SBC Communications Inc.
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Federal Communications Commission
Office of Secretary

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M St., N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: Non-Accounting Safeguards, CC Docket No. 96-149; CMRS Non-Structural Safeguards, WT Docket No. 96-162; Gen. Docket No. 90-314; Establishment of PCS

Today, Bruce Beard, Senior Attorney, Southwestern Bell Mobile Systems, Jim Tuthill, Vice President and General Counsel, Pacific Bell Mobile Systems and I met Aliza Katz and Thomas Koutsky, Office of General Counsel, and David Solomon, Deputy General Counsel, to discuss the issues summarized in attachment A. In addition, copies of Attachment B were distributed.

We are submitting two copies of this notice in accordance with the Commission's rules. Please stamp and return the provided copy to confirm your receipt. Please contact me at (202) 383-6423 should you have any questions.

Sincerely,

Gina Harrison /ALS

Gina Harrison
Director
Federal Regulatory Relations
Pacific Telesis Group
(A Subsidiary of SBC Communications, Inc.)

cc: A. Katz
T. Koutsky
D. Solomon

Section 22.903 Harms Competition

SBC Communications Inc.

June 11, 1997

LEVEL PLAYING FIELD REQUIRES REMOVAL OF 22.903

- The records in 96-162 and 90-314 support lifting 22.903.
- Regulatory consistency and symmetry of CMRS require lifting of 22.903.
- Structural separation rules, like 22.903 harm competition.

CMRS MARKET CHARACTERISTICS

- LECs have been providing CMRS for 14 years.
  - Since 1983, LECs have provided interconnection to their cellular affiliates.
  - Excellent benchmark of performance.
- CMRS providers have independent customer bases.
- The Commission has traditionally forborne from regulating CMRS:
  - negotiated interconnection agreements;
  - no end-user tariffs.

CMRS MARKET CHARACTERISTICS

- LECs own both in and out-of-region CMRS.
  - They have incentive to protect out-of-region assets.
- Congress has treated CMRS differently:
  - '93 OBRA-preemption, regulatory symmetry;
  - '96 Act-eliminated equal access requirement.

THE RECORDS SUPPORT LIFTING 22.903

- The FCC has already ruled that non-structural safeguards provide satisfactory protection for LEC CMRS:
  - 1982-cellular providers (other than AT&T) 89 FCC2d 58, 77-80 (1982).
  - 1993-PCS providers, including BOCs, 8 FCC Rcd 7700, 7747-52 (1993).
  - 1995-SMR providers, 10 FCC Rcd 6280, 6293-94 (1995).

THE RECORDS SUPPORT LIFTING 22.903

- 90-314 established sufficiency of cost accounting and non-discrimination rules.
- Commission approved PBMS safeguards plan.
- 96 Telecom Act provides additional protection:
  - Establishes procedure for negotiating interconnection agreements which are open for public inspection.
- 96 Telecom Act affirmed Commission's application of non-structural safeguards for CMRS.

THE RECORDS SUPPORT LIFTING 22.903

- Fourteen years of CMRS interconnection experience provides excellent benchmark.
- SBC, with major out-of-region CMRS interests has negotiated satisfactory interconnection agreements with other BOCs.
- "With respect to interconnection, no commenter, on this record, has demonstrated that Pacific Bell is discriminating unreasonably in favor of its PCS affiliate." DA 96-256, Feb. 27, 1996.
- There is nothing to support extension of the 22.903 rules to PCS or any other CMRS provider.

REGULATORY CONSISTENCY REQUIRES LIFTING 22.903

- Congress and the Commission seek regulatory symmetry for CMRS.
- "Congress saw the need for a new approach to the classification of mobile services to ensure that similar services would be subject to consistent regulatory classification." GN Docket 93-252, para. 13.
- Regulatory symmetry requires lifting 22.903:
  - symmetry with non-BOC CMRS providers
  - symmetry with the Commissions' PCS and SMR rules
- Lifting rules is consistent with Congressional and Commission intent to streamline regulation.

REGULATORY CONSISTENCY REQUIRES LIFTING 22.903

- The Sixth Circuit recognized the BOCs are at a disadvantage because of the lack of symmetry:
  - "the disparate treatment afforded the Bell Companies impacts on their ability to compete in the ever-evolving wireless communications marketplace." 69 F.3rd at 768.
- Competitors don't have the constraint of structural separation.

STRUCTURAL SEPARATION HARMS COMPETITION

- Creates artificial inefficiencies:
  - separate officers, operating, installation and maintenance personnel:
    - prevents one-stop shopping;
    - prevents integration of SBC CMRS operations.
- Commission in 90-314 recognized that integration would benefit consumers-structural separation harms consumers.
- The only winners are BOC competitors.
- Retreating from 90-314 would harm competition
  - No justification, either in or outside of the record.

employees of any of them or the public. Upon reasonable written notice and opportunity to cure, a Party may discontinue or refuse service if the other Party violates this provision, provided that such termination of service will be limited to the interfering Party's use of a facility, where appropriate.

7. PROVISIONING

7.1 General Provisioning Requirements.

Each Party shall provide provisioning services to the other as they do for other telecommunications carriers. SWBT represents that as of the Effective Date of this Agreement, its customer carrier service contact lines are available from 8:30 a.m. to 4:30 p.m. Monday through Friday for placing of orders (excluding legal holidays, subject to Section 19). SBW represents that as of the Effective Date of this Agreement customer carrier service contact lines are available from 8:30 a.m. to 4:30 p.m. If the Parties for whatever reason change these hours, they shall provide the other Party reasonable notice of such change and agree to consider any requests the other may have for special hours of service.

7.2 Each Party shall provide a single point of contact (the "Provisioning SPOC") for all ordering and provisioning contact and order flow involved in the purchase and provisioning of the Party's services.

7.3 SWBT and SBW acknowledge that the Order and Billing Forum is establishing uniform industry standards for Electronic Interfaces. Until such time as such standards have been developed by the Forum and agreed upon and implemented by SWBT and SBW, the Parties shall cooperate with each other to establish mutually agreeable ordering and provisioning procedures for access to each other's systems and databases, including appropriate protections for CPNI.

7.4 Upon execution of this Agreement, the Parties shall establish and maintain a mutually agreeable escalation process through which service ordering and provisioning disputes can be escalated.

7.5 Specific Provisioning Process Requirements.

7.5.1 The Parties agree to provide written confirmation (an "Order Confirmation") within a time interval mutually agreed to by both Parties. The Order Confirmation must

contain information regarding critical dates, circuit identification, trunk quantities and order number associated with the request.

7.5.2 All requests for (i) services not specifically enumerated in this Agreement, (ii) services covered by this Agreement for which facilities do not exist, or (iii) facilities, equipment or technologies not, in the providing Party's sole discretion, necessary to fulfill a request under this Agreement, shall be handled as Special Requests ordered without reference to SWBT tariffs and negotiated by the Parties. The providing Party will provide the ordering Party with a good faith estimate of the costs of each component of such Special Request. Final charges and liabilities will be settled prior to installation of the services requested and will be handled under a separate contract. An ordering Party may cancel a Special Request at any time, but will pay the providing Party's reasonable and demonstrable costs of processing and for implementing the Special Request up to the date of cancellation.

7.5.3 A providing Party will perform pre-testing as per industry standards and will provide to the ordering Party verbally, all test and turn-up results regarding the Connecting Facilities and Network Elements ordered.

7.5.4 As soon as reasonably practicable, a providing Party shall attempt notification of any instances when the ordering Party's Due Dates are in jeopardy of not being met on any order for Connecting Facilities and Network Elements. The Parties shall negotiate a new committed Due Date for the order.

7.5.5 By the end of the order due date, the Parties will perform cooperative testing with each other (including trouble shooting to isolate any problems) to test Connecting Facilities and Network Elements purchased in order to identify any performance problems.

7.5.6 When ordering unbundled Network Elements, SBW may not specify a combination of elements on one order without specifically detailing the elements in the order.

7.6 Due Dates for the installation or conversion of Connecting Facilities and Network Elements covered by this Agreement shall be based on the providing Party's standard intervals, or mutual agreement of the Parties in accordance with the availability of local interconnection facilities and equipment.

8. TROUBLE REPORTING AND MAINTENANCE

8.1 Trouble Reporting.

8.1.1 In order to facilitate trouble reporting and to coordinate the repair of Connecting Facilities, Network Elements, or other interconnection arrangements provided by the Parties under this Agreement, the Parties have established a single point of contact for the state in which this Agreement applies (the "SWBT Interexchange Carrier Center" or "IECC" and the "SBW Network Operations Center" or "NOC"). The IECC and NOC will be staffed twenty-four hours per day, seven days per week. The Parties shall call the appropriate center to report trouble, to inquire as to the status of trouble tickets in process and to escalate trouble resolution. The Parties may also report troubles by using such automated trouble reporting systems as such systems become available and as mutually agreed upon by the Parties.

8.1.2 A Party may advise the providing Party of the critical nature of inoperative facilities or arrangements and the need for expedited clearance of the trouble. In such cases where a party has indicated the essential or critical need for restoration of the facilities, services or arrangements, the other Party shall use its best reasonable commercial efforts to expedite the clearance of trouble.

8.1.3 In order to escalate resolution of troubles in the facilities, services and arrangements installed under this Agreement, the Parties shall follow the escalation procedures established in section 7.4.

8.2 Maintenance Procedures

8.2.1 The Parties shall provide each other with the same scheduled and non-scheduled maintenance for all Connecting Facilities and Network Elements provided under this Agreement that it currently provides for the maintenance of its own network. Where practicable, the Parties shall provide each other at least sixty (60) days' advance notice of any scheduled maintenance activity which may impact each other's end users.

8.2.2 The Parties agree to jointly develop a detailed description of, and implementation actions for, emergency restoration plans and disaster recovery plans, which shall be in place during the term of this Agreement.

8.2.3 The Parties agree to make a good faith effort to notify each other periodically regarding current status until such time as trouble has been cleared.

8.2.4 Maintenance Quality Standards

Maintenance quality standards shall be subject to review at least semi-annually and subject to modification upon mutual consent of the Parties.

8.2.5 The Parties agree to provide each other a monthly outage report (format to be mutually agreed upon) on reliability of interconnection facilities.

8.2.6 Each Party may request that the other Party provide a written report of the details behind major service outages.

9. CREDIT FOR INTERRUPTION OF SERVICE

9.1 In the event a Party's service is interrupted other than by the gross negligence or willful act of the providing Party, and remains out of order for eight normal working hours or longer after the providing Party has had access to the interrupted Party's premises, appropriate adjustment or refunds shall be made. The amount of adjustments or refund shall be determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported. The refund shall be the pro rata part of that month's flat rate charges for the period of days and that portion of the service facilities rendered useless or inoperative. The refund may be accomplished by a credit on a subsequent bill for service. When a service includes more than one communications path, the interruption allowance applies to the paths interrupted. For calculating credit allowances, every month is considered to have 30 days.

9.1.1 The amount of credit to a Party shall be an amount equal to a proration of charges specified in Section 7 of the inter- or intra-state special access tariff for the period during which the facility affected by the interruption is out of service.

9.1.2 A credit shall not be applicable for any period during which the affected Party fails to afford access to the facilities furnished by the other Party for the purpose of investigating and clearing troubles.

9.2 A Party's liability, if any, for its gross negligence or willful misconduct is not limited by this contract. With respect to any other claim or suit for damages arising out of mistakes,