

SUMMARY

First, as set forth in its Comments, SBC supports the Commission's approach that the relevant geographic and product markets for interstate, interexchange services need not be modified at this time. This approach is supported by numerous commenters, including both IXCs and BOCs. The Commission must, instead, treat the relevant markets for market power tests uniformly. The Commission cannot reasonably treat long distance as a national market when evaluating the market power of incumbents, but isolate portions of the market when performing the same analysis for new entrant IXCs. There is no economic basis for such an approach, which would result in disparate and more restrictive regulatory treatment for the entities most likely to provide vibrant price competition in the long distance market.

Second, while some incumbent IXCs urge the imposition of strict structural separation requirements upon BOC out-of-region interexchange services, these arguments have been made to this Commission in connection with both SBCS's Request to be Classified as a Non-dominant Carrier and in reply to comments filed in CC Docket 96-21; SBC effectively rebutted these commenters arguments in those dockets, and the arguments made for structural separation have become no more persuasive by their repetition in this docket.

Third, although the Commission denominates the concepts as "geographic rate averaging" and "rate integration" in the NPRM, nothing in the express language of the Telecommunications Act permits an "averaging" approach to the rates charged to subscribers at different geographic points within an IXC's service area. The Telecommunications Act simply requires that rural rates "shall be no higher" than urban rates, and rates charged in one state shall be no higher than in any other. Accordingly, the express language of the Telecommunications Act mandates rejection of rules permitting "special circumstance" deaveraging. However, Section

254(g) regulates only the “rates charged” by an IXC, and other IXC activities, such as advertising, are not affected. Provided an IXC’s services are available on the same terms from place to place, the Commission has no role under Section 254(g) in controlling the manner in which a provider advertises its rates.

In this and all of its dockets, the Commission must avoid adopting standards that would ultimately produce uneven or anticompetitive regulation of interstate, interexchange services. The Commission must also avoid any approach that would undermine the language or intent of the Telecommunications Act. SBC, therefore, urges the Commission (1) to avoid making an essentially non-binding policy statement upon market power issues it acknowledges are case specific; (2) to refuse to adopt BOC out-of-region separation requirements; and (3) to implement “geographic rate averaging” and “rate integration” rules consistent with the unambiguous terms of the Telecommunications Act.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Policy and Rules Concerning the)	CC Docket No. 96-61
Interstate, Interexchange Marketplace)	
)	
)	
Implementation of Section 254(g) of the)	
Communications Act of 1934, as amended)	

REPLY
COMMENTS OF SBC COMMUNICATIONS INC.
(NPRM SECTIONS IV, V, AND VI)

SBC Communications Inc. (“SBC”), by its attorneys and on behalf of its subsidiaries, Southwestern Bell Communications Services, Inc. (“SBCS”), Southwestern Bell Telephone Company (“SWBT”), and Southwestern Bell Mobile Systems (“SBMS”), files these reply comments pursuant to Parts IV, V, and VI of the Notice of Proposed Rulemaking released by the Commission on March 25, 1996 (the “NPRM”).

I. DISCUSSION

A. NPRM SECTION IV; NO CHANGE IN GEOGRAPHIC OR PRODUCT MARKET DEFINITIONS IS NECESSARY AT THIS TIME

As set forth in its Comments, SBC supports the Commission’s approach that the relevant geographic and product markets for interstate, interexchange services need not be

modified at this time.¹ This approach is supported by numerous commenters, including both interexchange carriers (“IXCs”)² and BOCs.³

As Bell Atlantic points out, the Commission must treat the relevant markets for market power tests uniformly. The Commission cannot reasonably treat long distance as a national market when evaluating the market power of incumbents, but isolate portions of the market when performing the same analysis for newcomers.⁴ The market definitions ultimately adopted should not vary based on the identity of the supplier. There is no economic basis for such an approach, which would result in disparate and more restrictive regulatory treatment for the entities most likely to provide vibrant price competition in the long distance market.⁵

¹NPRM at ¶41,42.

²See, e.g., AT&T Comments at 14-15. However, AT&T’s conclusion that the relevant product and geographic market need not be changed is buried among 20-odd pages of an anti-Bell Operating Company market power analysis not confined to the parameters of the NPRM. AT&T argues that Bell Operating Companies (“BOCs”)--out-of-region and in-region, and with or without separate affiliates--must be regulated differently than their incumbent, market-share-holding competitors.

AT&T and other commenters’ rhetoric generally ignores that the BOCs remain under price cap regulation with regard to local exchange and exchange access services; that geographic rate averaging and rate integration are required by the Telecommunications Act; that BOCs are required to establish separate affiliates for the provision of in-region interexchange services; and that the Telecommunications Act established comprehensive non-discrimination and pro-competitive requirements. (See *infra* at Section B) See generally LDDS Comments; Vanguard Comments; Frontier Comments.

³See Bell Atlantic Comments at 5; Pacific Telesis Comments at 4-6; BellSouth Comments at 9; NYNEX Comments at 5; US West Comments at 2; USTA Comments at 13.

⁴See Bell Atlantic Comments at 6.

⁵See Bell Atlantic Comments at 7. Even if appropriate safeguards did not exist, the Commission has not historically modified its geographic market definition in order to capture a single competitor or class of competitors. See Bell Atlantic Comments at 6. The same is true for the Commission’s definition of relevant product markets. The Commission has not segregated

The Commission uses its definitions of the relevant geographic and product markets in conjunction with its definitions of “dominant carrier” and “non-dominant carrier” to determine the regulatory regime under which a telecommunications carrier operates. Currently, when the Commission reviews an interstate, interexchange carrier’s alleged market power, it assesses a single, nationwide geographic market and individual, non-substitutable product markets. Although it details alternative approaches in the NPRM, the Commission tentatively concludes that it need not change its approach except where “credible evidence” is adduced that there is, or could be, a lack of competitive performance in a service or group of services or within a particular, less-than-nationwide market and there is a showing that geographic rate averaging will not sufficiently mitigate any exercise of market power ⁶

Given the essentially advisory approach the NPRM takes, SBC’s concern about the use of the Horizontal Merger Guidelines is somewhat mitigated.⁷ As some commenters cautioned,⁸ however, the Commission must be careful not to become sidetracked by arguments that fail to recognize the economic realities of the interexchange services market and the legal and

product markets by the product offered by each competitor (i.e., AT&T’s services are one product; MCI’s are another). Obviously, to do so would lead to absurd results: every producer would dominate its market, despite the existence of close substitutes.

⁶See NPRM ¶¶ 41,42.

⁷1992 U.S. Department of Justice/Federal Trade Commission Horizontal Merger Guidelines, 4 Trade Reg. Rep. (CCH)¶13,104, at 20,569. As SBC states in its comments, the primary purpose of the Horizontal Merger Guidelines is to evaluate the impact of a merger on the competitive characteristics of an industry, not as the basis for determining whether or how to regulate a market or its potential new entrants. SBC Comments at 3, 4.

⁸Bell Atlantic Comments at 6; US West Comments at 3; BellSouth Comments at 12; NYNEX Comments at 6-7.

regulatory constraints that will accompany out-of-region BOC and in-region BOC affiliate entry into the market. As the Commission acknowledges, and as commenters have pointed out,⁹ the Commission's discussion of potential new market definitions is dependent upon facts that do not exist and circumstances that have not arisen. The Commission should avoid adopting standards that would ultimately produce uneven or anticompetitive regulation of interstate, interexchange services.

B. NPRM SECTION V; STRUCTURAL SEPARATION IS NOT REQUIRED

AT&T, LDDS, and others urge the imposition of strict structural separation requirements upon BOC out-of-region interexchange services. In support of both SBCS's Request to be Classified as a Non-dominant Carrier¹⁰ and in reply to comments filed in CC Docket 96-21,¹¹ SBC effectively rebutted these commenters' arguments. The arguments made for structural separation by AT&T, MCI, Telecommunications Resellers Association ("TRA"), and others have become no more persuasive by their repetition in this docket; SBC, therefore, attaches copies of its Reply Comments in CCB Pol 95-24 and its CC Docket 96-21 Reply Comments and incorporates their arguments by reference as if fully set forth herein.¹²

⁹Bell Atlantic Comments at 7; BellSouth Comments at 15; NYNEX Comments at 6.

¹⁰In the Matter of Request of Southwestern Bell Communications Services, Inc., To Be Classified as Non-Dominant Carrier, CCBPol 95-24 ("CCBPol 95-24")(pending).

¹¹In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, Reply Comments of SBC (March 25, 1996).

¹²SBCS Reply Comments, CCBPol 95-24, Attachment A hereto; and SBC Reply Comments, CC Docket 96-21, Attachment B hereto. AT&T also urges that all LECs should additionally be subject to requirements that they not engage in joint marketing or any sharing of information between their interexchange affiliates and their in-region local operations.

Congress' intent in enacting the Telecommunications Act was to facilitate the entry of competitors not only to the local exchange market, but to the interexchange market. To facilitate BOC entry as Congress envisioned, the Commission should not regulate BOCs as dominant in their out-of-region provision of interstate, interexchange services; to the extent such regulations are adopted in CC Docket 96-21 under the rationale of the Fifth Report and Order, the Commission should eliminate the restrictions through this proceeding.¹³

BOCs are currently subject to the joint marketing provisions contained in the Telecommunications Act:

A Bell operating company may not market or sell interLATA service provided by an affiliate required by this Section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d),

Section 271(g)(2). BOC affiliates are likewise restricted:

A Bell operating company affiliate required by this section may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.

Section 271(g)(1). If additional joint marketing restrictions were required, they would have been specified in the Telecommunications Act. There is no reason for the Commission to adopt joint marketing safeguards beyond those established by Congress.

¹³See Bell Atlantic Comments at 2-5 and Attachments (Bell Atlantic Comments in 96-21 and Crandall Affidavit); NYNEX Comments at 9-11; BellSouth Comments at 23.

C. **SECTION VI; THE TELECOMMUNICATIONS ACT REQUIRES GEOGRAPHIC RATE “SYMMETRY”**

No commenter disputes that the Telecommunications Act mandates that the Commission adopt rules that require:

. . . that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each state at rates no higher than the rates charged to its subscribers in any other state.¹⁴

Although these concepts are denominated “geographic rate averaging” and “rate integration” in the NPRM, nothing in the express language of the Telecommunications Act permits an “averaging” approach to the rates charged to subscribers at different geographic points within an IXC’s service area.¹⁵ The Telecommunications Act clearly states that rural rates “shall be no higher” than urban rates, and rates charged in one state shall be no higher than in any other. This language does not contemplate “averaging.”

Accordingly, the express language of the Telecommunications Act mandates rejection of approaches such as those suggested by AT&T, MCI, and LDDS, which call for rules allowing blanket “special circumstances.” While the Commission may apply Section 10¹⁶ forbearance procedures and principles when the appropriate circumstances are shown, the principles of a three-month-old Section 254(g) should not be subjected to forbearance before the

¹⁴47 U.S.C. §254(g) (emphasis added).

¹⁵But see 47 U.S.C. §254(b)(3); Conference Report at 129, 132. Importantly, however, the legislative history of the Telecommunications Act can come into play only if the legislated language is ambiguous, which it is not.

¹⁶47 U.S.C. §160.

Commission even adopts implementing regulations. Instead, the clear intent of Congress embodied in Section 254(g) must be implemented. If, after implementation, the Commission determines that circumstances warrant forbearance, then comments may be sought on such a proposal.

Importantly, however, Section 254(g) deals with the “rates charged” by an IXC. Other IXC activities, such as advertising, are not regulated under Section 254(g). Provided an IXC’s services are available on the same terms from place to place,¹⁷ the Commission has no role under Section 254(g) in controlling the manner in which a provider advertises its rates.¹⁸ A

¹⁷The focus of Section 254(g) is upon the availability of rates. The Conference Report states, “Further, the conferees expect that the Commission will continue to require that geographically averaged and rate integrated services, and any services for which an exception is granted, be generally available in the area serviced by a particular provider.” Conference Report at 132.

¹⁸As Pacific Telesis points out:

. . . a service provider should have the latitude to advertise its rates in the manner it believes appropriate without regulatory interference, and should not be subject to a regulatory obligation to conduct its advertising campaign in any particular area.

* * *

. . . While Section 254(g) forbids service providers from limiting the geographic availability of discount plans, it does not contemplate regulating the conduct of their advertising campaigns. There are a number of legitimate reasons why an interLATA carrier may choose to advertise a discount plan on a less than service area-wide basis, even while the plan is in fact available to subscribers throughout the service area. . . . [T]he cost of advertising a particular discount plan throughout an IXC’s entire service region may be prohibitive.

While a discount plan should be available to subscribers throughout a carrier’s service area, there should be no regulatory burden to advertise such a plan coextensively with its availability. The Commission is neither the Federal Advertising Commission nor an advertising review board, and it should resist the temptation to strain its limited resources by second-guessing carriers’ marketing and advertising judgments.

Commission rule mandating such conduct will likely serve only to stifle competition by limiting promotional efforts of competitors.

II. CONCLUSION

In this phase of the referenced Docket, the Commission has requested comments upon the use of the Horizontal Merger Guidelines in connection with its definitions of geographic and product markets used in the evaluation of market power, its existing separation requirements for LEC-affiliated interexchange carriers and its proposed separation for BOC affiliated out-of-region interexchange carriers, and its adoption of geographic rate averaging and rate integration principles in response to the Telecommunications Act. SBC urges the Commission (1) to avoid making an essentially non-binding policy statement upon market power issues it acknowledges are case specific; (2) to refuse to adopt BOC out-of-region separation requirements; and (3) to implement “geographic rate averaging” and “rate integration” rules consistent with the clear terms of the Telecommunications Act.

Pacific Telesis Comments at 11-12 (footnote omitted).

Respectfully submitted,

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Washington, D.C. 20554

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OFFICE OF SECRETARY

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In the Matter of)
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Request of Southwestern Bell)
Communications Services, Inc.)
to be Classified as a)
Non-Dominant Carrier)
_____)

CCBPol 95-24

**SOUTHWESTERN BELL COMMUNICATIONS SERVICES, INC.'S
REPLY IN SUPPORT OF ITS REQUEST
TO BE CLASSIFIED AS A NON-DOMINANT CARRIER**

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SUMMARY

In this pleading, Southwestern Bell Communications Services, Inc. ("SBCS"), replies to the Comments filed in response to SBCS's Request that the Commission classify it as a non-dominant, interstate, domestic, interexchange services provider to customers of: (1) unaffiliated Commercial Mobile Radio Services providers, and (2) landline local exchange providers other than Southwestern Bell Telephone Company (the "Request"). Although the Request was limited to these specified market segments to simplify and to expedite Commission processing, SBCS does not concede that it would be dominant with respect to interexchange services even within the SWBT's operating area. Nevertheless, because this determination will be pro-competitive and benefit consumers of interexchange services, SBCS urges that the Commission act expeditiously to determine it non-dominant.

In particular, SBCS argues that, contrary to Comments arguing that the Request is premature, there are no prerequisites to the Commission's determination that SBCS is non-dominant. Further, the Commission has an established test for non-dominance, and not only does SBCS meet its strictures, no Respondent has even intimated that SBCS possesses market power under existing law, "i.e., [that SBCS has the] power to control prices." This lack of market power exists regardless of the scope of SBCS's intended service.

In addition, although some Respondents argue that a new test should be devised for SBCS, no legal or practical justification for such a change in the rules has been made. Finally, the additional structural and non-structural safeguards suggested by

some Respondents are unduly cumbersome and are unnecessary in view of the safeguards that exist today.

The Commission's expeditious grant of SBCS's Request will benefit competition and consumers, and the Commission should not tolerate misuse of the regulatory process and allow the four opposing Respondents to delay a competitor's entry into the domestic, interstate, interexchange market.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Request of Southwestern Bell) CCBPol 95-24
Communications Services, Inc.)
to be Classified as a)
Non-Dominant Carrier)

**SOUTHWESTERN BELL COMMUNICATIONS SERVICES, INC.'S
REPLY IN SUPPORT OF ITS REQUEST
TO BE CLASSIFIED AS A NON-DOMINANT CARRIER**

Southwestern Bell Communications Services, Inc. ("SBCS"), files this Reply to the Comments filed in response to SBCS's Request that the Commission classify it as a non-dominant, interstate, domestic, interexchange services provider (a non-dominant "IXC") to customers of: (1) unaffiliated Commercial Mobile Radio Services ("CMRS") providers, and (2) landline local exchange providers other than Southwestern Bell Telephone Company (the "Request").¹ SBCS urges that the Commission act expeditiously to determine it non-dominant. Such a determination will be pro-competitive and benefit consumers of interexchange services.

I. INTRODUCTION

Six Respondents filed Comments on the Request. Two Respondents supported the Request, and four opposed it.² The

¹To reiterate a point made in its Request, and in accordance with Bell Atlantic Communications, Inc. ("Bell Atlantic"), comments, although the Request was limited to these specified market segments to simplify and to expedite Commission processing, SBCS does not concede that it would be dominant with respect to interexchange services even within SWBT's operating area.

²The Request was supported by the Comments of Bell Atlantic and the Missouri Public Service Commission Staff (the "MoPSC"), subject to certain conditions, and opposed by competing carriers, including MCI Telecommunications Corporation ("MCI"), AT&T Corp. ("AT&T"), MFS Communications Company ("MFS"), and a related association, the Telecommunications Resellers Association

opponents of SBCS's Request stated several theories for the delay or denial of the relief sought, including: (A) SBCS should obtain other necessary authorizations to provide interexchange service before being declared non-dominant; (B) SBCS's Request should be addressed only after the Commission formulates a new test for non-dominance; and (C) SBCS should be subjected to unprecedented structural and non-structural safeguards. Each of these theories is:

- Without any basis in the Commission's rules; and
- Has the intent or effect of delaying the entry of a new competitor in the interexchange market.

The Respondents that opposed the Request--including the holders collectively of in excess of seventy-five percent (75%) of the market for interstate, interexchange services³ and a local exchange competitor having the advantage of being able to bundle local service with long distance⁴--will obviously benefit if they can keep a potential competitor out of the interexchange market for as long as possible.

This proceeding began as SBCS's effort to ease the Commission's processing of its interstate tariffs by establishing that it is non-dominant under the only test ever applied to IXCs. The Commission's narrow task in this proceeding is to determine whether SBCS is "non-dominant" in the relevant market. The

("TRA") (collectively, the "Respondents").

³AT&T is estimated to possess approximately 60% of the market for such services, and MCI is estimated to possess an additional 15%. TRA, an organization of interexchange service resellers claiming 350 members, also must represent some percentage of the market.

⁴MFS has this advantage.

Commission's test for non-dominance in this instance is clear and is not contested. By the terms of 47 C.F.R. § 61.3(o) and (t), SBCS is non-dominant if it has not been found by the Commission to possess "market power" in the relevant market.⁵ In addition to being presumed,⁶ the facts establishing SBCS's non-dominance under this test as set forth in the Request are undisputed. SBCS has undeniably established that it is non-dominant.

II. DISCUSSION

A. THE SBCS REQUEST IS NOT "PREMATURE"; THE EXISTING COMMISSION FRAMEWORK IS ADEQUATE TO ADDRESS THE REQUEST.

SBCS filed the Request to fulfill one step of the process necessary for it to operate as an IXC under streamlined procedures. MCI contends, however, that SBCS's Request should be denied as "premature" because SBCS has not yet been granted full authority by the United States District Court, the Department of Justice, or Congress to provide the interexchange services which are the subject of its non-dominance request.

Admittedly, the Commission's determination that SBCS is non-dominant will not in and of itself lead to SBCS's offering interstate, interexchange services; however, nothing in the MFJ,⁷

⁵Id. Section 61.3(o) states that a dominant carrier is "[a] carrier found by the Commission to have market power (i.e., power to control prices)." Id. Section 61.3(t) states that a non-dominant carrier is "[a] carrier not found to be dominant." Id.

⁶47 C.F.R. § 61.3(o) and (t). Under these rules, a carrier is non-dominant until "found by the Commission to have market power." Id.

⁷United States of America v. Western Electric Company, et al., Civil Action No. 82-0192, 552 F. Supp. 131 (D.D.C. 1982) (the "MFJ").

the Generic Wireless Waiver,⁸ the Code of Federal Regulations, the Communications Act of 1934, or any other aspect of telecommunications jurisprudence makes the determination of non-dominance dependent upon a provider's ability or inability to offer service at the time of that determination. Likewise, the enactment of federal legislation is not a prerequisite to the Commission's determination. While SBCS may face certain legal obstacles to providing service in addition to those faced by other new IXCs,⁹ the Commission's duty to determine that SBCS is non-dominant is unaffected. SBCS, like any prudent new market entrant, is pursuing a business plan to be ready to begin service when the bell sounds.

SBCS's Request fits squarely within the declaratory ruling procedures established under Commission Rules¹⁰ and the Administrative Procedure Act.¹¹ Other determinations outside of the Commission's jurisdiction may be necessary for SBCS to begin offering service, but these additional preconditions do not provide a basis for delay in the disposition of the Request.¹² As

⁸United States of America v. Western Electric Company, et al., Civil Action No. 82-0192, Order Released April 28, 1995, by the United States District Court for the District of Columbia (the "Generic Wireless Waiver").

⁹Such as a lack of customers, facilities, or contracts for resale.

¹⁰47 C.F.R. § 1.2 states: "The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling . . . removing uncertainty." Id.

¹¹5 U.S.C. § 554(e).

¹²Contrary to MFS's characterization, the Request is not for any sort of "waiver" of the Commission's Rules. Instead, SBCS seeks nothing more than the timely and straightforward application of those rules.

outlined by MCI, several potential paths exist for SBCS to begin offering interexchange service. However, since interexchange relief in one form or another will arise in the near future from either the courts or Congress, the Commission should address SBCS's Request at this time. The issue of non-dominance is not addressed elsewhere, and SBCS should be permitted to complete the Commission proceedings so that it has surmounted at least one hurdle to its providing service.

B. SBCS IS NON-DOMINANT UNDER THE COMMISSION'S RULES.

1. NO ONE CONTENDS THAT SBCS POSSESSES MARKET POWER.

As the Request demonstrates, SBCS possesses no market power; it is, therefore, non-dominant by definition.¹³ No Respondent has even intimated that SBCS possesses market power under existing law, "i.e., [that SBCS has the] power to control prices."¹⁴ This lack of market power exists regardless of the scope of SBCS's intended service.¹⁵ Accordingly, no Respondent has raised a legal or regulatory impediment to the Commission's determination that SBCS is non-dominant.

¹³47 C.F.R. §§ 61.3(o), 61.3(t).

¹⁴47 C.F.R. § 61.3(o).

¹⁵As argued by one Respondent (AT&T Comments at 2-3), the Commission has established the interstate, domestic, interexchange services market, taken as a whole, as the sole relevant product market to assess market power. See In the Matter of Motion of AT&T Corp. To Be Re-classified as a Non-Dominant Carrier, FCC 95-427, Order at 6, 16 (October 23, 1995) (the "AT&T Order"). The Commission has also determined that there is but a "single national relevant geographic market (including Alaska, Hawaii, Puerto Rico, [the] U.S. Virgin Islands, and other U.S. offshore points.)" Id. (emphasis added). These relevant market definitions to apply non-dominant regulation to all carriers, now including AT&T, Id. (citing Fourth Report and Order, 95 F.C.C. 2d 554, 562-75 (October 19, 1983) ("Fourth Report and Order")).

2. APPLICATION OF THE COMMISSION'S EXISTING STANDARDS RESULTS IN A FINDING OF NON-DOMINANCE.

Utilizing existing Commission rules and precedent and established antitrust analysis, the test of whether any carrier possesses market power in the relevant market requires an examination of (a) the carrier's market share; (b) the supply elasticity of the market; (c) the demand elasticity of the carrier's customers (or in SBCS's case, potential customers); and (d) the carrier's cost structure, size, and resources.¹⁶ Applying these factors to SBCS, as is specifically accomplished in the Request,¹⁷ the Commission can--and must--determine on the record before it that SBCS has no market power and is, by definition, "non-dominant."¹⁸ The facts underlying the Request in this regard are undisputed.

Under the only analysis it has ever applied, the Commission has found all domestic, interstate, interexchange carriers ever examined--including AT&T with its 60% market share--non-dominant.¹⁹ SBCS, with a zero market share and comparatively insignificant cost structure, size, and resources, must also be non-dominant.

C. TO DELAY THE ENTRY OF A COMPETITOR, SOME RESPONDENTS WOULD CHANGE THE RULES.

¹⁶AT&T Order at 23.

¹⁷SBCS Request at 3-5.

¹⁸AT&T Order at 39 (citing First Interexchange Competition Order, 6 F.C.C.R. at 5891-92).

¹⁹Because of the 47 C.F.R. §61.3(o) and (t) presumption, MCI has never been subjected to a requirement that it be declared non-dominant, even though it possesses a 15% share of the market. This is also true of all other carriers coming into existence since the Fourth Report and Order.

The Commission's existing test for judging whether a carrier is dominant is based upon an application of established antitrust principles to the Commission's decision, as stated in its rules, that dominance is to be measured by the existence or non-existence of market power.²⁰ The Respondents, however, disagree among themselves over whether the Commission's existing test for non-dominance should be applied to SBCS.²¹ Without contesting the fact that SBCS cannot control prices in an antitrust or any other sense, some Respondents, including MCI, argue that SBCS has "local bottleneck power" over the provision of access services through its affiliation with SWBT and that the Commission should, therefore, disregard its rules and devise a new, as yet undefined, test for SBCS and other IXCs affiliated with RBOCs.²² This suggestion is unjustified.

First, SBCS proposes to offer only interexchange and related services. In addition, SWBT's local exchange services are subject to the Commission's well established and carefully policed equal access and non-discrimination safeguards. See, e.g., Policy

²⁰See AT&T Order at 23 and 47 C.F.R. §61.3(o) and (t).

²¹Some Respondents either supported the application of the existing test to SBCS (See Bell Atlantic Comments at 2-4) or did not protest the application of that test (See MoPSC Comments at 3). Although SBCS is encouraged by the MoPSC's response generally in support of the Request, the MoPSC also suggests that state commissions should have some role in the determination of which carriers are non-dominant, much as they currently have a role in study area waiver proceedings. SBC respectfully disagrees. Unlike the waiver of study area boundaries, which has a direct effect upon both the interstate and intrastate jurisdictions for separations purposes, the determination of non-dominance in this instance is a purely interstate matter.

²²MCI Comments at 5-15; AT&T Comments at 2; MFS Comments at 4-5; TRA Comments at 3-10.

and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, 98 F.C.C.2d 1191, at text accompanying notes 11 and 12 (August 8, 1984) ("Fifth Report and Order"); 47 U.S.C. §§ 201, 202; see also the MFJ at §2. Even if SWBT's fettered power in the local exchange markets was relevant to the analysis of interexchange market power, in light of the single, nationwide relevant market definition adopted by the Commission, SBCS and SWBT combined do not have the power to control prices for the relevant interexchange services and, therefore, to be "dominant."

Commission precedent in this context is clearly in favor of non-dominant regulation. See Fifth Report and Order at 1198-1200. Despite their interexchange and local affiliations, neither GTE nor Sprint nor any other non-RBOC companies with both interexchange and local exchange carrier ("LEC") affiliates have ever been declared dominant for the pertinent interexchange services. The issues considered with respect to these carriers were found not to require dominant regulation; the issues for the Commission's consideration with respect to the Request are no more significant than those reviewed for other carriers and likewise do not require dominant regulation of SBCS.²³

²³Since the Request does not extend to the provision of interexchange services to SBCS's affiliated wireless company or the wireless company's customers, concerns expressed about the alleged "wireless bottleneck" that is purported to exist between SWBT and its wireless affiliate are irrelevant and immaterial to the Commission's determination that SBCS is non-dominant. Moreover, legal concerns about "bottleneck" or essential facilities are based on the alleged ability of the bottleneck owner to discriminate in favor of itself or its affiliates, they do not implicate in any way the only question which the Commission must address in this proceeding--whether the affiliate has market power in the new market it intends to enter. The

Further, although AT&T has argued that the Commission's analysis of market power must be made for only the full relevant market,²⁴ the services SBCS proposes to offer pursuant to the Request are, by definition, outside the sphere of SWBT's influence. SWBT cannot possibly use its LEC operations to impede competition with respect to SBCS's currently proposed customers. The Commission is justified, therefore, in granting SBCS non-dominant status for the limited range of interexchange activities SBCS proposes, however it might decide to treat other affiliates of LECs seeking broader interexchange authority.²⁵

D. SBCS IS STRUCTURALLY SEPARATE FROM SWBT.

Nothing in the Commission's rules or precedent requires SBCS to be structurally separate from SWBT to be classified non-dominant. SBCS anticipated--accurately, as it turned out--that some Respondents would assert in one form or another the dictum pronounced by the Commission over a decade ago in a footnote to the Fifth Report and Order. To provide the Commission with irrefutable grounds to approve the Request, SBCS expressed a willingness, if required, to abide by preconditions to a declaration of non-dominance, including structural separation, never before applied to any IXC. Evidently misunderstanding SBCS's spirit of cooperation as a sign of vulnerability, several Respondents--none of which

Commission is more than capable of dealing with potential discrimination that might result from SWBT's alleged bottleneck through structural separation, non-discrimination or other available regulatory remedies.

²⁴SBCS agrees with AT&T's assessment of the relevant market.

²⁵The Request is filed, of course, without prejudice to SBCS's seeking broader relief at an appropriate time.