

May 18, 2015

Christopher Killion
Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: EarthLink, Inc. v. SBC Communications Inc. and SBC Advanced Solutions, Inc. File No. EB-04-MD-006, EB Docket No. 14-207

Dear Mr. Killion:

On behalf of EarthLink, LLC (“EarthLink”), we provide the following responses to the questions in your letter dated May 15, 2015, regarding EarthLink’s Section 208 complaint filed against SBC Communications Inc. and SBC Advanced Solutions, Inc. in May 2004.¹

Changes in Identity of Parties Since 2005

On December 31, 2013, the Complainant in this case, EarthLink, Inc., merged into EarthLink, LLC. EarthLink, LLC is the successor in interest to EarthLink, Inc.

Continuing Viability of Dispute

The Complaint alleged that Defendants violated Sections 201 and 202 of the Communications Act, as well as the Federal Communication Commission’s rules and orders promulgated under the Act, including *Computer III* requirements. EarthLink sought both damages and prospective relief as remedies for these violations.² No factual or legal developments have changed EarthLink’s fundamental claim that the Defendants are liable for damages as a result of their violations of the law as it existed at the time of, prior to, and for a period subsequent to the date of the Complaint. Factual or legal developments may affect whether the violations continue through today or whether they ceased at some date after the Complaint was filed, but those issues

¹ See *EarthLink, Inc. v. SBC Commc’ns Inc. and SBC Advanced Solutions, Inc.*, File No. EB-04-MD-006, Complaint (filed May 13, 2004) (“Complaint”). The Enforcement Bureau used May 17, 2004 as the initial date for scheduling purposes. See *EarthLink, Inc. v. SBC Commc’ns Inc. and SBC Advanced Solutions, Inc.*, File No. EB-04-MD-006, Notice of Formal Complaint, at 2 n.1 (May 21, 2004).

² *Id.* ¶¶ 58-59.

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are appropriately addressed in the damages phase of this case.³ However, EarthLink's request for prospective relief in Paragraph 59(a) and 59(b) of the Complaint is now moot. Accordingly, EarthLink hereby withdraws its request for prospective relief.

Whether the Parties Have Engaged in Any Efforts to Settle the Dispute on Their Own

The parties engaged in settlement discussions prior to EarthLink's submission of the Complaint and during the course of the Commission's investigation. Parties have not engaged in any subsequent settlement negotiations.

Whether the Assistance of the FCC Staff Would Assist Settlement

At this time, EarthLink does not believe that assistance from the Staff would promote settlement. Both sides have fully presented their case, and EarthLink respectfully submits that the most efficient way to resolve the case is for the Commission to decide the case on the merits.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Wright", is positioned above the typed name.

Christopher J. Wright
Jennifer P. Bagg
Mark D. Davis
Counsel for EarthLink, LLC

³ Pursuant to Section 1.722 of the Commission's rules, 47 C.F.R. § 1.722, EarthLink's Complaint requested that the Commission resolve liability issues prior to the consideration of damages and indicated its intent to file a supplemental complaint regarding monetary damages after the liability issues in the case were resolved. *Id.* ¶ 58.

CERTIFICATE OF SERVICE

I certify that on May 18, 2015, I served a copy of the foregoing letter on the parties identified below by means of electronic mail.

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A handwritten signature in blue ink, appearing to read "J. Bagg", is positioned above a horizontal line.

Jennifer P. Bagg