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January 29, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex parte presentation - IB Dkt. No. 97-142;
ITC-97-777 (SBCS); ITC-97-776 (SBCS)

Dear Ms. Salas:

On January 28, 1998, Stan Moore and Gina Harrison representing Southwestern Bell Communications Services, Inc. (SBC), and Jennifer Wheatley of Wiley, Rein & Fielding made a presentation to Craig Brown of the Common Carrier Bureau, and Gina Keeney, Diane Cornell, Adam Krinsky, Bob Calaff, Mindy Ginsberg and Troy Tanner of the International Bureau to discuss processing of SBC's international Section 214 applications and grooming of inbound international telecommunications traffic. At that meeting, the attached documents were distributed.

Sincerely,

Gina Harrison

Attachment

cc: Craig Brown
Gina Keeney
Diane Cornell
Adam Krinsky
Bob Calaff
Mindy Ginsberg
Troy Tanner

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FACSIMILE TRANSMISSION COVER SHEET



FEDERAL COMMUNICATIONS COMMISSION
INTERNATIONAL BUREAU
2000 M STREET, N.W., SUITE 800
WASHINGTON, DC 20534 USA

PHONE: (202) 418-1470 FAX: (202) 418-2824

Date: December 18, 1997

To: Carl Frank
From: Susan O'Connell

Total Pages = 1 including this cover sheet.

Messare:

The following is the condition that we would impose on our grant of Sec. 214 private line authority to SBCS (ITC-97-770) consistent with the same condition we've imposed on other BOC private line authorizations:

"It is ordered that any agreements applicant negotiates with foreign carriers to route U.S. inbound switched traffic to its in-region states via its authorized private lines are subject to our Section 43.51(e) requirements."

This condition responds to concerns raised in other proceedings that the BOCs would seek to "groom" foreign return (US-inbound) traffic to their regions. We have previously noted that many such agreements with foreign carriers would by rule be subject to FCC prior approval under our international settlements policy (ISP) for switched services, which requires uniform settlement procedures and proportionate return. When switched traffic is carried outside the ISP -- as it may between the US and countries for which we've authorized the use of private lines to carry switched traffic -- the ISP and the prior approval rule would not, by their terms, apply. We therefore have incorporated a specific prior approval condition in the Sec. 214 authorizations to the BOCs for facilities-based and resold private lines (which include authority to use those private lines to carry switched traffic between the US and approved countries outside the ISP).

I cannot grant the application by public notice without a commitment from SBCS to comply with this filing requirement. If you could fax me a letter (and follow it up with a hard copy) committing to this condition, we can go ahead with a public notice grant. Otherwise, I will need to grant the application by written order. Please let me know if you have any questions. Thanks for your help.

**THE COMMISSION SHOULD GRANT SBC's "IN-REGION"
INTERNATIONAL SECTION 214 APPLICATIONS**

January 28, 1998

ISSUE

The Commission is neither processing SBC's in-region international Section 214 applications on a streamlined basis, nor even granting them at all.

ARGUMENT

The Commission's delay in processing SBC's in-region international long distance Section 214 applications lacks legal and policy justification.

- *The Wichita Falls decision, striking down Sections 271 and 272, inter alia, of the 1996 Act, adds impetus to the need to process the in-region applications.*
- *Section 214 Processing is supposed to be relatively limited.*
 - FCC said (Public Notices) that interLATA issues should not be involved.
- *The Commission's delay in processing SBC's applications is discriminatory.*
 - *The current processing discriminates between SBC and other U.S. carriers.* U.S. interexchange carriers' Section 214 applications are generally processed on a streamlined basis with market entry occurring 36 days after public notice. In contrast, SBC's applications have not been acted upon and are still pending. Indeed, other U.S. local exchange carriers' applications, such as GTE's, are eligible for streamlined processing and have been granted. In contrast, PB Comm's in-region international Section 214 application has been pending for 8 months.
 - *The current processing discriminates between BOCs and foreign carriers.*
 - Under the *Foreign Participation Order*, foreign carriers that lack market power or certify compliance with current international dominant carrier regulations on the relevant affiliated route are eligible for streamlined processing and normally will be authorized on the same schedule. While foreign companies can enter the market freely, therefore, U.S. companies with substantial domestic operations remain foreclosed. Such foreclosure results in an unwarranted competitive "headstart" for foreign carriers, at the expense of U.S. industry and domestic employment.
 - In the *Foreign Participation Order*, the Commission committed most often to acting on non-streamlined foreign carrier applications within 90 days, with the possibility of extending that period only where there are "questions of extraordinary complexity." Domestic carriers deserve no less; a commitment to grant all non-streamlined applications within 90 days would level the playing field between BOCs and foreign carriers.

- *The Commission's delay in processing SBC's applications is unnecessary because SBC's Section 214 applications could be "conditionally" granted.*
 - *The Commission could grant Section 214 authorization for the provision of in-region international services that would take effect only when the SBC possesses clear legal authority to offer in-region long distance. The processing of BOCs' Section 214 applications should not be delayed pending compliance with Section 271 because the provision of in-region international service is already effectively contingent on the BOCs' authorization to provide in-region interLATA service. The Commission could instead grant "conditional" authority that takes effect when a given BOC possesses the legal authority to offer in-region interLATA services.*
 - *SBC will comply with any lawful conditions, thus alleviating FCC concerns about anti-competitive in-region activity. SBC will, of course, comply with any generally applicable competitive safeguards, lawfully imposed by the Commission in a valid notice and comment rulemaking.*
 - *Granting SBC's in-region international Section 214 applications will not preclude additional conditions on the BOCs' provision of in-region interLATA service. The FCC has authority to impose conditions on Section 214 authorizations to serve the public interest, convenience and necessity. The International Bureau has not used this authority, citing the *Execunet* decision that reversed a limitation on the scope of an old MCI Section 214 authorization. The Bureau's concern about the *Execunet* decision ignores the FCC's ability to condition Section 214 authorizations on compliance with future lawful rules or policies. It also ignores the fact that Section 214 carriers must comply with lawfully-imposed generally applicable policies, even if imposed subsequently. In fact, the Bureau has granted numerous Section 214 authorizations subject to modification based upon future notice and comment FCC rules generally applied.*
- *The Commission's delay is inconsistent with its forthcoming initiative to streamline international rules to reduce paperwork and delay.*

GROOMING

Definition: Grooming is the geographic allocation of proportionate return traffic.

FCC Treatment and Background:

- Grooming with non-dominant carriers is permitted under the FCC rules; Commission should amend its *Foreign Participation Order* rules to make this clear, in accordance with SBC's Petition for Reconsideration.
- Grooming is being done even now.

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SECTION 214 APPLICATIONS

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- Grooming is not just a BOC-only issue; If grooming is a special concession, it should be applied uniformly to any carrier seeking geographic enrichment of inbound traffic, not just BOCs.

Public Interest: Grooming is good for carriers and consumers, and is not a zero sum game.

- Grooming reduces costs for carriers, permitting lower prices for outbound international long distance.
- Grooming does not rob from one carrier to pay another; rather, grooming taps unused "consumer surplus."
- Grooming leads to lower prices for consumers.

CONCLUSION

The Commission should immediately grant SBC's applications conditioned on its legal authority to offer in-region long distance services and expedite the processing of non-streamlined international Section 214 applications, including SBC's in-region applications.