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March 6, 1998

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FEDERAL COMMUNICATIONS COMMISSION
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BY HAND DELIVERY

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

Re: In the Matter of North American Numbering Council Presents Report and Recommendations Concerning Use and Assignment of Carrier Identification Codes (CICs), CC Docket No. 92-237

Dear Ms. Salas:

Please find enclosed for filing an original and ten copies of the Comments of SBC Communications Inc. in the above-captioned proceeding.

Please date-stamp and return the extra copy provided to the individual delivering this package.

Sincerely,

Michael K. Kellogg

Michael K. Kellogg

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of Administration of the North American Number Plan Carrier Identification Codes (CICs)	CC Docket No. 92-237

To: The Commission

COMMENTS OF SBC COMMUNICATIONS INC.

In its Further Notice of Proposed Rulemaking and Order, FCC 97-364 (rel. Oct. 9, 1997) ("Further Notice") in this docket, the Commission has asked for comments on a variety of topics relating to CIC assignment. SBC Communications, Inc. ("SBC") files these comments in support of the Report and Recommendations of the CIC Ad Hoc Working Group to the North American Numbering Council (NANC) Regarding Use and Assignment of Carrier Identification Codes (CICs) (Feb. 18, 1998) ("NANC Recommendations"). The NANC Recommendations reflect a broad consensus within the industry achieved through long hours of cooperative discussion. While the industry consensus process is not perfect, it enables all affected entities to have a voice in creating important industry guidelines. Where, as here, a true industry-wide consensus has emerged, that consensus should be respected by the Commission.

In particular, SBC fully supports the conclusion of the NANC Recommendations that the Commission should not codify CIC assignment guidelines, except to the extent specifically proposed by NANC. Attempting to deal with CIC assignment by regulatory fiat, rather than

through industry consensus, would increase costs and decrease flexibility, all contrary to the deregulatory aims of the 1996 Act.

If, however, the Commission ultimately does decide to codify CIC assignment guidelines, SBC urges the Commission to follow the NANC Recommendations with respect to these guidelines, with one significant exception. SBC feels that the treatment of the definition of "entity" in the NANC Recommendations insufficiently recognizes important legal and regulatory separations that exist (or will exist) between several of SBC's affiliates and subsidiaries. SBC therefore proposes a modification to the proposed definition that will recognize these distinctions and advance competition consistent with regulatory constraints.

I. CODIFICATION OF CIC ASSIGNMENT GUIDELINES [FURTHER NOTICE ¶¶ 10-13]

The Further Notice tentatively concludes that "Commission rules would serve better our objectives of promoting competition and minimizing costs associated with CIC expansion than voluntary industry guidelines." Further Notice ¶ 10. SBC respectfully disagrees with this tentative conclusion, for three reasons.

First, Commission codification of CIC assignment guidelines is inconsistent with the fundamental aims of the Telecommunications Act of 1996. Although the Act did not address CIC administration specifically, the primary purpose of the Act was "to provide for a pro-competitive, de-regulatory national policy framework." Joint Statement of Managers, S. Conf. Rep. No. 104-230, at 1 (1996). Plainly, Commission codification of a process that has been

administered by voluntary industry consensus for nearly two decades is not in accord with the establishment of a "de-regulatory national policy framework."

Second, the Commission's proposal is inconsistent with its own rulings establishing the industry consensus model for administering numbering plan issues. In its 1995 order establishing the NANC to oversee the North American Numbering Plan Administrator ("NANPA"), the Commission noted a variety of reasons why it should not either directly oversee the NANPA or assume the duties of the NANPA itself. See Administration of the North American Numbering Plan, 11 FCC Rcd 2588 (1995) ("NANP Order"). The Commission "conclude[d] that the industry model will best serve the public interest. It will permit fair and efficient overall administration of numbering resources, foster an integrated approach to numbering administration across NANP member countries, and enable this Commission and regulatory bodies of other nations to ensure that domestic numbering administration is effective, while leveraging the expertise and innovation of the industry." Id., 11 FCC Rcd at 2601, ¶ 25.

The Commission states that it wishes to promote exactly the same goals here, see Further Notice ¶ 2, and yet now proposes to accomplish them in exactly the opposite way: by replacing voluntary industry administration of CIC assignment with direct Commission administration. The Commission offers as justification for this change of heart "[t]he recent increased demand for CICs and the changing competitive environment." Further Notice ¶ 10. But the Commission has noted that the industry "in the past has successfully resolved many numbering issues and fostered the introduction of new services," NANP Order, 11 FCC Rcd at 2602, ¶ 26, and offers no explanation why voluntary industry administration will not be up to the task in the future. In light of Congress's express preference for deregulation of the telecommunications industry and

the Commission's own prior policy preference to "leverage the expertise and innovation of the industry," the Commission needs to make a persuasive showing that the industry consensus process has failed to efficiently administer CIC assignment to justify its tentative conclusion. No such showing has been made, or even attempted.

To the contrary, SBC agrees with the NANC that the industry consensus approach continues to be the best and most efficient mechanism for administering the CIC assignment process. If the Commission codifies CIC assignment guidelines, they could only be modified through lengthy notice and comment procedures, which would delay changes that may be necessary as the industry evolves. SBC firmly believes that the industry process is the best forum to hash out the various issues concerning CIC assignment, a forum where all the relevant industry members can have a voice, where technical limitations and options can be discussed knowledgeably, and where solutions can be conceived and guidelines issued in a timely manner. The most appropriate forum is the Industry Number Committee (INC), which created and maintains the CIC guidelines.

Third, SBC supports NANC's belief that adoption of Commission rules could create inequities in the assignment and administration of CICs between those entities subject to FCC jurisdiction (i.e., U.S. carriers) and other participants in the NANP, such as carriers in Canada and the Carribean. Indeed, the Commission rejected suggestions for the creation of a U.S.-only numbering authority in the NANP Order for this very reason. NANP Order, 11 FCC Rcd at 2603, ¶ 29 ("Multiple national administrators involve a great deal of duplicative expense and complicate the administration of an integrated numbering plan like the NANP."). Again, the fact that the FCC has not even attempted to demonstrate a compelling need for the adoption of U.S.-

only rules compels SBC to urge the FCC to refrain from such a policy course, especially in the face of the potential harm to the public interest that would result from a split in the NANP.

SBC does support Commission codification of two elements of the CIC assignment guidelines, as suggested in the NANC Recommendations. See NANC Recommendations ¶ 36. SBC agrees with NANC that codification of these two elements -- a requirement that a CIC must be activated within six months of assignment, and a requirement that a CIC must show access and usage on semi-annual reports the NANPA provides to the Commission -- as Commission Rules will enhance the NANPA's authority to efficiently administer CIC assignments and prevent abuse of the guidelines.

II. THE DEFINITION OF "ENTITY" [FURTHER NOTICE ¶¶ 21 - 32]

If the Commission ultimately decides to adopt rules codifying CIC assignment guidelines, SBC urges the Commission simply to follow the NANC Recommendations regarding those guidelines, with only one significant modification. SBC believes that the definition of "entity" proposed by NANC does not sufficiently reflect important legal and regulatory distinctions between various SBC affiliates and subsidiaries.[1]

As the affiliates of incumbent local exchange carriers who are also BOCs, SBC's subsidiaries providing cellular and interexchange telecommunications are required to be structurally separate from the local exchange carriers. See Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications

[1]NANC's proposed definition reads: "An entity is a firm or group of firms under common ownership and control. Control is defined as one firm having a 50% or greater ownership interest in another." NANC Recommendations ¶ 21.

Services by the Bell Operating Companies, 95 F.C.C.2d 1117 (1983) (cellular services); 47 U.S.C. § 272 (a)-(b) (interexchange services). These separate affiliates must operate independently of the telephone company, with separate books, records, and accounts. They must have separate officers, directors, and employees, and must conduct all transactions on an arms-length basis. Thus, to offer a complete package of local, cellular, and long-distance services, SBC will need to maintain three separate subsidiaries.

SBC believes that its legally-required separate affiliates are sufficiently distinct that they should be considered separate entities for purposes of CIC assignment. Other companies can offer local, cellular, and long-distance services on an integrated basis, and can easily and seamlessly coordinate the use of a limited number of CICs between their various corporate divisions. Since they can share facilities and networks, these companies are also able to share traffic, and thus have little need to use additional CICs to keep traffic separate. In SBC's case, however, the required structural separation between the affiliates makes it essential to keep traffic on the three networks separate and trackable. It is not even clear, under the FCC's separate subsidiary rules, that the affiliates could lawfully share CICs; certainly it would be difficult and complicated to do so. This is so because of the unique administrative activities required and expenses incurred to insure all legal and regulatory requirements are upheld; for example, the various SBC subsidiaries must maintain duplicative administrative staff and billing and control systems. This combination of factors places SBC and its affiliates at a disadvantage against its structurally integrated competitors.

SBC therefore proposes the following definition for "entity":

> An entity is a firm or group of firms under common ownership or control. Multiple affiliates and/or subsidiaries within a firm or group of firms which are required by law and/or regulation to operate as structurally separate telecommunications service providers shall be considered separate entities for the purpose of CIC assignment eligibility.

SBC supports the NANC's proposed definition of "common ownership or control" as meaning a 50 percent or greater ownership interest in another.

SBC believes that this definition will achieve many of the pro-competitive benefits the Commission sought through a proposed "exception" to the ownership test proposed in the Further Notice. Further Notice ¶¶ 30-31.[2] SBC agrees with the Commission that there are circumstances in which two or more of SBC's affiliates will likely provide services in competition with each other: e.g., a wireless affiliate offering long-distance service in competition with the wireline long-distance affiliate of the telephone company. Unless each affiliate is allowed its unique set of CICs, competition between the two will be hindered, as the Commission explained. Id. ¶ 30.

Any such exception should, however, be limited to circumstances in which structural separation is required by law or regulation. Companies that voluntarily choose to establish some degree of internal corporate separation should not be entitled to separate groups of CIC codes. Otherwise, the Commission would risk providing incentives for companies to organize themselves in a given manner simply to gain access to additional CICs. By contrast, SBC, the

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[2]The Commission sought to establish an exception to its definition of "entity" such that commonly-owned firms, such as a local exchange company and its wireless affiliate, would be considered separate entities if denial of separate CIC assignment "could weaken competition in the telecommunications services market." Further Notice ¶ 31.

other BOCs, and any other company required by statute or by federal or state regulators to maintain fully separate affiliates have a legitimate need for separate sets of CIC codes. SBC believes that the definition proposed above will properly limit the exception so as to reduce the competitive inequality faced by such companies while not providing incentives for companies to manipulate their internal structures.

CONCLUSION

The Commission's proposal to adopt rules codifying CIC assignment guidelines is contrary to intent of the 1996 Act, Commission precedent, and the efficient operation of the CIC assignment process. SBC respectfully urges the Commission to continue to let the industry do the job it has done well for the past 20 years. If the Commission does, however, decide to codify CIC assignment guidelines, SBC suggests that the Commission adhere to the NANC Recommendations with one exception designed to address the competitive inequities faced by SBC's structurally separate affiliates and advance the pro-competitive goals of the 1996 Act.

Respectfully submitted,

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March 6, 1998