DOCKET FILE COPY ORIGINAL

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

RECEIVED
MAR 8 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
The Development of a National Framework to Detect and Deter Backsliding to Ensure Continued Bell Operating Company Compliance with Section 271 of the Communications Act Once In-Region InterLATA Relief is Obtained	)))))	RM 9474

COMMENTS OF STATE COMMUNICATIONS, INC.
IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING

State Communications, Inc. ("SCI"),[1] by its counsel, hereby submits its Comments in the above-captioned proceeding in support of the Petition for Expedited Rulemaking ("Petition") filed by Allegiance Telecom, Inc. ("Allegiance") on February 1, 1999. SCI emphatically agrees that the time is ripe for the Commission to begin the process of planning the next steps required for the proper development – and survival – of competitive local carriers. As evidenced by the period since enactment of the Telecommunications Act of 1996 (the "1996 Act"), ensuring the compliance of the wily, politically powerful, and well-heeled Bell Operating Companies ("BOCs") with laws, regulations and policies that are intended to erode their entrenched monopolies is easier said than done.

No. of Copies rec'd 0+4
List A B C D E

[1] SCI is a competitive carrier authorized to provide local and long distance service in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina Tennessee and Texas. SCI is also authorized to provide long distance service in Indiana and New Jersey, and has filed or intends to file authority to provide interexchange and competitive local exchange services in Arkansas, California, Illinois, Indiana, Kansas, New Jersey, New York, Oklahoma, Oregon, Pennsylvania and Rhode Island.

DISCUSSION

1. The First Step is to Avoid Premature Approval of BOC Section 271 Applications

An ounce of prevention is worth a pound of cure. Although SCI agrees that the Commission must plan ahead for the time that BOCs will have entered the interLATA market in their respective regions, SCI submits that the most important step in this process is to maintain a healthy skepticism with regard to BOC claims of compliance with the Competitive Checklist. The Commission should not yield to pressure, but should stand firm in each case until it is clear that a given BOC petitioner has adequately complied with law, and has furnished sufficient assurance that it will *continue* to do so once Section 271 entry is approved. The Communications Act of 1934, as amended (the "Act") requires not only that the Competitive Checklist be mechanically complied with, but also that the authorization of Section 271 entry be "consistent with the public interest, convenience and necessity."[2]

As a practical matter, the fate of the competitive local marketplace, and the interest of the public in obtaining reasonably priced, reliable, high-quality and innovative telecommunications services is hanging in the balance. Theoretically, the period we are now in – the period *before* the BOCs gain the authority to purvey in-region interLATA services – is the period of maximum leverage in the struggle to ensure that the Competitive Checklist is satisfactorily fulfilled. Since an extremely valuable right is being offered in exchange for compliance with the pro-competitive 1996 Act, the expectation has been that the BOCs would ultimately fall into line with legal and policy requirements. However, as pointed out by Allegiance in its Petition,[3] and in countless other CLEC filings before the FCC and state commissions, BOC compliance progress has largely been unimpressive.

The interrelationships of telecommunications providers are extremely complex, with countless interdependent factors. Given the many links in the chain that must be smoothly

---

[2] *See* 47 C.F.R. § 271(d)(3)(C).

[3] *See* Allegiance Petition at 7.

interoperative in order to deliver high-quality, reliable and economical telecommunications services to the consumer, it is exceedingly simple for an ILEC to throw a wrench into the system. From gross failures of performance such as the seeming inability to develop a workable, fully-featured and economical electronic OSS interface to more subtle "tweaks" that interpose delay, confusion and undermine a CLEC's ability to serve its customers efficiently, the BOCs' "bag of tricks" is seemingly a bottomless resource. In many cases, a BOC's failure to perform is read by the CLEC customer as the CLEC's failure, making the CLEC appear to be an unreliable alternative to "Ma Bell," thereby undermining the CLEC's ability to expand its customer base. Unfortunately, this is likely to continue for the foreseeable future.

The Supreme Court's recent overturning of the Eighth Circuit in *AT&T Corp. v. Iowa Utils Bd.*, 119 S. Ct. 721 (1999), and the likely revisiting of many prices, terms and conditions of the relationships between BOCs and competitive carriers, makes it even more important that the Commission continue to require that the demands of the Act are fully satisfied prior to putting its imprimatur on any BOC's 271 entry.

2. <u>Clarity in Enforcement of the 1996 Act's Conditions is Essential</u>

Section 271(d)(6) of the Act vests the Commission with the clear authority to address post-Section 271 "backsliding" by a Bell Operating Company ("BOC"), but it does not provide sufficient detail to police the situation properly. The Commission needs to step into this gap by promulgating rules that will spell out precisely how Section 271 will be enforced if BOC "backsliding" should occur. Allegiance's petition for rulemaking is appropriate in this context, and in view of the substantial and complex issues involved, SCI submits that it is by no means too early to commence the type of public discussion such a rulemaking would foster. Accordingly, SCI favors moving forward with Allegiance's proposal, and the issuance of a Notice of Proposed Rulemaking, as soon as practicable. In fact, this is an ideal juncture to take up such a subject, since the memory of the many BOC compliance failures, and attempts to make

end runs around restrictions,[4] are fresh in the minds of state and federal regulators. To help stem future problems, clear and unmistakable regulatory requirements, including relevant time frames and performance measurements, must be specified. Likely paths of BOC divergence need to be identified in advance and blocked.

3. The Best Available Standards Should be Used as Guidance for Crafting National Minimum Standards

SCI agrees that the Commission should craft national minimum performance standards and procedures based on the best available practices, such as the work done by the New York and Texas Commissions on collocation. However, SCI notes that these standards are a work in progress rather than a *fait accompli*, and other state commissions may develop even more advanced approaches that should be incorporated into the national minimum standards. In addition, although the New York and Texas approaches are significant, the Commission should be prepared to go beyond them if more progressive alternatives offer themselves in the process of the rulemaking. For each key element of compliance, the Commission should affirmatively seek the best practices in effect, and entertain comments intended to refine them further.

4. A Strong Federal Role in Preventing Backsliding is Crucial

Although the states unquestionably have a strong role to play in nipping BOC non-compliance in the bud in the ordinary course of regulating intrastate services, the FCC is the principal enforcer in cases of BOC backsliding. As stated above, however, prevention of backsliding in the first place may be more valuable than penalizing it once it is underway. In addition to its statutory role as the ultimate arbiter of backsliding complaints, the FCC must take

[4] One prominent example is Ameritech's attempt to team with Qwest Communications to offer interexchange services in Ameritech's home territory as a means of side-stepping the MFN restrictions. BOCs will always have the strong incentive and means to attempt to bring in through the back door what is not tolerated at the front entrance.

a leading role in setting up a national framework to prevent backsliding in the first place. The Commission cannot properly allow the process of preventing backsliding to be played out exclusively at the state level, possibly resulting in a crazy quilt of conflicting requirements. Although there may be some regional variations that justify material departures from some phone company practices, there is considerable homogeneity in the way that ILECs function, and in the way they can and should relate to competitive carriers. Accordingly, the Commission needs to take a strong hand in establishing a baseline for BOC practices that directly affect the spread of competition: *viz.,* provisioning intervals, ordering procedures and technology, interconnection practices, collocation practices, access to BOC-controlled rights of way and other key facilities, recombination of UNEs and subloop unbundling.

Moreover, as correctly pointed out by Allegiance,[5] cutover from BOC local service to local service offered by a competitive carrier is presently a rocky road full of pitfalls: at the outset, there are unnecessary delays and expenses which may deter potential customers. Default cutover standards, including reasonable turnaround times, need to be established on a national basis so that this process can be made more efficient. SCI agrees that the goal should be to approach the turnaround times presently realized by interexchange carriers, approximately three business days. At the very least, there should be parity between the time frames applicable to BOC establishment of new service and customer cutover to CLEC service. (CLECs should also prepared to offer BOCs the same degree of efficiency in the case of CLEC customers reverting to BOC service.)

---

[5] *See* Allegiance Petition at 13-14.

Establishing minimum federal standards for key aspects of the relationship between BOCs and CLECs will shortcut a great deal of wasteful haggling and stonewalling, and will limit the scope of issues that must be adjudicated or arbitrated. Just minimizing the burden of interminable and repetitive legal proceedings on all carriers would be a positive step.

Nationwide minimum standards will also help new competitive carriers in the initial implementation of their networks, and should also materially assist them in obtaining financing, since both network planners and investors will have a baseline of expectations to work from, regardless of the state involved.

5. The Commission Should Use This Opportunity To Establish Complaint Procedures Under Section 271(d)(6)(B) of the Act

Under Section 271(d)(6) the Act, the FCC's role in enforcement of backsliding issues is crucial, and cannot properly be delegated to the states. SCI believes establishing default minimum standards will be instrumental in avoiding the need to preempt states later, because it will give state commissions clear guidelines to work from in adjudicating or arbitrating disputes. In most cases, the FCC will only become involved directly where states fail to act, or act improperly. This division of power appropriately recognizes concerns of federalism and allows states to build upon the default minimum standards when and where they consider it necessary.

Nevertheless, it seems likely, given recent experience, that the Commission will be called upon to exercise its enforcement authority. Consequently, the Commission should seize upon the opportunity afforded by this rulemaking vehicle to establish a separate complaint procedure to review and dispose of backsliding complaints within the 90-day period allowed by Section 271(d)(6)(B) of the Act.

6. Penalties for BOC Non-Compliance Will Have to be Significant and Multi-faceted

After 271 entry is permitted, the BOCs will be in an almost unconceivable position of strength. It will not be possible to deter bad action by a slap on the wrist. Nor will conventional

monetary forfeitures be likely to have much effect. The Commission should request public comment on fashioning appropriate remedies designed to deter, and if necessary, penalize, BOC disregard of the conditions for 271 approval. SCI agrees with Allegiance that a multi-faceted approach, including stringent monetary forfeitures for each day illegal actions go uncorrected, as well as other sorts of innovative sanctions (such as suspension of 271 authority and compelled, substantial reductions in pricing of rates charged to competitors for UNEs, resale and traffic termination) will be necessary.[6] These multifaceted remedies will have to be swiftly and certainly applied. Otherwise, they will not be effective.

CONCLUSION

The Petition for Expedited Rulemaking filed by Allegiance is timely and on target. The time to establish procedures for ensuring continued BOC compliance with the conditions for Section 271 entry is now, not after one or more BOCs commence interLATA service provision in their home regions. Of course, the most important means of preventing non-compliance is to continue to hold fast to statutory standards in satisfaction of the Competitive Checklist, and to keep a diligent eye on the public interest, convenience and necessity *before* 271 entry is approved for any of the BOCs. Nevertheless, presuming that such entry is likely in the near future, now is the time to commence the national discussion as to how this situation can best be policed in the public interest. SCI agrees that national default minimum standards should be promulgated by the FCC governing key aspects of the inter-relationship between BOCs and CLECs; and a separate complaint procedure needs to be set up to enable the FCC to make

[6] Obviously, care will have to be taken not to engage in enforcement that can adversely affect either BOC or CLEC customers while the issues are being sorted out.

enforcement decisions. A necessary part of this enforcement process will be swift, certain, and multifaceted penalties that are sufficient to deter, or call a quick halt to, BOC bad acts.

Respectfully submitted,

Dana Frix
Ronald J. Jarvis
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, NW, Suite 300
Washington, D.C. 20007
Telephone: (202) 424-7500
Facsimile: (202) 424-7645

Counsel for State Communications, Inc.

Hamilton E. Russell, III
General Counsel and Vice President
of Regulatory Affairs
STATE COMMUNICATIONS, INC.
200 North Main Street, Suite 303
Greenville, SC 29601
Telephone: (864) 271-6335
Facsimile: (864) 271-7810

Dated: March 8, 1999

CERTIFICATE OF SERVICE

I, Sonja Sykes-Minor, hereby certify that on this 8th day of March 1999, copies of the foregoing COMMENTS OF STATE COMMUNICATIONS, INC. IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING, were served via Messenger** or U.S. Mail, postage prepaid, upon the following parties:

Magalie Roman Salas, Esq. **(Original + 4)****
Secretary
Federal Communications Commission
Portals - 445 12th Street, S.W.
Filing Counter TWS-A325
Washington, D.C.

International Transcription Service**
1231 20th Street, N.W.
Washington, d.C. 20054

Robert W. McCausland
Vice President, Regulatory and Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, TX 75207-3118

Jonathan E. Canis
Ross A. Buntrock
Michael B. Hazzard
Kelley Drye & Warren LLP
1200 Nineteenth Street, N.W.
Fifth Floor
Washington, D.C. 20036

Sonja Sykes-Minor