

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Southwestern Bell Telephone Company's)
Comparably Efficient Interconnection Plan)
for the Provision of Security Service)

CC Docket Nos. 85-229, 90-623 and 95-20

DOCKET FILE COPY ORIGINAL

To: The Common Carrier Bureau

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
COMMENTS IN OPPOSITION TO
MOTION TO HOLD IN ABEYANCE**

Southwestern Bell Telephone Company ("SWBT"), by its attorneys, hereby opposes the Motion to Hold in Abeyance ("motion") filed on August 2, 1996, by the Alarm Industry Communications Committee ("AICC"). In particular, the Bureau should deny AICC's request that further consideration of SWBT's Comparably Efficient Interconnection ("CEI") Plan for Security Service¹ be held in abeyance until completion of the Electronic Publishing NPRM proceeding.²

The sole purpose of a CEI plan approval proceeding is to determine whether the plan complies with the Commission's Computer III requirements.³ Thus, the only issue now before

¹ Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for the Provision of Security Service, filed April 4, 1996.

² Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96-152, Notice of Proposed Rulemaking, released July 18, 1996 ("Electronic Publishing NPRM").

³ Bell Atlantic Telephone Companies, Offer of Comparably Efficient Interconnection to Providers of Internet Access Services, CCBPol. 96-09, Order, released June 6, 1996 ("Bell Atlantic CEI Order"), at para. 47.

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the Bureau is whether SWBT has complied with these requirements. The Bureau should not address the unrelated question of what activities might constitute the “provision” of alarm monitoring services under Section 275 of the the Telecommunications Act of 1996 (“Act”). Doing so would mark an unwarranted departure from the Bureau’s recent Bell Atlantic CEI Order. The Bureau determined there and should reaffirm here that whether a BOC’s CEI Plan is consistent with the Act is more properly addressed in a pending rulemaking and should not serve to block, much less delay, CEI plan approval.

Approval of SWBT’s CEI Plan would not “prejudge” a later determination by the Commission as to what activities might constitute “provision” of alarm monitoring services. Moreover, approval now would represent the most efficient use of the Commission’s limited resources.

I. INTRODUCTION

On April 4, 1996, SWBT filed its CEI Plan for Security Services. SWBT requested that its CEI Plan be approved in accordance with the Commission’s Computer III requirements.

Under applicable precedent, SWBT’s CEI Plan must comply with nine specific CEI

“parameters” and with certain other nonstructural safeguards. The prescribed parameters are:

1. Unbundling of Basic Services
2. Interface Functionality
3. Resale
4. Technical Characteristics
5. Installation, Maintenance and Repair
6. End User Access
7. CEI Availability
8. Minimization of Transport Costs

9. Recipients of CEI⁴

SWBT's CEI Plan must also comply with nonstructural safeguards pertaining to:

1. Use of Customer Proprietary Network Information ("CPNI")
2. Disclosure of Network Information
3. Nondiscrimination Reporting⁵

SWBT's CEI Plan accurately identifies each of the Commission's prescribed parameters and safeguards, and demonstrates in detail SWBT's commitment to comply fully with each of them. AICC's initial comments did not claim that SWBT neglected to mention any particular parameter or safeguard, nor did they demonstrate that SWBT's intention to comply with every safeguard fell short of the Commission's Computer III requirements.⁶

On July 18, the Commission released its Electronic Publishing NPRM concerning, among other things, that portion of the new telecommunications law which states that no BOC or affiliate "shall engage in the provision of alarm monitoring service" ⁷ In its NPRM, the Commission seeks comment on "what types of activities constitute the 'provision' of alarm monitoring services subject to the 1996 Act."⁸ It seeks specific comment on "whether, among

⁴ Amendment of Section 64.702 of the Commission's Rules and Regulations, Phase I, Report and Order, 104 FCC 2d 958 (1986) (further citations omitted) ("Phase I Order"), at paras. 154-166; Bell Atlantic CEI Order, at para. 12.

⁵ Amendment of Section 64.702 of the Commission's Rules and Regulations, Phase II, Order, 2 FCC Rcd 3072 (1987) (further citations omitted) ("Phase II Order"), at paras. 73-75; Bell Atlantic CEI Order, at para. 39.

⁶ See, SWBT's Reply Comments, filed June 7, 1996, at 13-14.

⁷ Telecommunications Act of 1996, Pub. L. No. 64-104, 110 Stat. 56 (1996), at Section 275(a)(1), 47 U.S.C. § 275(a)(1).

⁸ Electronic Publishing NPRM, at para. 71.

other things, billing and collection, sales agency, marketing, and/or various compensation arrangements, either individually or collectively, would constitute the provision of alarm monitoring.”⁹

II. **BUREAU APPROVAL OF SWBT’S CEI PLAN WOULD NEITHER RESULT IN NOR REQUIRE A FINDING THAT SWBT WOULD ENGAGE IN THE PROVISION OF ALARM MONITORING SERVICE.**

Very recently, the Bureau has recognized that CEI plan approval is limited to determining whether the plan complies with the Commission’s Computer III requirements.¹⁰ As there is no substantial dispute that SWBT’s CEI Plan meets each of these requirements, the Bureau’s analysis should end and its approval should issue.

AICC’s argument that approval would “prejudge” the outcome of the questions presented by the Electronic Publishing NPRM is misleading and specious. For several reasons, that argument should be rejected in its entirety.

First, no Bureau determination that SWBT’s CEI plan meets Computer III requirements would necessitate a finding that the activities contemplated by SWBT would constitute the “provision” of alarm monitoring service. Approval may, and should, issue with but a series of findings that SWBT has complied with each of the Commission’s prescribed parameters and safeguards. None of these findings could be read to dispose of the question of what constitutes

⁹ Id.

¹⁰ Bell Atlantic CEI Order, at para. 47.

“provision,” and AICC does not claim otherwise. In short, the conclusions reached in these two proceedings would not be mutually exclusive.

Second, SWBT has not sought any Bureau relief or declaration beyond the approval sought for its CEI Plan. It certainly has not, for instance, sought any declaratory ruling to the effect that its intentions, if carried out, would constitute the “provision” of alarm monitoring service. Moreover, at no time has SWBT sought FCC approval for its entry into the “alarm monitoring business,” as erroneously contended twice now by AICC.¹¹ AICC’s attempt to rewrite Section 275 to so state demonstrates the weakness of its own attacks on SWBT’s narrow request.

Third, in its Bell Atlantic CEI Order, the Bureau declined to address multiple claims of alleged unlawfulness under the Act, including interconnection (Section 251), unbundling (Section 252) and interLATA (Sections 271 and 272) items. As to all of them, the Bureau correctly concluded that they should be addressed in a separate rulemaking.¹² The Bureau should remain consistent here and decline to consider AICC’s lone objection under Section 275. AICC provides no reason why the Bureau should elevate the worth of AICC’s objection over the several advanced, yet rejected, in the Bell Atlantic matter. No such reason exists.

Fourth, AICC misapprehends the authority of the Bureau. The Commission will determine the outcome of the questions presented by the Electronic Publishing NPRM. The

¹¹ AICC Motion, at 1 (emphasis added); see also, AICC Comments, at 4 (attempting to redefine the Section 275 prohibition against engaging in the provision of “alarm monitoring service” to “prohibit BOC participation in the alarm monitoring business” (emphasis original)).

¹² Bell Atlantic CEI Order, at paras. 47, 51.

Commission would not be any more bound by the Bureau's decision here than it would be in the context of an application for review following any other Bureau decision. This would be so even if the Bureau had been asked to conclude here (which it has not) that SWBT's intentions do not violate Section 275.

For these reasons, the Bureau should not allow itself to be drawn into a controversy over the proper interpretation of Section 275. Bureau approval would not "tacitly authorize" SWBT to violate Section 275;¹³ the Section 275 "controversy"¹⁴ injected by AICC is beyond the scope of this proceeding; and the Bureau need not make any "consideration"¹⁵ as to whether the activities contemplated by SWBT would be tantamount to "provision" of alarm monitoring services.

III. **PROMPTLY APPROVING SWBT'S CEI PLAN WOULD REPRESENT THE MOST EFFICIENT USE OF THE BUREAU'S RESOURCES.**

Because Bureau approval of SWBT's CEI Plan does not require any determination regarding the plan's consistency with Section 275, the Bureau should reject AICC's claim that completing the task of issuing such approval would be "administratively unjustifiable."¹⁶ To the contrary, assuming the efficacy of the Commission's Computer III requirements,¹⁷ a Commission

¹³ AICC Motion, at 2.

¹⁴ Id., at 3.

¹⁵ Id., at 4.

¹⁶ Id., at 6.

¹⁷ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, Notice of Proposed Rulemaking,

determination in the Electronic Publishing NPRM proceeding that the activities listed in the instant CEI Plan do not constitute “provision” of alarm monitoring services would not necessarily negate the need for approval of SWBT’s CEI Plan. For instance, the Commission could well rule that SWBT’s Security Service CEI Plan involves SWBT’s sale of alarm monitoring but not a provision of alarm monitoring, and that even just the sale of such an enhanced service by a BOC requires CEI plan approval.

SWBT has not invited the Bureau to “prejudge” the lack of necessity for CEI plan approvals under the Act.¹⁸ By the same token, the Bureau should not be led to believe, as AICC claims, that the Commission “is likely to make clear” that SWBT’s plans would be “in plain violation of the 1996 Act.”¹⁹

IV. THE BUREAU IS NOT BEING ASKED TO DECIDE A NOVEL QUESTION OF LAW.

AICC’s final argument is that the Bureau may not decide the novel question of law as to “what constitutes the provision of alarm monitoring services.”²⁰ The fallacy of this argument

released July 18, 1996 (“BOC In-Region Rulemaking Proceeding”), at para. 50 (“We consequently seek comment on which, if any, of our Computer II, Computer III, and ONA rules may have been rendered unnecessary by the 1996 Act.”)

¹⁸ SWBT notes that in the BOC In-Region Rulemaking Proceeding, the Commission concludes “that we should continue to enforce those existing Computer II, Computer III, and ONA requirements that are consistent with the 1996 Act.” NPRM, at para. 49.

¹⁹ AICC Motion, at 6. Indeed, although it referenced SWBT’s CEI Plan in its Electronic Publishing NPRM, the Commission reached no tentative conclusion regarding that Plan or even the question on which it has sought comment. Electronic Publishing NPRM, at n. 113.

²⁰ Id., at 7.

rests in the fact that Bureau approval of SWBT's CEI Plan would not "necessarily involve[]"²¹ or even indirectly result in making such a decision. Simply put, the question may be novel, but the question is not before the Bureau.²²

V. CONCLUSION

This matter is fully at issue and ripe for decision. SWBT's CEI Plan should be approved based on its compliance with the Commission's Computer III requirements. The policy questions presented in the Electronic Publishing NPRM are not germane to this matter. In any event, the Bureau should not allow its day-to-day business to come to a grinding halt because of

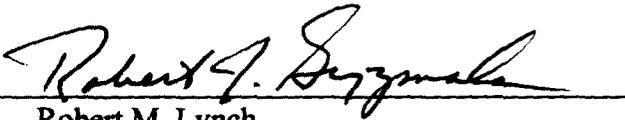
²¹ Id.

²² Moreover, even if the question were properly before the Bureau, and necessary to its decision, SWBT has rebutted AICC's arguments on this score and has demonstrated that its plans cannot reasonably be seen to violate Section 275(a)(1). See, SWBT Reply Comments, at 2-13; SWBT ex parte letter to the Commission, July 3, 1996; SWBT ex parte presentation to the Bureau, July 18, 1996.

the pendency of a rulemaking proceeding. SWBT respectfully requests that its CEI Plan now be approved.

Respectfully submitted,

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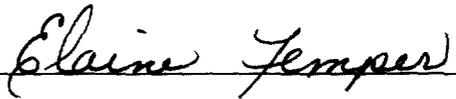
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August 12, 1996

Certificate of Service

I, Elaine Temper, hereby certify that the Comments of Southwestern Bell Telephone Company in docket Nos. 85-229, 90-623 and 95-20 have been served this 12th day of August, 1996 to the Parties of Record.

A handwritten signature in cursive script that reads "Elaine Temper". The signature is written over a solid horizontal line.

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