider for Combined SBC-AT&T***

TULSA, Okla. and SAN ANTONIO (June 16, 2005) – WilTel Communications (a wholly owned, indirect subsidiary of Leucadia National Corporation - NYSE: LUK), and SBC Communications Inc. (NYSE: SBC), announced today a new master services agreement extending their relationship through 2009.

The agreement outlines parameters for continued SBC usage of WilTel services throughout the planned AT&T acquisition and integration process. Additionally, the agreement calls for WilTel to be a preferred long-term provider of the combined SBC and AT&T for off-net and diverse network services, providing businesses with expanded options to maintain multiple, redundant network connections to maximize network performance and reliability.

"WilTel was critical to SBC's nationwide launch of long-distance voice and data services. This agreement continues our successful relationship with WilTel and allows us to deliver several key benefits to our customers," said Bob Ferguson, group president and CEO, SBC Enterprise Business Services. "Our top priorities during the planned AT&T acquisition process are to ensure security and reliability for our customers. This agreement with WilTel is designed to facilitate those efforts and to enable us to provide even greater network diversity options for our customers moving forward."

The agreement includes purchase commitments from SBC and performance incentives designed to ensure consistent high-quality service for SBC customers. Additional financial details related to the agreement will be disclosed in each party's related SEC filing.

WilTel's President and Chief Executive Officer, Jeff Storey, said SBC remains an important long-term customer.

"We are committed to assisting SBC with a smooth transition," Storey said. "In the near term, WilTel expects to generate a considerable amount of revenue from SBC. WilTel has a solid foundation, and expects to continue its success as a provider of wide-area networking services for enterprises, carriers, the federal government and media/entertainment companies."

This new master services agreement replaces the alliance agreement that the two companies formed in February 1999.

#### **About WilTel Communications**

WilTel Communications, LLC, provides a diverse set of data, voice, IP, video, managed and professional services, creating advanced wide-area

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networking solutions for enterprise, global telecommunications providers, the federal government and media and entertainment companies. WiTel's next-generation network infrastructure reaches border-to-border and coast-to-coast with international connectivity to accommodate global traffic. WiTel Communications, LLC is the operating subsidiary of WiTel Communications Group, LLC, a wholly owned, indirect subsidiary of Leucadia National Corporation. For more detailed information, visit [www.witel.com](http://www.witel.com).

#### **About SBC Communications**

SBC Communications Inc. is a Fortune 50 company whose subsidiaries, operating under the SBC brand, provide a full range of voice, data, networking, e-business, directory publishing and advertising, and related services to businesses, consumers and other telecommunications providers. SBC holds a 60 percent ownership interest in Cingular Wireless, which serves 50.4 million wireless customers. SBC companies provide high-speed DSL Internet access lines to more American consumers than any other provider and are among the nation's leading providers of Internet services. SBC companies also offer satellite TV service. Additional information about SBC and SBC products and services is available at [www.sbc.com](http://www.sbc.com).

#### **Cautionary Language Concerning Forward-Looking Statements**

*This press release may contain "forward-looking statements." Although WiTel believes any such statements are based on reasonable assumptions, there is no assurance that actual outcomes will not be materially different. WiTel assumes no obligation to update those statements to reflect actual results, changes in assumptions and other factors. The forward-looking statements are subject to known and unknown risks, uncertainties and other factors that could cause actual results to differ materially from those projected. Additional information that could lead to material changes in performance is contained in filings with the Securities and Exchange Commission made by Leucadia.*

*Information set forth in this news release contains financial estimates and other forward-looking statements that are subject to risks and uncertainties, and actual results may differ materially. A discussion of factors that may affect future results is contained in SBC's filings with the Securities and Exchange Commission. SBC disclaims any obligation to update or revise statements contained in this news release based on new information or otherwise.*

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EXHIBIT 99.1

CONFIDENTIAL PORTION MARKED [\*\*\*] HAS BEEN OMITTED PURSUANT TO A  
REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE  
SECURITIES AND EXCHANGE COMMISSION.

SBC AGREEMENT No. 05040021

Master Services Agreement

among

WilTel Communications, LLC,

WilTel Local Network LLC

SBC Services, Inc.

and

SBC Communications Inc.  
(for certain limited purposes as set forth herein)

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MASTER SERVICES AGREEMENT  
AMONG  
WILTEL COMMUNICATIONS, LLC  
WILTEL LOCAL NETWORK LLC  
SBC SERVICES, INC.  
AND  
SBC COMMUNICATIONS INC.  
(FOR CERTAIN LIMITED PURPOSES SET FORTH HEREIN)

This MASTER SERVICES AGREEMENT, dated as of June 15, 2005 (the "Effective Date"), is entered into by and among:

WilTel Communications, LLC, a Delaware limited liability company ("WilTel"), and its Affiliate, WilTel Local Network LLC ("WilTel Local Network");

and

SBC Services, Inc., a Delaware corporation ("SBC"), and, solely for the purposes of Articles 1 and 23 hereof, SBC Communications Inc. ("Parent").

RECITALS

WHEREAS, WilTel and SBC Communications Inc. entered into a Master Alliance Agreement dated February 8, 1999, as amended (as so amended, the "MAA"), and certain other agreements pursuant thereto (the MAA, such other agreements and all ancillary agreements and related documentation are referred to herein collectively as the "Alliance Agreements"); and

WHEREAS, contemporaneous with the execution of this Agreement, the Parties have executed that certain Termination, Mutual Release and Settlement Agreement, of even date herewith (the "Termination and Release Agreement"), among SBC Communications Inc., SBC Operations, Inc., SBC Services, Inc., SBC Telecom, Inc. and SBC Long Distance, LLC (successor to SBC Long Distance, Inc. and Southwestern Bell Communications Services, Inc.), on behalf of themselves and their Affiliates, and WilTel Communications Group, LLC (f/k/a Williams Communications, Inc.) and WilTel Communications, LLC, which terminates the MAA and all other Alliance Agreements and releases all obligations thereunder, except to the extent provided otherwise in the Termination and Release Agreement, by the mutual agreement of the parties thereto; and

WHEREAS, WilTel wishes to enter into this Agreement to continue to make available existing Services and other Services relating to telecommunications services; and

WHEREAS, SBC wishes to purchase such Services from WilTel; and

WHEREAS, SBC is authorized to enter into this Agreement to provide certain Services to WilTel; and

WHEREAS, WilTel wishes to purchase such Services from SBC; and

WHEREAS, SBC wishes to continue to make such Services available to WilTel pursuant to this Agreement; and

WHEREAS, the Parties do not intend to undertake any joint venture, partnership, or other arrangement other than as purchasers and sellers of the Services identified in this Agreement; and

- 1.14 "AS Ratio" shall mean answer seizure ratio.
- 1.15 "ASR" shall mean access service request, a form used to send a service order to a telecommunications carrier.
- 1.16 "ATIS/OBF" shall mean "Alliance for Telecommunications Industry Solutions" and "Ordering and Billing Forum." ATIS is an industry standards body; OBF is the subcommittee of ATIS which works standards related to ordering and billing of telecommunications services.
- 1.17 "ATM Service" shall have the meaning set forth in Section 1.1 of Schedule A3.
- 1.18 "Available" or "Availability" shall mean: (a) with respect to On-Net Services, the condition in which, in WilTel's sole but reasonable discretion, WilTel has the Facilities and Capacity necessary to provide On-Net Service, and such Facilities or Capacity are not already committed to other Persons and which are accessible to SBC, directly from the WilTel Network; and (b) with respect to any Off-Net Services, the condition in which a Third Party Provider or SBC Affiliate, including any SBC Local Exchange Carrier Affiliate, makes available such Off-Net Service.
- 1.19 "Billing Party" shall have the meaning set forth in Section 11.1.
- 1.20 "Bulk Facility" shall mean a Dedicated Local Access Facility that is shared between SBC and WilTel for their respective Customers or respective internal use.
- 1.21 "Business Day" shall mean any Day except Saturday, Sunday and any federal holiday.
- 1.22 "Business Hours" shall mean the hours of 9:00 a.m. until 5:00 p.m., local time, on each Business Day.
- 1.23 "California Affiliates" shall have the meaning set forth in Section 23.14.B.
- 1.24 "Calling Card Service" shall mean such service as described in Schedule B1.
- 1.25 "CAP" shall mean a competitive access provider.
- 1.26 "Capacity" shall mean capacity which may be provided On-Net or Off-Net for telecommunications services in DS-1, DS-3 and OC-n.
- 1.27 "CDR" shall have the meaning set forth in Section 1.5(a) of Schedule A1.
- 1.28 "CFA" shall mean the "Circuit Facility Assignment." "CFA" is used to indicate what physical slot or channel assignment has been assigned to a DS-1, DS-3, or OC-n Facility; specific Entrance Facility or termination point on the edge of a telecommunications carrier's network that is provided to identify where to connect Circuits.
- 1.29 "Change of Control of WilTel" shall mean any transaction or event or series of related transactions or events pursuant to which (i) all or substantially all of the assets of WilTel are acquired by an SBC Restricted Company, or (ii) an SBC Restricted Company owns beneficially (as such term is used in Rules 13d-3 and 13d-5 of the Securities Exchange Act of 1934, as amended) 50% or more of the voting or equity interests in WilTel (including by means of a tender or exchange offer, reclassification, consolidation, merger, sale or other disposition of equity interests) or (iii) an SBC Restricted Company possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of WilTel

- 1.166 [\*\*\*]
- 1.167 "SBC" shall have the meaning set forth in the preamble and, to the extent applicable, in Section 4.1.
- 1.168 "SBC Facilities" shall have the meaning set forth in Section 9.1.D.
- 1.169 "SBC ILEC" is an SBC Affiliate that is an ILEC.
- 1.170 "SBC Restricted Company" shall mean any Person identified on Appendix A.
- 1.171 "SCC" shall mean switching control center, and is WilTel's single point of contact for network surveillance and maintenance for WilTel voice services.
- 1.172 "SCP" shall mean signal control point. 166
- 1.173 "Second Purchase Period" shall have the meaning set forth in Section 3.1.A.
- 1.174 "Second QoS Period" shall have the meaning set forth in Section 3.2.A.
- 1.175 "Service" or "Services" shall include any service provided by one Party to another Party under this Agreement, including Transport Services, Platform Services, Collocation Services, International Services, Ancillary Services and services pertaining to Circuits.
- 1.176 "Service Assurance Bonus" shall have the meaning set forth in Section 3.2.A.1.
- 1.177 "Service Assurance End of Year Bonus" shall have the meaning set forth in Section 3.2.A.1.iii.
- 1.178 "Service Assurance Metrics" shall mean the service assurance metrics set forth in Section A of Appendix B.
- 1.179 "Service Assurance Monthly Bonus" shall have the meaning set forth in Section 3.2.A.1.i.
- 1.180 "Service Delivery Bonus" shall have the meaning set forth in Section 3.2.A.2.
- 1.181 "Service Delivery End of Year Bonus" shall have the meaning set forth in Section 3.2.A.2.iii.
- 1.182 "Service Delivery Metrics" shall mean the service delivery metrics set forth in Section B of Appendix B.
- 1.183 "Service Delivery Monthly Bonus" shall have the meaning set forth in Section 3.2.A.2.i.
- 1.184 "Service Intervals" shall mean WilTel's time periods for responding to SBC's requests for Capacity as defined in Section G.1.3 of Schedule C.
- 1.185 "Service Metrics" shall mean the Service Assurance Metrics, Service Delivery Metrics, Service Migration Metrics, SLAs, SLOs and other service level measurements, as applicable.
- 1.186 "Service Migration Metrics" shall mean the service migration metrics set forth in Section C of Appendix B.
- 1.187 "Service Order(s)" shall mean WilTel-approved forms executed by SBC and accepted by WilTel, or electronic communications as may be delivered via an electronic interface that may be provided by WilTel for the purpose of ordering Material and Services hereunder in accordance with Schedule C. Service Orders incorporate the applicable Quote.

- G. Preferred Provider. WilTel is hereby designated a preferred provider to SBC for diversity interexchange Services and other interexchange Services not provided on SBC's network (including, after its acquisition of AT&T, AT&T's network) during the Term of this Agreement; provided, however, that notwithstanding the foregoing, SBC shall have no obligation pursuant to this Section 2.3.G. to purchase any particular Service from WilTel, nor shall WilTel at any time have any claim of any nature against SBC pursuant to this Section 2.3.G.
- H. Certain Service Interruptions. For the purpose of the Service Assurance Metrics and the SLAs in Schedules A1 through A6, WilTel shall not be responsible for Service interruptions that are (a) caused by the negligence or willful misconduct of SBC, its Affiliates or SBC's Customer or others authorized to use the Services by SBC; (b) caused by the failure of Off-Net Services not provisioned by WilTel as part of a 1+ Voice Service; (c) caused by Planned Maintenance where SBC was previously notified of such Planned Maintenance in accordance with Section C of Schedule D, if and only to the extent that the interruption was within the prearranged time for the Planned Maintenance; or (d) the result of a Force Majeure Event or a Legal or Regulatory Event.
- I. Best Practices. With respect to operational detail and data collection, measurement and reporting, except as otherwise expressly set forth in this Agreement, the Parties intend to implement this Agreement consistent with the Parties' past practices.
- J. Service Level Objectives. The Parties agree that the failure to meet any specific SLO set forth in Schedules A1 through A6 shall not be deemed in and of itself to be a default under this Agreement.

ARTICLE 3. SPECIAL PROVISIONS GOVERNING WILTEL SERVICES

3.1 Service Purchase Commitment.  
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A. Purchase Commitment Provisions.

1. Purchase Commitment. Subject to the credits provided in Section 3.1.A, Section 3.1.B, Section 3.1.F and Section 3.1.G, SBC and its Affiliates shall purchase from WilTel and pay in accordance with this Section 3.1 for at least (i) \$600,000,000 of Included Services during the period beginning January 1, 2005 and ending December 31, 2007 (such period, the "First Purchase Period") and (ii) \$75,000,000 of Included Services during the period beginning January 1, 2008 and ending December 31, 2009 (such period, the "Second Purchase Period") (collectively, the "Purchase Commitment").
2. Included Services. "Included Services" shall mean (a) all Services provided by WilTel to SBC under this Agreement that are not Excluded Services (as hereinafter defined); (b) all services provided by WilTel to SBC under the Wholesale Services Agreement that are not Excluded Services; and (c) with respect to the portion of the First Purchase Period that is prior to the Effective Date, all services purchased by SBC and its Affiliates pursuant to any Alliance Agreement that (i) with respect to the period from January 1, 2005 through and including April 30, 2005, are set forth on Schedule A8 as "Included Services" or (ii) with respect to the period from May 1, 2005 through and including the Effective Date, are not Excluded Services. In addition, after the consummation of any business combination involving WilTel with another carrier, "Included Services" shall include all Off-Net Services provided to SBC by WilTel through such other carrier. Notwithstanding the immediately preceding sentence, in no event shall Included Services include any services other than Included Services purchased from WilTel under this Agreement and Included Services shall exclude any services purchased directly by SBC under any agreement with another carrier with whom WilTel may combine.

6.4 Transition of Platform at Request of WilTel. SBC acknowledges and agrees that (a) during the Term, WilTel intends to transition to its own platforms or to other providers a substantial portion if not all of the Platform Services that it currently purchases from SBC and (b) in conjunction therewith, [\*\*\*] Upon receipt of written Notice from WilTel (the "Platform Transition Notice") requesting transition of specified Platform Services off of the Platforms, SBC shall implement such transition in accordance with the reasonable terms of such Platform Transition Notice.

1. Except as otherwise provided in this Agreement and in Schedule B1, the terms and conditions for termination of Platform Services, including those with respect to Platforms located in WilTel facilities, shall be consistent with those set forth in this Agreement. If SBC provides Platform Services that WilTel uses to fulfill any obligations to SBC, SBC shall continue to provide those Platform Services to WilTel in accordance with the terms of Schedule B1 until those obligations of WilTel to SBC lapse.

2. SBC may not for any reason discontinue providing any Platform Services to WilTel during the Term (or thereafter pursuant to a Platform Transition Notice) except with WilTel's prior written consent or as provided in this Agreement, including Section 6.2, Section 6.3, Article 7 or Section 13.1.

6.5 Construction of Platform Services Obligations. SBC's obligations to provide Platform Services and features pursuant to this Agreement shall be limited to the terms and conditions specified in Schedule B1 and shall in no event exceed its obligations to provide Platform Services and features that were provided by SBC to WilTel as of February 9, 2005. In the event of any ambiguity in the terms and conditions set forth in Schedule B1, SBC's obligations to provide Platform Services and features pursuant to this Agreement shall be limited to the Platform Services and services that were provided by SBC to WilTel as of February 9, 2005.

#### ARTICLE 7. TERMINATION OF THIS AGREEMENT

7.1 Term of Agreement. This Agreement shall commence on the Effective Date and shall expire on December 31, 2009 (the "Term"), unless terminated earlier pursuant to this Article 7.

7.2 Early Termination.

- A. Mutual Consent. This Agreement may be terminated at any time by mutual written consent of the Parties.
- B. Cessation of Operations or Insolvency. Either Party may terminate this Agreement immediately upon Notice to the other Party if (a) the other Party institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property or assets; (b) any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of the other Party and the appointment continues undischarged or unstayed for forty-five (45) Days; or (c) any proceeding under any Debtor Relief Law relating to the other Party or to all or any material part of its property or assets is instituted without the consent of such Party and continues undischarged or unstayed for forty-five (45) Days, or an order for relief is entered in any such proceeding.
- C. Change of Control. During the First Purchase Period, SBC may, but shall not be obligated to, terminate this Agreement if, without the prior consent of SBC, there is a Change of Control of WilTel.



News Release

TIME WARNER  TELECOM

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## Time Warner Telecom, AT&T, SBC Extend Long-Term Service Agreement

*Time Warner Telecom to deliver "last-mile" network services to merged companies;  
agreement provides businesses the benefits of alternative communications choices*

San Antonio, Redminster, N.J., and Littleton, Colo., June 1, 2005 – Time Warner Telecom (Nasdaq: TWTC), SBC Communications Inc. (NYSE: SBC) and AT&T Corp. (NYSE: T) today announced the extension of a long-term service agreement under which Time Warner Telecom would provide special access and other "last-mile" network services to the companies nationwide through 2010. The deal, effective upon completion of the SBC and AT&T merger, demonstrates the parties' commitment to promoting viable competition in the telecommunications industry and to delivering businesses the benefits of alternative communications choices.

"This agreement enables SBC, post-merger, to become a more effective out-of-region provider, thereby enhancing competition in the industry nationwide," said Mark Keiffer, senior vice president-business marketing for SBC. "SBC is pleased to build upon the long-term business relationship AT&T has had with Time Warner Telecom."

This new commercial agreement would extend a current contract between Time Warner Telecom and AT&T through Dec. 31, 2010, for the combined AT&T and SBC once the merger is completed. AT&T entered into a long-term commercial agreement with Time Warner Telecom on Jan. 1, 2001, buying local network access primarily to provide private-line and special-access services to businesses nationwide, and for local termination of long-distance and international calls.

"This agreement ensures that we will continue our valued business relationship with AT&T post-merger, and that we will be able to include SBC in that relationship, allowing us to be a viable competitor of and supplier to the merged entity," said John Blount, executive vice president-field operations for Time Warner Telecom. "We are excited about the opportunity to be a key provider for the combined entity."

"Time Warner Telecom has been a valuable supplier of 'last-mile' network services used to connect our corporate customers to the AT&T network in many markets around the country," said Regina Egea, AT&T vice president of global access strategy and bandwidth product management. "We're very pleased this relationship will continue once our merger with SBC is completed."

Completion of the SBC-AT&T merger is expected by the end of this year or in early 2006, following all necessary regulatory and governmental approvals.

-more-

**Time Warner Telecom, AT&T, SBC agreement/add one**

In a separate agreement, SBC will provide Time Warner Telecom with special access and other "last-mile" network services in SBC's traditional in-region territory for five years. The deal, which will take effect June 2, 2005, strengthens Time Warner Telecom's ability to compete effectively for the nationwide business market.

**SBC Communications Inc. is a Fortune 50 company whose subsidiaries, operating under the SBC brand, provide a full range of voice, data, networking, e-business, directory publishing and advertising, and related services to businesses, consumers and other telecommunications providers. SBC holds a 60 percent ownership interest in Cingular Wireless, which serves more than 50 million wireless customers. SBC companies provide high-speed DSL Internet access lines to more American consumers than any other provider and are among the nation's leading providers of Internet services. SBC companies also now offer satellite TV service. Additional information about SBC and SBC products and services is available at [www.sbc.com](http://www.sbc.com).**

**For more than 125 years, AT&T (NYSE "T") has been known for unparalleled quality and reliability in communications. Backed by the research and development capabilities of AT&T Labs, the company is a global leader in local, long distance, Internet and transaction-based voice and data services.**

**Time Warner Telecom, headquartered in Littleton, Colo., provides managed network services, specializing in Ethernet and transport data networking, Internet access, local and long distance voice, VoIP and security, to enterprise organizations and communications services companies throughout the U.S. As a leading provider of integrated and converged network solutions, Time Warner Telecom delivers customers overall economic value, quality, service, and improved business productivity. With nearly 20,000 route miles of its own local and regional fiber networks, a national IP backbone with 10 Gbps capacity, and nearly 5,300 buildings connected directly to its fiber networks, Time Warner Telecom provides the local "last mile" of reliable communications services to customers. Please visit [www.twtelecom.com](http://www.twtelecom.com) for more information.**

**About the Proposed SBC/AT&T Merger:**

**In connection with the proposed transaction, SBC Communications Inc. ("SBC") filed a registration statement, including a proxy statement of AT&T Corp., with the Securities and Exchange Commission (the "SEC") on March 11, 2005 (File No. 333-123283). Investors are urged to read the registration and proxy statement (including all amendments and supplements to it) because it contains important information. Investors may obtain free copies of the registration and proxy statement, as well as other filings containing information about SBC and AT&T Corp., without charge, at the SEC's Internet site ([www.sec.gov](http://www.sec.gov)). These documents may also be obtained for free from SBC's Investor Relations web site ([www.sbc.com/investor\\_relations](http://www.sbc.com/investor_relations)) or by directing a request to SBC Communications Inc., Stockholder Services, 175 E. Houston, San Antonio, Texas 78205. Copies of AT&T Corp.'s filings may be accessed and downloaded for free at the AT&T Investor Relations Web Site ([www.att.com/ir/sec](http://www.att.com/ir/sec)) or by directing a request to AT&T Corp., Investor Relations, One AT&T Way, Bedminster, New Jersey 07921.**

**SBC, AT&T Corp. and their respective directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies from AT&T shareholders in respect of the proposed transaction. Information regarding SBC's directors and executive officers is available in SBC's proxy statement for its 2005 annual meeting of stockholders, dated March 11, 2005, and information regarding AT&T Corp.'s directors and executive officers is available in the registration and proxy statement. Additional information regarding the interests of such potential participants is included in the registration and proxy statement and other relevant documents filed with the SEC.**

-more-

**Time Warner Telecom, AT&T, SBC agreement/add two**

**Cautionary Language Concerning Forward-Looking Statements:**

**This document contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act. Forward-looking statements are statements that are not historical facts and are generally identified by the words "expects", "anticipates", "believes", "intends", "estimates" and similar expressions.**

**AT&T-SBC: These statements include, but are not limited to, financial projections and estimates and their underlying assumptions, statements regarding the benefits of the business combination transaction involving AT&T and SBC, including future financial and operating results and the plans, objectives, expectations and intentions of the combined. Such statements are based upon the current beliefs and expectations of the managements of AT&T and SBC and are subject to significant risks and uncertainties (many of which are difficult to predict and are generally beyond the control of AT&T and SBC) that may cause actual results to differ materially from those set forth in, or implied by, the forward-looking statements.**

**The following factors, among others, could cause actual results to differ materially from those set forth in the forward-looking statements: the ability to obtain governmental approvals of the transaction on the proposed terms and schedule; the failure of AT&T shareholders to approve the transaction; the risk that the businesses will not be integrated successfully; the risk that the cost savings and any other synergies from the transaction may not be fully realized or may take longer to realize than expected; disruption from the transaction making it more difficult to maintain relationships with customers, employees or suppliers; competition and its effect on pricing, spending, third-party relationships and revenues. Additional factors that may affect future results are contained in SBC's and AT&T's filings with SEC, which are available at the SEC's Web site <http://www.sec.gov>. Other than as required by applicable law, AT&T and SBC disclaim any obligation to update and revise statements contained in this news release based on new information or otherwise.**

**Time Warner Telecom: These statements include, but are not limited to, the benefits and impacts of the agreements described in this release and Time Warner Telecom's continued relationship with AT&T/SBC. Such statements are based upon the current beliefs and expectations of the management Time Warner Telecom and are subject to significant risks and uncertainties (many of which are difficult to predict and are generally beyond the control of Time Warner Telecom) that may cause actual results to differ materially from those set forth in, or implied by, the forward-looking statements. Important factors that could cause actual results to vary materially from those set forth in the forward-looking statements include the failure of AT&T/SBC to consummate the planned merger, unforeseen technological changes in the industry, future consolidation in the industry and economic downturns, as well as the Risk Factors set for the in Time Warner Telecom's Annual Report on Form 10-K for the fiscal year ended December 31, 2004. Time Warner Telecom undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.**

###

EX-10.2 3 dex102.htm SERVICES AGREEMENT

EXECUTION COPY

Exhibit 10.2

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**CONFIDENTIAL TREATMENT REQUESTED**

**PLACES WHERE INFORMATION HAS BEEN REDACTED HAVE BEEN**

**MARKED WITH (\*\*\*\*\*)**  
**SERVICES AGREEMENT**

**BY AND AMONG**

**SBC COMMUNICATIONS INC.**

**AT&T CORP.**

**and**

**TIME WARNER TELECOM HOLDINGS INC.**

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**June 1, 2005**

**Restricted Proprietary Information**

**For use and disclosure only to authorized employees, agents or contractors of SBC, AT&T, TWTC and their respective affiliates. Copies may not be made without the express consent of SBC, AT&T and TWTC.**

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[remainder of page intentionally left blank]

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"Services" shall have the meaning ascribed to such term in the AT&T/TWTC Agreement.

"Sixth Amendment" shall have the meaning ascribed to such term in the recitals to this Agreement.

"Total Cumulative Revenue Commitment" shall have the meaning ascribed to such term in the AT&T/TWTC Agreement.

"TWTC" shall have the meaning ascribed to such term in the preamble to this Agreement.

## ARTICLE II

### EFFECTIVE DATE AND TERM

#### 2.1 Effective Date and Term.

This Agreement shall become effective as of the Effective Time. Notwithstanding the foregoing and for the avoidance of doubt, in no event shall this Agreement become effective unless and until the Merger shall become effective. TWTC has no pending filings and will submit no new filings with respect to the Merger review, however, nothing in this section will be construed to mean that TWTC will not comply with any government or state agency requests for information as such requests relate to the Merger review or continue its normal course regulatory activity as necessary. This Agreement will terminate pursuant to ARTICLE VI.

## ARTICLE III

### AT&T/TWTC AGREEMENT

#### 3.1 Amendments.

Subject to Section 8.6 of this Agreement, the AT&T/TWTC Agreement is hereby amended as follows:

3.1.1 Extension of Term. Section 2.A of the AT&T/TWTC Agreement, as specifically amended pursuant to the Sixth Amendment, is hereby deleted and replaced with the following Section 2.A:

2.A This Agreement will be effective as of the Effective Date (i.e. January 1, 2001), and will remain in effect for a term of ten (10) years from the Effective Date ("*Term*"), unless terminated at an earlier date or unless renewed or extended, as provided in this Agreement.

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**3.1.2 Revenue Commitment.**

3.1.2.1 Section 30.A.iii of the AT&T/TWTC Agreement, as specifically amended pursuant to the Sixth Amendment, is hereby amended by adding the following language to the end of Section 30.A.iii:

Notwithstanding the foregoing, Term years 9 and 10 shall be treated as a single Term year ending December 31, 2010 (the "Extension Period") (or such later date as is required pursuant to the provisions of this Section 30.A.iii below), and any Annual Deficiency for the Extension Period shall only become payable in immediately available funds within thirty (30) days from the date of delivery of the notice of non-compliance for the Extension Period, which shall occur no earlier than the last business day of the calendar month following the month in which the Extension Period ends. Consistent with Section 30.A.iii of the AT&T/TWTC Agreement, no amounts paid during the Extension Period in respect of any Annual Deficiency for any Term year prior to the Extension Period will apply toward the satisfaction of the Annual Revenue Commitment for the Extension Period.

\*\*\*\*\*

3.1.2.2 Table 1.A entitled "Annual Revenue Commitments and Total Cumulative Revenue Commitment" is hereby deleted and replaced with the following Table 1.A:

**Table 1.A  
Annual Revenue Commitments and Total Cumulative Revenue Commitment**

<b>Term Year(s)</b>	<b>1/1/05 to 12/31/05 (Year 5)</b>	<b>1/1/06 to 12/31/06 (Year 6)</b>	<b>1/1/07 to 12/31/07 (Year 7)</b>	<b>1/1/08 to 12/31/08 (Year 8)</b>	<b>1/1/09 to 12/31/10 (Years 9-10 (Extension Period))</b>
<b>Annual Revenue Commitments</b>	*****	*****	*****	*****	*****
<b>Total Cumulative Revenue Commitment</b>	***** (See also the Ninth Amendment and Section 29.C of the Sixth Amendment)	***** (See also Section 29.C of the Sixth Amendment)	***** (See also Section 29.C of the Sixth Amendment)	***** (See also Section 29.C of the Sixth Amendment)	*****

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6.2.2.2 is unable or admits in writing its inability to pay its debts as they become due;

6.2.2.3 commences or authorizes a voluntary case or other proceeding seeking liquidation, reorganization, suspension of payments or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or consents to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or makes a general assignment for the benefit of creditors, or fails to pay a substantial portion of its debts as they become due, or takes any corporate action to authorize any of the foregoing, is insolvent, bankrupt or the subject of a receivership; or

6.2.2.4 has any substantial part of its property subjected to any levy, seizure, assignment or sale for or by any creditor or governmental agency without such levy, seizure, assignment or sale being released, lifted, reversed, or satisfied within ten (10) days.

**6.3 Termination of Merger Agreement.**

This Agreement shall terminate, without penalty or termination charges, upon the termination of the Merger Agreement pursuant to its terms prior to the Effective Time.

**6.4 Change in Control Event.**

\*\*\*\*\*

**6.5 Termination of the AT&T/TWTC Agreement.**

This Agreement shall terminate upon the termination of the AT&T/TWTC Agreement as amended by Article III of this Agreement in accordance with its terms, without penalty or termination charges beyond those contemplated by the terms of the AT&T/TWTC Agreement

**ARTICLE VII**

**REPRESENTATIONS AND WARRANTIES**

**7.1 Standing and Authority.**

Each Party represents and warrants to the other Parties that it has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated herein, that all corporate acts and other proceedings required to be taken to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated herein have been duly and properly taken, and that this Agreement has been duly

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***Qwest Ex Parte***

***WC Docket No. 05-65***

**In the Matter of**

**SBC/AT&T Applications for Approval of Transfer of Control**

**September 21, 2005**

**Qwest** 

# CONDUCT REMEDIES FOR THE SBC/AT&T MERGER

*This document is limited to certain pricing conditions and service requirements necessary to lessen the harm to competition in special access markets that would otherwise be caused by the proposed SBC/AT&T merger. It does not include any discussion of other appropriate remedies and conditions, such as asset and customer divestitures, or remedies designed to lessen the negative impact of the proposed merger on mass market services.*

***Conduct remedies are necessary to replicate the competitive pressure exerted on the wholesale market by AT&T today, and prevent abuses of SBC's market power in the future.***

---

For special access/dedicated services, and for a minimum of 5 years, the merged entity must be required to:

- Provide price discounts to carriers purchasing SBC wholesale services
  - 50% price discount off current “effective” price on 25% of each carrier’s circuits (spread proportionately over all services)
- Provide wholesale purchasers increased flexibility in purchasing services
  - Add and delete circuits without restrictions or penalty under contracts and regional purchasing plans; eliminate grooming restrictions
  - Eliminate conditions that restrict UNE purchase in order to qualify for discounts on special access
  - Fresh look on existing contracts and the ability to extend existing contracts for up to 5 years
- Continue to make AT&T and SBC services and facilities available at existing terms and conditions, subject to the above requirements

***Non discrimination and reciprocity are critical requirements if other carriers are to have a reasonable opportunity to compete against SBC/AT&T post merger.***

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The SBC/AT&T merged entity must:

- Offer wholesale customers the same terms and conditions that SBC/AT&T obtains from others (reciprocity)
- Offer to other carriers any service arrangement that it offers to its partners/affiliates/business units under the same terms and conditions
- Not discriminate against other carriers to the benefit of Verizon/MCI
- Deliver quality service on a timely and non discriminatory basis that allows purchasing carriers, like Qwest, to meet our end user customer requirements
  - Failure to do so must result in additional price discounts