The Washington Post

April 19, 2000, Wednesday, Final Edition

SECTION: FINANCIAL; Pg. E03

LENGTH: 833 words

HEADLINE: Employees Sue SBC Over Stock in 401(k)

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BODY:

A group of current and former employees of telephone giant SBC Communications Inc. sued the company yesterday, charging that SBC sold off top-performing stock they held in their 401(k) retirement accounts without permission and replaced it with SBC stock, which has not performed as well.

The class-action suit, filed in federal court in Los Angeles, seeks damages of at least $1.15 billion on behalf of about 40,000 employees.

The case, one of several over 401(k) disputes after mergers, grew out of the acquisition of Pacific Telesis Group by SBC in 1998. Pacific Telesis employees who participated in the company's 401(k) plan had invested heavily in company stock.

When Pacific Telesis spun off its wireless communications subsidiary as AirTouch Communications Inc. in 1994, these workers received substantial blocks of AirTouch stock.

In 1997, Pacific Telesis was acquired by SBC. Initially, the complaint said, SBC told the workers they could keep their AirTouch stock. A year later, however, SBC said it was merging the Pacific Telesis plan into SBC's and it subsequently "stripped" participants of their AirTouch stock and invested the proceeds in SBC stock, it added.

The AirTouch stock was valued at $ 635 million at the time and since has risen sharply~to more than $ 1 billion—as AirTouch merged with Vodafone PLC to form one of the world's largest wireless communications companies, the suit said.

SBC said it had not seen the suit but "our position on this issue is very clear. No SBC savings plan includes direct ownership in any other company that is not related to SBC."

The company said after its acquisition of Pacific Telesis, "SBC moved to bring the two companies' savings plan in line with one another" and added that it reached agreement with its unions on the issue and provided employees with "months of prior notice."

Labor law experts said the Employee Retirement Income Security Act gives employers considerable discretion as to what investment options to offer.

"An employer is not obligated to continue to offer an investment," one expert said, but when an existing option is eliminated there is a fiduciary obligation to ensure that the investment decisions made by the plan are prudent.

A growing number of companies are facing issues of this sort as retirement savings plans, such as 401(k) plans, increasingly supplement or take the place of traditional pensions, and as mergers and acquisition continue at a rapid clip.

First Union Corp. was sued twice last year by workers over its 401(k) plans. In one case, former Signet

Bank employees accused First Union of illegally shifting assets from Signet's 401(k) plan into First Union mutual funds.

In the other case, employees complained that the big bank had offered them only its own mutual funds, which they said had mediocre performance and high fees, because the large number of participants and substantial amount of money they had invested were useful in marketing the bank's 401(k) management services to other firms.

First Union is defending itself in the cases and has said it operates its funds properly.

The SBC suit said the company told some workers that AirTouch was a competitor to its own wireless operations and it didn't want its workers invested in a competitor. In addition, the large purchase of SBC stock helped bolster its price, the suit said.

"What seems to have gone on here is a complete abdication by the plan fiduciaries of their responsibility to ward off the corporate side of the company and to keep them out of the fiduciary decision-making process," said Eli Gottesdiener, a lawyer with Sprenger & Lang, a Washington firm representing the workers.

"There needs to be a fire wall in these companies as the asset pools of these 401(k) plans grow and grow and grow to make sure that corporate interests, subtle and not so subtle, do not influence the fiduciary decisions," he said.

Gottesdiener said SBC also failed to inform plan participants of their options, including what they might do to avoid having their AirTouch shares sold.

Barry Resnick of Orange, Calif, whose wife, Adrienne, has worked more than 30 years for Pacific Telesis and its predecessors, said he first learned of SBC's plan when she brought home a packet of information in October 1998 telling them that their shares would be sold by the end of the month.

The information offered options but all boiled down to the same thing: "AirTouch was going to be sold whether we did something or not," Resnick said. "I was furious."

Over the following months AirTouch stock soared to new highs as Vodafone acquired it for a 39 percent premium to the market price and then itself split five shares for one.

"Each day I turned on my computer and got sicker and sicker as I watched AirTouch go through the roof," Resnick said.

Resnick figures the AirTouch sale cost him $ 103,000 in gains, while the SBC stock that replaced it has been flat or down slightly.