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ATX COMMUNICATIONS INC
Form 8-K
April 20, 2005

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported) April 14, 2005

ATX COMMUNICATIONS, INC.
(Exact Name of Registrant as Specified in Charter)

| | | |
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| Delaware (State or Other Jurisdiction Of Incorporation) | 000-49899 (Commission File Number) | 13-4078506 (IRS Employer Identification No.) |
|---|--|--|

| | |
|--|------------------------------|
| 2100 Renaissance Boulevard, King of Prussia, PA ----- (Address of principal executive offices) | 19406 ----- (Zip Code) |
|--|------------------------------|

(610) 755-4000

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

SECTION 1 - REGISTRANT'S BUSINESS AND OPERATIONS

ITEM 1.03 BANKRUPTCY OR RECEIVERSHIP.

On January 15, 2004 (the "Petition Date"), ATX Communications, Inc. ("ATX" or the "Company") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). On the Petition Date, 31 of ATX's subsidiaries also filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy

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Court. On March 10, 2004, CoreComm Maryland, Inc., also a subsidiary of ATX, filed a chapter 11 petition in the Bankruptcy Court. By Order signed April 13, 2005 and entered April 14, 2005, the Bankruptcy Court confirmed the Debtors' Modified Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as amended and/or modified, the "Plan"). A copy of the Plan as confirmed is attached hereto as Exhibit 2.1.

On April 14, 2005, the Company had 30,000,054 shares issued and outstanding and 1,000,000 shares reserved for future issuance in respect of claims and interests filed and allowed under the Plan, for an aggregate total of 31,000,054 shares. Information as to the assets and liabilities of the Company may be found in the Consolidated Monthly Operating Report for the Period from February 1, 2005 to February 28, 2005 (the "Monthly Operating Report"), as filed with the Bankruptcy Court, which is filed as Exhibit 99.1 hereto and incorporated herein by reference. Such Monthly Operating Report contains an unaudited condensed consolidated balance sheet as of February 28, 2005 and January 31, 2005.

The Plan provides for the substantive consolidation of the Debtors and is the product of the successful conclusion of comprehensive settlements with Verizon Communications, Inc. ("Verizon") and SBC Communications, Inc. ("SBC"), and a compromise and settlement among the Debtors, the Creditors' Committee and Leucadia National Corporation ("Leucadia"), the Debtors' prepetition and postpetition senior secured lender. The following is a summary of the material features of the Plan (capitalized terms used but not defined below have the meanings given to them in the Plan):

A. Summary of Key Settlements Approved Pursuant to the Plan

Creditors' Committee Settlement: Pursuant to the settlement with the Committee, the Plan provides that holders of: (a) Allowed Class 6 Claims (Convenience Claims) (i.e., general unsecured claims of \$5,000 or less or claims voluntarily reduced to that amount by a creditor) will receive a Cash distribution equal to 15% of their Allowed Claim; and (b) Allowed Class 7 Claims will receive their Pro Rata share of the Class 7 Cash Amount, which is expected to be \$7 million. As a result of the settlement agreements between the parties, the unsecured claims of Leucadia, and virtually all of the general unsecured claims of Verizon and SBC will not share in or dilute Class 7 creditor recoveries from the Class 7 Cash Amount. The Claims of SBC and Verizon will be treated pursuant to their respective settlement agreements. The aggregate amount of claims asserted by Leucadia, SBC and Verizon that will no longer share in Class 7 distributions exceeds \$200 million dollars. As a result, the Debtors estimate that the total Allowed Class 7 Claim pool will be reduced to between \$70 - \$80 million, and that Class 7 creditors ultimately will receive distributions in the 8.75% to 10% range. In addition, the Class 7

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Cash Amount may be increased by an amount equal to eight percent (8%) of the net proceeds, if any, in excess of \$3,500,000 received by the Debtors or Reorganized Debtors in respect of any Avoidance Actions, after payment of all costs of prosecution, settlement and collection. However, given the uncertainties of litigation, there can be no assurance that any such additional amounts will be received.

Verizon Settlement Agreement: The principal terms of the Verizon Settlement provide that the Debtors will assume certain of their executory contracts with Verizon and reject others, and in connection with the assumption of certain of its agreements with Verizon, the Debtors will, (a) make a cure payment to Verizon in the amount of \$16.5 million, (b) allow the balance of Verizon's Claim as a General Unsecured Claim in the aggregate Allowed amount of

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\$37.5 million (although Verizon has agreed that it will not be entitled to recover on account of such Claim unless and until the recovery of other holders of Allowed General Unsecured Claims exceeds 15%), (c) sell or close down certain of their operations in the states of New York and Massachusetts within 90 days of the Effective Date, subject to the receipt of any necessary regulatory approvals, and (d) make certain additional payments to Verizon in the event that any other executory contract party to whom the Debtors make a cure payment in excess of \$500,000 receives a recovery on account of its cure claim that, on a percentage basis, exceeds the cure recovery percentage received by Verizon pursuant to the Verizon Settlement Agreement. Pursuant to the Verizon Settlement Agreement, the Debtors also must deliver written releases in favor of Verizon by the executive officers designated in Attachment 4 to the Verizon Settlement Agreement.

SBC Settlement Agreement: The principal terms of the SBC Settlement Agreement provide that, in consideration for SBC's support of the Plan, the Debtors will sell or shutdown certain of their Mid-West CLEC operations, businesses which, in the past, have relied heavily on interconnection agreements with SBC for the provision of their services. SBC will receive 45% of the net proceeds of the sale of the Mid-West CLEC operations in full and final satisfaction of SBC's Claim(s) against the Debtors, as more fully described in the settlement agreement. If 45% of the net proceeds of such sale, divided by SBC's Allowed General Unsecured Claim, is less than the Pro Rata distribution to Class 7 Claim holders, then SBC will be entitled to the same Pro Rata distribution as the other holders of Allowed Class 7 Claims. Leucadia has agreed that SBC's Allowed General Unsecured Claim will be satisfied from funds of the Reorganized Debtors or Leucadia rather than the Class 7 Cash Amount, regardless of whether the sale proceeds are sufficient or the Mid-West CLEC assets are sold.

B. Summary of Plan Distributions

Below is a summary of the treatment accorded each Class of Claims and Equity Interests under the Plan:

| DESCRIPTION | TREATMENT |
|-------------------------------|---|
| Leucadia DIP Claims | Unless otherwise agreed by Leucadia, on the Effective Date, Leucadia will receive payment in full of the unpaid, non-contingent amount of the Leucadia DIP Claims from the underlying loan documentation. |
| Administrative Expense Claims | Except (i) to the extent that the holder of an Allowed Administrative Expense Claim has agreed to less favorable treatment of such Claim or (ii) to the extent that the holder of an Allowed Fee Claim, on the later of the Effective Date and the date such Administrative Expense Claim becomes Allowed, or as soon thereafter as is practicable, the holder of an Allowed Administrative Expense Claim will receive Cash in an amount equal to the Allowed amount of such Claim. |
| Fee Claims | Unless otherwise agreed by the holder of an Allowed Fee Claim, the holder of an Allowed Fee Claim shall receive payment in full of the Allowed amount of such Fee Claim no later than five (5) Business Days after such Fee Claim becomes Allowed, subject to other terms as may be mutually agreed upon between the holder of such Fee Claim and the Reorganized Debtors. |

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| Priority Tax Claims | Except to the extent that the holder of an Allowed Priority Tax Claim of the Debtors prior to the Effective Date or has agreed to a different treatment of such Claim, each holder of an Allowed Priority Tax Claim will receive the Reorganized Debtors, either (a) Cash in an amount equal to the Allowed amount of such Claim on the later of the Effective Date and the date such Claim becomes Allowed, or as soon thereafter as is practicable, (b) deferred Cash payments having a present value as of the Effective Date, equal to the Allowed amount of such Claim, or (c) upon such other terms determined by the Bankruptcy Court, such Claim holder of such Allowed Priority Tax Claim deferred Cash payments having a present value as of the Effective Date, equal to the Allowed amount of such Claim. |
| Other Priority Claims | Except to the extent that the holder of an Allowed Other Priority Claim of the Debtors prior to the Effective Date or has agreed to a different treatment of such Claim, each holder of an Allowed Other Priority Claim shall receive the Reorganized Debtors, either (a) Cash in an amount equal to the Allowed amount of such Claim on the later of the Effective Date and the date such Claim becomes Allowed, or as soon thereafter as is practicable, (b) deferred Cash payments having a present value as of the Effective Date, equal to the Allowed amount of such Claim, or (c) upon such other terms determined by the Bankruptcy Court, such Claim holder of such Allowed Other Priority Claim deferred Cash payments having a present value as of the Effective Date, equal to the Allowed amount of such Claim. |
| Secured Tax Claims | Except to the extent that the holder of an Allowed Secured Tax Claim of the Debtors prior to the Effective Date or has agreed to a different treatment of such Claim, each holder of an Allowed Secured Tax Claim will receive, at the time such Claim becomes Allowed, or as soon thereafter as is practicable, (a) on the later of (x) the Effective Date and the date such Claim becomes Allowed, or as soon thereafter as is practicable, (y) the date such Claim becomes Allowed, to the Allowed amount of such Claim, including any interest required to be paid under Bankruptcy Code section 506(b), (b) deferred cash payments, or (c) upon such other terms determined by the Bankruptcy Court, such Claim holder of such Allowed Secured Tax Claim deferred Cash payments having a present value as of the Effective Date, equal to the Allowed amount of such Claim. |
| Other Secured Claims | The legal, equitable and contractual rights of the holders of Allowed Secured Claims are unaltered by the Plan. Unless the holder of such a Claim has agreed to a different treatment of such Claim, on the Effective Date, or as soon thereafter as is reasonably practicable, each Allowed Other Secured Claim will be satisfied by the Reorganized Debtors, (i) assumed, (ii) reinstated, or (iii) the underlying collateral surrendered. |
| Leucadia Prepetition Claims | \$25 million New Senior Note and 100% of the shares of New Common Stock issued to Leucadia will be subject to dilution of ownership by the Reorganized Debtors under the New Management Restricted Stock Plan.) |
| Customer Claims | The rights of each holder of an Allowed Customer Claim with respect to the balances it may hold shall be satisfied between the parties in the Reorganized Debtors' businesses. The Reorganized Debtors assume the obligations of the Customer Claims according to their original terms. |
| Convenience Claims | Each holder of an Allowed Convenience Claim shall receive 15% of the Allowed amount of such Claim on the Effective Date, or as soon thereafter as is practicable. |
| General Unsecured Claims | Each holder of an Allowed General Unsecured Claim, excluding SBC Claims (to the extent provided by the Verizon Settlement Agreement), shall receive the Reorganized Debtors, either (a) Cash in an amount equal to the Allowed amount of such Claim, plus such amount, if any, added to that amount as of the Effective Date, or (b) 6.20 of the Plan. (Note: The \$7.0 million Cash amount shall be held in a segregated, interest bearing escrow account as of the Effective Date of the Plan and held in a segregated, interest bearing escrow account as of the Effective Date of the Plan and held in a segregated, interest bearing escrow account as of the Effective Date of the Plan.) |

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distribution to holders of Allowed Class 7 Claims in accordance provisions of this Plan.)

Section 510(b) and Other Subordinated Claims Holders of Section 510(b) and Other Subordinated Claims shall not receive distributions on account of such Claims and shall not receive under the Plan on account of such Section 510(b) Claims.

Old Common Stock Interests and Other Equity Interests in ATX Holders of Old Common Stock Interests and Other Equity Interests shall not receive any distributions under the Plan on account of such Old Common Stock Interests and Other Equity Interests in ATX. All Old Common Stock Interests and Other Equity Interests in ATX will be deemed extinguished as of the Effective Date.

Equity Interests Securities Litigation Claims Holders of Equity Interests Securities Litigation Claims shall not receive distributions on account of such Claims and shall not receive under the Plan.

SECTION 9 - FINANCIAL STATEMENTS AND EXHIBITS

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.

(c) EXHIBITS.

| EXHIBIT NO. | DESCRIPTION |
|-------------|---|
| 2.1 | Debtors' Modified Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of April 13, 2005 |
| 99.1 | Consolidated Monthly Operating Report for the Period from February 1, 2005 to February 28, 2005 |
| 99.2 | Press Release of the Company, dated April 14, 2005 |

Cautionary Statement Regarding Forward Looking Statements

This document contains certain forward-looking statements that involve substantial risks and uncertainties. All statements regarding the Company's expected future financial position, results of operations, cash flows, restructuring and financing plans, business strategy, budgets, projected costs, capital expenditures, competitive positions, growth opportunities, plans and objectives of management for future operations and statements that include words such as "anticipate," "if," "believe," "plan," "estimate," "expect," "intend," "may," "could," "should," "will," and other similar expressions are forward-looking statements.

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Such forward-looking statements are inherently uncertain, and readers must recognize that actual results may differ from the Company's expectations.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934,

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the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: April 20, 2005

ATX COMMUNICATIONS, INC.
(Registrant)

By: /s/ Neil Peritz

Name: Neil Peritz
Title: Chief Accounting Officer

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