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Federal Communications Commission
Office of Secretary

Ms. Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, D.C. 20054

Re: Application by SBC Communications Inc., et al., for Provision of In-Region InterLATA Services in Oklahoma; CC Docket No. 97-121

Dear Ms. Keeney:

This letter responds to oppositions that were filed by all six RBOCs (counting SBC and Pacific as a single entity) to ALTS's motion filed April 23, 1997, seeking dismissal of SBC's Section 271 application in the above proceeding. A copy of this ex parte filing is being delivered today to SBC and the other RBOCs.

The oppositions make little effort to defend SBC's application under Track A. Rather, the RBOCs focus their attention on the claim that SBC should be entitled to pursue its application under Track B, despite the existence of several interconnection requests in Oklahoma. They deny that the Track B option is disabled by any of these interconnection requests, citing the "such provider" phrase in the disabling language of Section 271(c)(1)(B). The RBOCs interpret "such provider" as requiring that only requests from interconnectors whose operations already meet the test imposed under Track A have the effect of disabling the Track B option.[1] In short, the RBOCs argue that Track B is disabled only when the Track A test has already been meet.

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[1] SBC at 8; NYNEX at 5; BellSouth at 2; US WEST at 3-5. Bell Atlantic's articulation is refreshingly candid about the "heads I win, tails you loose" nature of this argument: " ...if ALTS is right about the facts, then SBC is entitled as a matter of law to proceed under Track B. And if ALTS is wrong about the facts ... then SBC is entitled to proceed under Track A" (at 2).

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There is no need to belabor the illogic of the RBOCs' position. First, it conflicts with the last sentence of Section 271(c)(1)(B), in which Congress created two exceptions to the disabling effect of requests for interconnection. This portion of the subsection provides that Track B is not disabled in situations where new entrants bargain in bad faith, or unreasonably delay an interconnection implementation schedule. The RBOCs' interpretation of "such provider" would rob the last sentence of Section 271(c)(1)(B) of any meaning.

Second, in addition to the conflict with the last sentence of Section 271(c)(1)(B), there is no sound policy reason why Congress would wish to disable Track B only in situations where the conditions of Track A for in-region interLATA entry have already been meet, inasmuch as Track A imposes more robust conditions for in-region entry.

Third, the factual predicate underlying the RBOCs' position -- that facilities-based competitive providers of service to business and residence customers will be filing interconnection requests -- is a factual impossibility. In terms of simple POTS service, competitors cannot serve anyone in a meaningful way until they are able to exchange traffic with the incumbent, provide access to E911, etc. Any new customers who unknowingly signed up with a CLEC unable to connect them to the vast majority of their family, friends and neighbors being served by the incumbent would quickly disconnect their service, and reject it as utterly inadequate.[2]

The RBOCs trot out other makeweight contentions to little effect. They complain unceasingly that IXCs have an incentive to block their entry into in-region long distance,[3]

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[2] Some RBOCs try to gloss over this fatal problem by suggesting that facilities-based competitors might already have an interconnection agreement in place, and be seeking only an additional agreement (BellSouth at 4; SBC at 16-17). In order to accept this contention, the Commission would have to conclude that the disabling language of Section 271(c)(1)(B) is solely intended to protect those entities which already meet the Track A test, and already possess an interconnection agreement. Obviously, so tortured a construction makes no sense.

[3] E.g., NYNEX at 2, BellSouth at 4; Ameritech at 3. SBC proclaims that " ... Congress did not give competitors the keys to Bell company interLATA entry" (at 13), without recognizing that Brooks Fibers simply does not care about SBC's interLATA

(continued...)

but that they offer no response to the clear and undiluted incentive possessed by CLECs like Brooks Fiber to enter residential service just as soon as it makes economic sense. They also rely on remarks of two individual congressmen (remarks that NYNEX mysteriously transmutes into an "express recogni[tion]" by "the House Conference Committee" (NYNEX Opposition at 7)). But remarks by individuals, particularly those inserted by request outside the floor debate, represent only their "personal views" (Blanchette v. Connecticut General Insurance Corps., 419 U.S. 102, 132 (1974)).

Indeed, when it comes to legislative history, the RBOCs completely disregard Congress' unmistakable preference for Track A.[4] The oppositions ignore the emphasis placed on Track A by the House of Representatives, and subsequently by the Conference Committee when it adopted the House version of Section 271. ALTS recited this history in detail in its motion, and the inability of the RBOCs to offer any response to this fact here is a telling failure.

While the RBOCs' interpretation of "such provider" is plainly incorrect, the Commission might feel tempted to give some definition to this phrase -- and thereby prevent some interconnection requests from disabling Track B -- out of a concern about hypothetical situations in which all the interconnection requests made within ten months of passage of the 1996 Act were successfully implemented, yet not all checklist items required for Track A compliance had been requested.[5]

ALTS urges the Commission not to grapple with so remote a contingency at the present time when interconnection agreements clearly have not yet been fully

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[3](...continued)
business, provided SBC complies with the local competition requirements of Section 271.

[4] Ameritech asserts that: "there is not a word in the 1996 Act suggesting that Track A is 'Congress' preferred mechanism'" (at 6). But see the House Report concluding that RBOC compliance with interconnection requirements would only be "truly validated" via Track A. H.R. Rep. No. 104-204 at 77. Bell Atlantic tries to dismiss this as an "isolated quote" (at 8), an interesting stance for a litigant relying so heavily on the remarks of individual members. The only isolation here is between the RBOCs and Congress' clear intent.

[5] See, e.g., NYNEX at 4; Bell Atlantic at 7; Ameritech at 5.

implemented. Instead, the Commission need only find that the number and nature of interconnection requests in Oklahoma are clearly adequate to disable Track B presently, and reserve its authority to revisit this issue in the future.[6] The only sure point at which the Commission can determine whether any particular new entrant or group of new entrants actually meet the Track A test is the time at which all requested checklist items, including OSS, have been fully implemented pursuant to final prices.[7] Contrary to the suggestions of the RBOCs, there is no intelligible way to perform "gene testing" on new entrants during the pendency of the interconnection process to determine whether they will grow up into facilities-based competitors that meet the Track A test.[8] New tactics are adopted and others quickly thrown aside in the birth of any new industry. Premature predictions by the Commission as to which new entrants could actually evolve into qualifying Track A entities would effectively disable Congress' preferred Track A route.

On the other hand, once all interconnection requests made during the first ten months after passage of the 1996 Act are fully and properly implemented, the current Section 271 "toolboxs" will have been completed, and all checklist items attained by any new entrant would then be available to all the others. Should the behavior of new entrants at that time demonstrate that the Track A test might never be meet, the Commission could then revisit the meaning of "such provider" if it perceived any policy need to impose a narrowing reading of this phrase.

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[6] See SBC Brief in Support of its application at ii: " ... the Oklahoma Corporation Commission ... has approved Southwestern Bell's interconnection agreements with six different local competitors."

[7] Ameritech implicitly acknowledges this fact in its opposition when it states that "access and interconnection must be pursuant to an interconnection agreement that includes a schedule for implementing the requested access and interconnection" (at 6)).

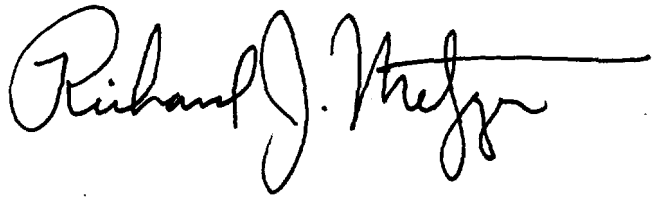
[8] See US WEST's concession that:

> "no standards or rules currently exist to guide these decisions. For example, if a competitive entrant has not affirmatively stated an intent to meet all the Track A criteria, do we assume it is not a Track A competitive entrant, or do we presume every competitive entrant will satisfy the Track A criteria absent a showing to the contrary?" (at 7)

There is no appreciable burden to the RBOCs in deferring any examination by the Commission of supposedly "unfair" disabling interconnection requests until all requests filed during the first ten months have been implemented. CLECs have an incentive to implement their agreements as quickly as possible, and RBOCs have the ability to accelerate that implementation, and also can arbitrate any unduly long schedule. And, as noted above, any unreasonable delay by a new entrant of implementation removes the disabling effect of its request.

Accordingly, ALTS respectfully requests that the Commission grant ALTS's motion, while reserving its authority to revisit the issue of allegedly "unfair" disabling interconnection requests in any state at such time as all interconnection requests made within ten months of passage of the 1996 Act have been fully implemented pursuant to final prices.

Yours truly,



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