

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

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In the Matter of)
)
Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company, and)
Southwestern Bell Communications)
Services, Inc., d/b/a Southwestern Bell)
Long Distance for Provision of In-Region,)
InterLATA Services in Texas)

CC Docket No. 00-4

COMMENTS OF PILGRIM TELEPHONE, INC.

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SUMMARY

The Commission must deny the application of SBC Communications Inc. for authorization to provide in-region, interLATA service in Texas because SBC has failed to make the required showings under Section 271 of the Communications Act. SBC has failed to demonstrate that it complies with the competitive checklist requirements of Section 271. SBC has also failed to show that grant of its application would be in the public interest, convenience, and necessity.

With respect to the competitive checklist, there are several instances in which SBC has failed to meet this test. These failures cause competitive harm to carriers attempting to enter the local exchange market in Texas, particularly carriers offering casual calling services. Until these failures are remedied the Commission should deny the SBC application.

Under the terms of Section 271, SBC is required to provide non-discriminatory access to databases and associated signaling necessary for call routing and completion. SBC has not demonstrated compliance with this requirement because it has failed to commit to provide real time access to its call-related databases in a manner sufficient to permit other carriers to check information related to billing name and address and call blocking in connection with their routing and completion of calls.

The provision of real time access to call-related databases is important to Pilgrim and other providers of casual calling services because real time access to the information maintained in these databases improves the efficiency and accuracy of call routing and completion, reduces costs associated with call transmission, and optimizes the efforts of casual calling providers to bill and collect for their services. Consumers also are better served if casual calling providers are given real time access to SBC's call-related databases. Consumers are protected because service providers can accurately identify and accommodate customers' call blocking instructions if the

providers have access to these instructions in SBC-controlled databases in real time as calls are being processed and transmitted.

The Commission's broader competitive objectives also are served by ensuring that SBC provides real time access to its call-related databases. For example, the provision of "dial around" long distance service can be enhanced by furnishing carriers offering these services with sufficient access to SBC call-related databases, thus enabling these carriers to handle this type of casual calling traffic efficiently, economically, and with a minimum level of billing and call processing errors.

SBC's failure in its application to demonstrate that it will provide real-time access to its call-related databases thus is not only highly problematic for casual calling service providers, but is also detrimental to consumers and at odds with the pro-competitive goals at the core of the Section 271 requirements.

SBC has failed to meet the competitive checklist test requiring SBC to provide non-discriminatory access to network elements. As explained above, SBC has not committed to providing adequate access to call-related databases, which also constitute an unbundled network element. Pilgrim and other parties assert there is ample evidence for the Commission to conclude that failure to provide billing and collection impairs the ability of telecommunications carriers to provide services they seek to offer.

One example of the deleterious results of SBC's failure to commit to provide its billing and collection services is presented by the case of Calling Party Pays. The success of CPP in the marketplace hinges in large part on the ability of wireless carriers to develop an effective means to collect bills from calling parties with whom the carriers have no subscriber relationship. Al-

though wireless carriers face many obstacles in attempting to bill and collect directly or through third parties such as credit card companies, access to the billing and collection infrastructure of incumbent local exchange carriers offers a ready solution that will help ensure that wireless carriers can offer CPP.

SBC's refusal to provide billing and collection service causes SBC to fail the competitive checklist test. This failure should be of particular concern to the Commission because SBC and other incumbent carriers enjoy bottleneck control over billing and collection services, and their exertion of this control continues to impair the growth of competition in both local exchange and long distance markets.

SBC also fails to provide dialing parity, as required by the competitive checklist, for casual customers of competing providers because of its refusal to provide access to call blocking information. SBC's refusal to provide Pilgrim with blocking information means that casual customers may receive inferior quality service when using Pilgrim's services because Pilgrim's inability to access call-related databases controlled by SBC will make it extremely difficult for Pilgrim to honor blocking requests, or verify identity or authorization. Surely, SBC's denial of access to blocking databases will have a negative impact on competition.

In addition to these failures to meet the competitive checklist requirements, the refusal of SBC to commit to the provision of real time access to its call-related databases or to the provision of billing and collection services also causes SBC to fail the public interest test contemplated by Section 271. There is evidence to suggest that SBC's prior dealings with competitive telecommunications service providers such as Pilgrim are marked by discriminatory and other anti-competitive practices. The Commission, against such a background and in light of the im-

portant consumer and competitive benefits to be gained by requiring real time access to SBC databases and the provision of billing and collection services by SBC, should refuse to grant SBC's application unless these commitments are made.

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COMMENTS OF PILGRIM TELEPHONE, INC.

Pilgrim Telephone, Inc. (Pilgrim), by counsel, hereby submits its comments in response to the Public Notice released by the Common Carrier Bureau on January 10, 2000,¹ regarding the above-captioned proceeding and opposing the application of SBC Communications Inc. (SBC) and its subsidiaries Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (SBCS) for authorization to provide in-region, inter-Local Access and Transport Area (LATA) service in the State of Texas, pursuant to Section 271 of the Communications Act of 1934 (Act).²

¹ Public Notice, "Comments Requested on Application by SBC Communications Inc. for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of Texas," DA 00-37, released Jan. 10, 2000.

² 47 U.S.C. § 271.

I. INTRODUCTION

Pilgrim is an interstate, interexchange carrier in the business of providing casual access, common carrier services,³ including collect and calling card casual access common carrier services, and various information and enhanced services, including pay-per-call services.⁴ Among the information and enhanced services Pilgrim provides are group access bridging, telemessaging and voice mail services, bulletin board services, and access to these various services.

Pilgrim has participated extensively before the Commission in a wide variety of rule-making proceedings relating to competitive services, service provisioning, and billing and collection for telecommunications services. Pilgrim, like all service providers engaged in offering casual access telecommunications and electronic services to the public via the telephone, is substantially dependent on the essential facilities of local exchange carriers (LECs) used in connection with billing and collection for these services, and is also reliant on embedded LEC databases which exist primarily to permit the routing, completion, verification, and billing and collection for telecommunications traffic.⁵

³ Pilgrim currently provides presubscribed 1+ services only in the eastern LATA in the Commonwealth of Massachusetts.

⁴ Pay-per-call services are those services that are subject to regulation under Section 228 of the Act, 47 U.S.C. § 228, and Sections 64.1501 through 64.1512 of the Commission's Rules, 47 C.F.R. §§ 64.1501-64.1512.

⁵ Telecommunications traffic includes traditional message telecommunications service, common carrier services, and access to common carrier and information services.

Competitive service providers need not be facilities based carriers. Non-facilities based service providers include non-facilities based “virtual” service providers. It has been common in the telecommunications industry for virtual providers, such as switchless resellers, to provide services on an interstate level, and both Congress and the Commission have sought to protect and encourage the activities of these service providers as a means of fostering price competition and offering a greater array of choices to consumers.⁶ It also is the case that these virtual service providers can offer services in the local exchange marketplace, competing against incumbent local exchange carriers (ILECs) and providing new competitive and innovative services directly to consumers. The Supreme Court has upheld the Commission’s decision that requesting carriers do not face any facilities-ownership requirement in order to obtain unbundled network elements from ILECs.⁷

Thus, as providers of casual calling services, Pilgrim and other carriers offer nascent competition to SBC’s local exchange service. Casual calling services are unique in that a consumer does not establish a business relationship and subscriber account with the service provider

⁶ Section 251(c)(4) of the Act, 47 U.S.C. § 251(c)(4), imposes a duty on ILECs to offer certain services for resale at wholesale prices. “Recognizing that incumbent LECs possess market power, Congress prohibited unreasonable restrictions and conditions on resale.” Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15966 (para. 939) (1996) (*Local Competition Order*), *aff’d in part and vacated in part sub nom.* Competitive Telecom. Ass’n v. Federal Comm. Comm’n, 117 F.3d 1068 (8th Cir. 1997), *aff’d in part and vacated in part sub nom.* Iowa Utils. Bd. v. Federal Comm. Comm’n, 120 F.3d 753 (8th Cir. 1997), *aff’d in part, rev’d in part, and remanded sub nom.* AT&T v. Iowa Utils. Bd., 119 S.Ct. 721 (1999).

⁷ AT&T v. Iowa Utils. Bd., 119 S.Ct. 721, 736 (1999) (“We agree with the Court of Appeals that the Commission’s refusal to impose a facilities-ownership requirement was proper.”).

in advance of a call.⁸ Under such circumstances, consumers can use casual calling as an opportunity to try new services and new providers with minimal risk.

In order to develop and flourish, however, providers of casual calling services need access not only to the physical elements of SBC's LEC network, such as local switching and loops, but also to the databases and services which are essential to the routing, transmission, and completion of telecommunications services, and for billing and collection for such services.

These issues have been elucidated in recent Commission rulemaking proceedings such as the *UNE Remand Proceeding*⁹ and the *CPP Rulemaking Proceeding*.¹⁰ For example, in the *CPP*

⁸ See Stephen E. Siwek & Gale Mosteller, "Billing and Collection for 900-Number Calls: A Competitive Analysis," Sept. 7, 1999 (Siwek and Mosteller Study), at 1. The Siwek and Mosteller Study was commissioned by the Billing Reform Task Force (BRTF) and can be found at <<<http://www.ei.com/publications/papers.htm>>>. The Commission has recognized the difficulties of carriers establishing a binding contract with casual callers. Therefore, the Commission has permitted tariffing of certain dial around services so that carriers would be able to reduce the risk of having no contract with a casual customer. Policy and Rules Concerning the Interstate Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Order on Reconsideration, 12 FCC Rcd 15014 (para. 32) (1997).

⁹ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, 1999 WL 1008985, released Nov. 5, 1999 (*UNE Remand Order*). Issuance of the Order culminated a proceeding initiated in April 1999. See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Further Notice of Proposed Rulemaking, FCC 99-70, released Apr. 16, 1999 (*UNE Second Notice*). The proceeding was initiated in response to instructions from the Supreme Court that the Commission revisit and develop more specific standards with respect to its earlier decisions regarding the unbundling of network elements by ILECs. See *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999).

¹⁰ Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207 (*CPP Rulemaking Proceeding*), Declaratory Ruling and Notice of Proposed

Rulemaking Proceeding, the Coalition To Ensure Responsible Billing has alleged that certain Bell Operating Companies (BOCs), including SBC, have instituted moratoria on new party billing on their local exchange bills, and that competitors are denied access to LEC bills “for receiving even a minuscule number of complaints.”¹¹ The Coalition concludes that LECs can gain a significant competitive advantage if they are successful in driving competitive services off the local bill.¹²

In the following sections, Pilgrim will demonstrate that SBC has failed to make sufficient commitments and showings in its application with respect to the manner in which it will make its facilities and services available to casual calling service providers, and that this failure causes SBC to fall short of the mark with regard to meeting the checklist requirements of Section 271 and its other statutory obligations. We will also show that this lack of commitment by SBC to make its facilities and services sufficiently available to casual calling service providers is symptomatic of ongoing and persistent efforts by SBC to stymie the efforts of casual calling service providers to bring competitive services to consumers. Finally, we will demonstrate that the shortcomings of the SBC application, taken together with SBC’s demonstrable practices of seeking to

Rulemaking, FCC 99-137, released July 7, 1999 (*CPP Declaratory Ruling*) (*CPP Rulemaking Notice*). The proceeding was initiated by the Commission two years earlier. See *Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207, Notice of Inquiry, 12 FCC Rcd 17693 (1997).

¹¹ *CPP Rulemaking Notice*, Comments of Coalition To Ensure Responsible Billing, filed Sept. 17, 1999, at 8.

¹² *Id.*

thwart competitive entry, compel the Commission to conclude that the public interest requires rejection of SBC's application unless these deficiencies are satisfactorily remedied.

II. SBC HAS FAILED TO MAKE THE SHOWINGS NECESSARY FOR A GRANT OF ITS APPLICATION UNDER SECTION 271 OF THE ACT

To obtain authorization to provide in-region, interLATA service under Section 271, SBC must satisfy the following four criteria: (1) SBC meets the requirements of either Section 271(c)(1)(A), known as "Track A", or Section 271(c)(1)(B), known as "Track B"; (2) SBC has fully implemented the competitive checklist, or SBC's statements approved by the State of Texas under Section 252 of the Act¹³ satisfy the competitive checklist contained in Section 271(c)(2)(B); (3) the requested authorization will be carried out in accordance with the requirements of Section 272 of the Act;¹⁴ and (4) SBC's entry into in-region, interLATA markets is consistent with the public interest, convenience, and necessity. SBC retains the ultimate burden of proof that its application satisfies all the requirements of Section 271 and must demonstrate that it proves each element by a preponderance of the evidence.¹⁵

The Commission has elaborated on the requirements for showing that a BOC has fully implemented the competitive checklist. The BOC must demonstrate, for example, that it is of-

¹³ 47 U.S.C. § 252.

¹⁴ 47 U.S.C. § 272.

¹⁵ Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, released Dec. 22, 1999, at paras. 47-48 (*Bell Atlantic New York Order*).

fering interconnection and access to network elements on a nondiscriminatory basis.¹⁶ Essentially, the test is whether the BOC is providing service to competitors at parity with its retail offerings or, when there is no analogous retail activity, whether the BOC's performance would allow an efficient competitor a meaningful opportunity to compete.¹⁷ The Commission applies these standards in a pragmatic fashion, considering the overall picture presented by the record.¹⁸

According to the standard outlined above, the Commission must deny SBC's application because SBC has failed to make at least two of the required showings. First, SBC has failed to demonstrate that it complies with the competitive checklist. As described in more detail in the following sections, by denying Pilgrim and similarly situated carriers nondiscriminatory billing and collection information and services, SBC proves that it is not willing to provide service to competitors at parity with its retail offerings. Indeed, Pilgrim believes there is evidence to support the conclusion that SBC has decided to deprive Pilgrim of any meaningful opportunity to compete with SBC or with other competitors in the marketplace.

Second, SBC fails to demonstrate that a grant of its application would be in the public interest. SBC's past anti-competitive behavior provides strong evidence that allowing SBC to enter the long distance market would not help to increase competition in the long distance or lo-

¹⁶ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543 (paras. 14-15) (1997) (*Ameritech Michigan Order*); *Bell Atlantic New York Order* at para. 44.

¹⁷ *Bell Atlantic New York Order*, at para. 5

¹⁸ *Id.*

cal telephone service markets.¹⁹ Instead, SBC would leverage its monopoly power in the local exchange market and the billing and collection market to restrict both local and long distance competition.

III. CASUAL CALLING SERVICE PROVIDERS MUST HAVE SUFFICIENT ACCESS TO SBC'S CALL-RELATED DATABASES, AND MUST BE ABLE TO OBTAIN BILLING AND COLLECTION SERVICES FROM SBC, IN ORDER TO PROVIDE COMPETITIVE SERVICES IN LOCAL EXCHANGE MARKETS

One of the defining characteristics of casual calling services — the fact that the service provider does not have any ongoing subscriber relationship with the party who will be billed for the call — makes it critically important that the casual calling service provider be given the option to utilize billing information, and billing and collection services, maintained by SBC.

A. Access to Information in SBC's Call-Related Databases Is Necessary To Enable Casual Calling Service Providers To Transmit Calls, To Bill and Collect, and To Comply with Regulatory Requirements

In order for Pilgrim to offer meaningful competition to SBC services, it requires certain information that SBC refuses to provide. In particular, Pilgrim needs real time access to billing name and address and blocking information.

Pilgrim needs this information, at a minimum, in order to determine whether calls should be accepted and transmitted, and in order to bill and collect for the calls. For example, as Pilgrim has noted in commenting on the *UNE Second Notice*, ILECs should be required to provide access to their databases and signaling that relate to customer service preferences, including collect call blocking, third party bill blocking, and blocking for international calls and 900 number serv-

¹⁹ See Section V, *infra*.

ices.²⁰ These requirements, in giving service providers more control over their billing and collection operations, will make them stronger competitors, thus generating benefits for consumers in the form of a wider selection of service offerings available at competitive prices. Moreover, the availability of billing information on an unbundled basis will also promote entry by new providers of a variety of telecommunications services and information services, thus fostering competition and benefiting consumers.²¹

The importance of call-related information maintained in ILEC databases can be illustrated by taking the example of a service provider seeking to enter the Texas market to provide collect calling services.²² Collect calling services by their very nature are casual access services in which a service provider generally does not have a presubscribed or permanent relationship with the terminating called party who will be billed for the service. The casual access service provider will necessarily be dependent on SBC for a series of services, databases, and facilities in order to provide its collect calling services. The service provider will require access to SBC's lines and switches as part of the call routing. The service provider will also require access to SBC's line information database (LIDB) for purposes of validating that the terminating party has granted permission for the acceptance of collect call traffic. Finally, the service provider will re-

²⁰ See *UNE Second Notice*, Comments of Pilgrim Telephone, Inc., filed May 26, 1999 (Pilgrim UNE Comments), at 18.

²¹ See *CPP Rulemaking Notice*, Comments of Pilgrim Telephone, Inc., filed Sept. 17, 1999 (Pilgrim CPP Comments), at 8-9.

²² See Pilgrim UNE Comments at 5-6.

quire real time access to billing name and address in order to have the capability to validate and bill the call. The service provider will also require access to any databases maintained by SBC regarding the credit viability of the call termination party, in order to enable the service provider to determine whether it should undertake the credit risk of completing the call.

Access to this information greatly reduces errors and lowers costs, thus providing direct and tangible benefits to consumers. Most importantly, this information allows new entrants to provide new and innovative services that customers want, in an efficient manner, and ensures that consumers avoid the services that they have affirmatively decided to block. Lower service quality due to errors that could have been avoided frustrates customers, leaving competitors that do not have access to ILEC databases at a disadvantage in their ability to attract and then retain customers. A company simply cannot stay in business without an efficient, cost-effective way to bill and collect for its services.

Finally, Pilgrim needs information not only to meet its competitive challenges, but also to meet its regulatory obligations. To ensure that Pilgrim complies with statutory requirements,²³ and with Commission and Federal Trade Commission (FTC) consumer protection safeguards and requirements relating to call transmission and billing,²⁴ Pilgrim must have timely access to accurate call-related data maintained by SBC.

²³ See, e.g., Section 228 of the Act, 47 U.S.C. § 228.

²⁴ 16 C.F.R. Part 308; 47 C.F.R. §§ 64-1501-64.1512.

B. Casual Calling Service Providers Also Need the Option To Obtain Billing and Collection Services from SBC Because of the Difficulties Associated with Billing and Collection for Casual Calls

In addition to their need for access to ILECs' call-related databases for real time billing name and address and other data, new entrants providing causal calling services also are likely to require billing and collection services from ILECs. In both the *CPP Rulemaking Proceeding* and the record developed with respect to the MCI Billing and Collection Petition²⁵ there is strong evidence that alternatives to ILEC provided billing and collection may not be practical or sufficient for casual calling services such as those frequently provided by Pilgrim.

With respect to the prospect of calling party pays (CPP) providers directly billing for their CPP services, an economic study conducted for AirTouch Communications, Inc. (AirTouch), has concluded that, "[b]ecause of the low value of the billing transaction relative to the cost of generating a stand-alone bill, only a company that currently sends a bill to a customer can economically provide the CPP billing services."²⁶ The Katz and Majerus Study also concluded that "[e]ven once a bill is generated and sent to a consumer, there still remain significant

²⁵ MCI Telecommunications Corporation, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, Petition for Rulemaking, filed May 19, 1997 (MCI Petition). See FCC Public Notice, "MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements for Billing and Collection of Non-Subscribed Services," Rulemaking No. 9108, DA 97-1328, released June 25, 1997 (*MCI Petition Public Notice*). The company has since changed its name to MCI WorldCom, Inc.

²⁶ *CPP Rulemaking Proceeding*, Comments of AirTouch Communications, Inc., Attachment A, "Declaration of Dr. Michael L. Katz and David W. Majerus: ILEC Market Power in Billing and Collection," filed Sept. 17, 1999 (Katz and Majerus Study), at 10.

costs associated with trying to collect this bill. Given the likely size of bills sent out for CPP, if the collection were done on a stand-alone basis its costs would swamp any revenues collected.”²⁷ Since CPP involves the issue of billing and collection for service rendered to a non-subscribed customer (*i.e.*, the calling party who is responsible for paying the charge for the call), the problems of direct billing for CPP closely mirror the problems that Pilgrim faces with respect to billing for collect calling and other services to casual callers.

An economic study commissioned by the Billing Reform Task Force (BRTF) recently examined billing and collection for 900-number calls and reached the same conclusion as the Katz and Majerus Study with regard to the deficiencies of direct billing.²⁸ Significantly, the Siwek and Mosteller Study also found that:

[o]utcomes in the marketplace are . . . consistent with our conclusion for 900-number calls. In practice, direct billing and collection for 900-number calls occurs to a *very limited extent*. If direct billing and collection for 900-number calls actually competed with LEC billing and collection, information providers would want to switch to direct billing and collection. . . . Information providers stick with LEC billing and collection for 900-number calls because they do not have competitive alternatives.²⁹

The Katz and Majerus Study also examined the feasibility of third-party billing for CPP and determined that no third-party billing options offer a viable alternative to ILEC billing and

²⁷ *Id.*

²⁸ Siwek and Mosteller Study at 4-8.

²⁹ *Id.* at 7-8 (emphasis added).

collection.³⁰ In the case of credit card billing, the Katz and Majerus Study listed several reasons why such billing would not be practical or effective for CPP, including the fact that “credit card companies do not currently have software for calculating the local taxes associated with wireless phone calls.”³¹ The Siwek and Mosteller Study reached the same conclusion regarding credit card billing for 900-number service,³² finding that “about one-third of the existing pool of potential 900-number callers would be eliminated if information providers relied solely on credit cards” because only 66 percent of households have credit cards.³³ The Katz and Majerus Study also examined cable companies and electric utilities as possible alternatives to ILEC billing and collection for CPP, but concluded that “cable companies and electric utilities do not provide effective limits on the exercise of ILEC market power in CPP billing and collection services.”³⁴

IV. SBC HAS SYSTEMATICALLY DENIED COMPETING CARRIERS THE BILLING AND CALL-RELATED INFORMATION THAT THEY NEED AND ITS 271 APPLICATION DOES NOT ADEQUATELY RESPOND TO THESE CONCERNS

SBC’s refusal to provide casual calling services providers, such as Pilgrim, with real time billing name and address, blocking information, and billing and collection services, is strong evidence that SBC does not intend to provide service to competitors at parity with its retail offer-

³⁰ Katz and Majerus Study at 12-14.

³¹ *Id.* at 12.

³² *See* Siwek and Mosteller Study at 8-13.

³³ *Id.* at 9.

³⁴ Katz and Majerus Study at 14.

ings, or allow an efficient competitor a meaningful opportunity to compete. Although SBC's application asserts that SWBT complies with the specific requirements of the competitive checklist as amplified by the *Bell Atlantic New York Order* and the Commission's other implementing decisions,³⁵ a close examination of SBC's application shows no evidence that it intends to provide casual calling service providers with the services they need to compete and that are required by the competitive checklist.

A. SBC Has Consistently Denied Competing Carriers Access to the Services They Need To Offer Meaningful Competition

SBC has consistently refused to provide Pilgrim with real time billing name and address, blocking information, and credit card validation information,³⁶ in addition to refusing to provide billing and collection services in Texas. Pilgrim has made every effort to negotiate with SBC to receive these services. Although SBC has claimed that its "image policy" precludes it from providing these services for certain Pilgrim casual calling services, Pilgrim has pointed out to SBC

³⁵ SBC Application at 8.

³⁶ In addition to refusing to provide Pilgrim with sufficient access to call-related information, SWBT also has evidenced a reluctance to provide information to competitors in other contexts. For example, SWBT has been ordered by the Public Utility Commission of Texas (PUC) to pay competitors Rhythms Links, Inc., \$583,120 and Covad Communications Co. \$262,680 in legal costs resulting from SWBT's failure to provide relevant information during an arbitration, which resulted in a five-month delay. PUC News Release, "SWBT To Pay \$846,000 Penalty, PUC Orders SWBT to Take Remedial Action," Sept. 24, 1999.

that SBC's application of its "image policy" has not been applied consistently among carriers and in any event does not explain SBC's refusal to bill for Pilgrim's collect calling services.³⁷

Unfortunately, SBC's Section 271 application provides no indication or assurances that SBC is prepared to resolve these issues in a manner consistent with its obligations under the Act. Pilgrim believes that this failure by SBC constitutes a serious deficiency in its application because the types of practices in which SBC has engaged in its dealings with Pilgrim demonstrate that SBC has the means and intent to use its control over call-related databases and billing and collection services to frustrate the provision of service by competitors. In light of the fact that SBC has gained and maintained this control because it has long enjoyed the status of a franchised monopoly utility funded by ratepayers in the State of Texas and elsewhere, the Commission should be concerned about any prospect that SBC may continue to seek to leverage this control to further its competitive objectives.³⁸ Without any assurances that SBC is committed to changing these anti-competitive policies, the Commission must deny SBC's application.

³⁷ See Letter from Walter Steimel, Jr., Counsel for Pilgrim Telephone, Inc., to Cassandra Carr, Senior Vice President, External Affairs, SBC Corporation, May 17, 1999, a copy of which is attached hereto. In Pilgrim's view, "image policies" are used to censor both communications and services, and prohibit competition with certain ILEC services under the guise that billing and collection would be contrary to the corporate image of the ILEC. See Letter from Walter Steimel, Jr., Counsel for Pilgrim Telephone, Inc., to Jeff Dygert, Enforcement Div., Common Carrier Bur., FCC, Feb. 4, 1999, at 2.

³⁸ The Commission has recently addressed the implications of the ILECs' historical local exchange monopoly for the current task of promoting local exchange competition:

B. SBC Has Failed To Demonstrate That It Has Complied with Checklist Item (ii) Because It Has Not Committed To Provide Casual Calling Service Providers With Sufficient Access to Network Elements

SBC's application does not demonstrate that it will provide Pilgrim with several unbundled network elements that it needs to compete. The SBC application is deficient in its commitment to provide Operations Support Systems (OSS), and signaling and call-related databases. The *UNE Remand Order* specifically finds that signaling and call-related databases and OSS are network elements that must be unbundled.³⁹

The Commission has recognized that OSS is essential if CLECs are to be able to compete effectively with ILECs.⁴⁰ With respect to billing information, the Commission has observed that competing carriers need access to billing information to provide accurate and timely bills to their

The incumbent LECs still enjoy cost advantages and superiority of economies of scale, scope, and ubiquity as a result of their historic, government-sanctioned monopolies. These economies are now critical competitive attributes and would belong unquestionably to the incumbent LECs if they had "earned" them by superior competitive skills. These advantages of economies, however, were obtained by the incumbents by virtue of their status as government-sanctioned and protected monopolies. We believe that these government-sanctioned advantages remain barriers to [other] carriers' ability to provide a range of services to a wide array of customers, and that their existence justifies placing a duty on the incumbent carriers to share their network facilities.

UNE Remand Order at para. 86.

³⁹ *Id.* at para. 15.

⁴⁰ *Bell Atlantic New York Order* at para. 8 n.12.

customers.⁴¹ SBC's application attempts to paint a very rosy picture with respect to OSS, claiming that "SWBT provides nondiscriminatory access, and then some,"⁴² and that its access to OSS allows new entrants, *inter alia*, to bill their customers "all with a level of timeliness and accuracy that allows an efficient carrier to compete against SWBT."⁴³

SBC claims that it offers CLECs a choice of five different electronic interfaces for billing, allowing the CLEC to bill its customers, to process its customers' claims and adjustments, and to view SWBT's bill for services provided to the CLEC.⁴⁴ The SBC application, however, contains very little description of the types of billing services that it would provide. For example, SBC does not mention real time access to billing name and address or to blocking data. Instead, SBC merely asserts that "[t]hrough these interfaces and the range of available billing media, SWBT provides access to all usage data that CLECs have requested and SWBT's systems are capable of providing."⁴⁵ SBC claims that CLECs' access to SWBT's billing systems is at parity with the access afforded to SWBT retail operation.⁴⁶ The yardstick used by SWBT, however,

⁴¹ *Id.* at para. 226; Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, Inter-LATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20698 (1998) (*Second BellSouth Louisiana Order*).

⁴² SBC Application at 22.

⁴³ *Id.*

⁴⁴ *Id.* at 91.

⁴⁵ *Id.*

⁴⁶ SBC argues that, of the eight measurements associated with billing, SWBT met seven in at least two of the three months immediately preceding its application. The largest discrepancy was

counts only those services SWBT has agreed to bill and completely ignores the many services and service providers that SWBT simply refuses to serve. For example, in an open meeting attended by SWBT's major billing and collection customers, the director of SWBT's billing and collection services admitted that SWBT will never provide billing and collection for CPP unless ordered to do so.

SBC's self-serving statistics and assertions in its filing are not good enough when SWBT has a demonstrated history of denying competing carriers the vital information that they need. While it may be the case that SBC in fact intends to provide sufficient OSS access in the manner Pilgrim describes, its application does not reflect any such intent. The importance of the issue requires that SBC's commitments and obligations must be addressed unambiguously.

C. SBC Has Failed To Comply with the Requirements of Checklist Item (x) Because It Has Not Met Its Burden of Demonstrating That the Manner in Which It Provides Access to Call-Related Databases Is Sufficient for Casual Calling Service Providers

SBC claims that SWBT provides access to its Line Information Database (LIDB), Caller ID databases, toll-free databases, and Advanced Intelligent Network (AIN), as well as its service management systems (SMS), which are used to create, modify, or update information in the call related databases.⁴⁷ While SBC goes on at great length regarding CLECs' ability to add informa-

in "Billing Completeness" between CLEC and SWBT retail performance in October 1999, when SWBT returned 98 percent of bills to CLECs and 99.2 percent to its own retail operations. According to SBC, such a difference "has no appreciable impact on the provision of service by the CLEC to its customers because the overall performance for both the CLEC and SWBT is so high." *Id.* at 91-92.

⁴⁷ *Id.* at 113.

tion to these databases, SBC does not address whether these databases provide sufficient information for carriers offering competing services to casual customers to bill those casual callers. Contrary to its assertions, for instance, SWBT refuses to provide any information regarding 900/976 blocking, billing name and address, and credit history to any carrier but itself, even though this information is contained in an electronic database that could be accessed by competitors.

In light of the fact that SWBT has consistently refused to provide Pilgrim with the real time billing name and address features that it could make available as part of access to LIDB, we believe it is essential that the Commission act to clarify SBC's obligations by requiring that SBC provide real time access to call-related databases to telecommunications carriers doing business in the State of Texas.

D. SBC Has Failed To Comply with the Requirements of Checklist Item (xii) Because It Does Not Provide Access to Call Blocking Information Needed To Provide Consumers with Local Dialing Parity

Section 271(c)(2)(B)(xii) of the Act requires a BOC to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."⁴⁸ Section 251(b)(3) imposes upon all LECs "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays."⁴⁹ As

⁴⁸ 47 U.S.C. § 271(c)(2)(B)(xii).

⁴⁹ 47 U.S.C. § 251(b)(3).

the Commission explained, “customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC’s customers.”⁵⁰

SBC’s refusal to provide Pilgrim with blocking information means that casual customers may suffer inferior quality service when using Pilgrim’s services because Pilgrim’s inability to access call-related databases controlled by SBC will make it extremely difficult for Pilgrim to provide these customers with the blocking that they desire. If a consumer who has requested blocking decides to use one of Pilgrim’s casual calling services, the consumer may unwittingly make calls that could not be dialed over SBC’s network because Pilgrim would not know that the customer wanted those calls blocked. Under casual calling circumstances, the only way that Pilgrim could obtain information comparable to that contained in SBC’s blocking databases would be to halt every call to ask the customer about his or her blocking preferences. Such an approach cannot constitute parity with SBC’s retail offerings or a meaningful opportunity to compete.

V. THE COMMISSION MUST DENY THE SBC APPLICATION BECAUSE THE DEFICIENCIES IN THE APPLICATION COMPEL A CONCLUSION THAT GRANTING THE APPLICATION WOULD NOT SERVE THE PUBLIC INTEREST

In addition to a finding of compliance with the competitive checklist, the Commission must make a finding that the requested authorization is consistent with the public interest, convenience, and necessity.⁵¹ As explained in the *Bell Atlantic New York Order*, the public interest analysis requires a determination that is independent of the competitive checklist. The Commis-

⁵⁰ *Bell Atlantic New York Order* at para. 373.

⁵¹ Section 271(d)(3) of the Act, 47 U.S.C. § 271(d)(3).

sion views “the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected.”⁵² In particular, the Commission may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest.⁵³ No one factor in the public interest analysis is dispositive, but it is important to remember that a strong public interest showing cannot overcome a failure by the applicant to demonstrate compliance with one or more checklist items.⁵⁴

As explained in the sections above, SBC has failed to demonstrate compliance with checklist items. Even if the Commission finds that SBC has complied with all the checklist items, it must deny grant of the SBC application because such a grant would not be in the public interest, convenience, and necessity. Allowing SBC to enter the in-region, interLATA market in Texas will harm competition in both the long distance and the local exchange markets and therefore frustrate one of the goals of the Commission and the Act. There is already evidence that SBC’s actions have harmed competition in the interstate, interexchange market, and have curbed

⁵² *Bell Atlantic New York Order* at para. 423.

⁵³ *Id.*

⁵⁴ *Id.* at paras. 423-424.

the ability of wireless providers to offer competing services that could act as substitutes for local exchange services provided by ILECs.

SBC argues that it is in the public interest to grant its application because there will be an increase in competition in the long distance market.⁵⁵ Not surprisingly, however, the SBC application does not address its efforts to *reduce* competition in the interexchange market by denying billing and collection arrangements to carriers offering non-subscribed casual calling services. More than two and one-half years have passed since MCI demonstrated the need for the Commission to adopt measures to prevent ILECs from engaging in discriminatory and restrictive practices with respect to their billing and collection for non-subscribed interexchange services, such as collect, 10XXX, third-party, LEC “joint use” calling card, and 900 service calling.⁵⁶ There is strong evidence in the MCI Petition record demonstrating that denial of ILEC billing and collection services would seriously impair the ability of carriers to offer casual calling services.

It is interesting that SBC has strongly opposed any billing and collection obligations in the context of the *CPP Rulemaking Proceeding*, another area where new entrants, in this case Commercial Mobile Radio Service (CMRS) providers, might offer services that compete with local exchange service. In the *CPP Rulemaking Notice*, the Commission has found that “CPP

⁵⁵ SBC Application at 47-55.

⁵⁶ MCI Petition at 13. The Common Carrier Bureau has recently requested that the record in the MCI Petition proceeding be supplemented by ex parte filings. See Ex Parte Comments of Pilgrim Telephone, Inc., filed Dec. 15, 1999.

could provide several important tangible benefits to telecommunications consumers in the United States.”⁵⁷ According to the Commission, one major benefit envisioned is the possibility that CPP could ultimately lead to wireless services becoming a viable competitive alternative to local exchange services offered by ILECs, particularly for residential customers.⁵⁸

In the CPP proceeding, SBC “is opposed to any requirement that LECs be required to bill and collect for CPP.”⁵⁹ SBC points to potential customer confusion as a reason why LECs should not be required to bill and collect for CPP. According to SBC, local exchange service customers who are used to paying flat rates for all of their local calling are likely to be confused by CPP and upset with the new charges, and SBC should not be responsible for handling consumer complaints concerning the new serving arrangement and should not risk a potential reduction in the sale of their core services because of CPP “sticker shock.”⁶⁰

As we have noted in an earlier section, parties in the *CPP Rulemaking Proceeding* have demonstrated that practical alternatives to ILEC billing and collection services do not currently exist. The same is true in the case of other casual calling services, because restricted or insufficient access to SBC’s billing information and billing and collection services impairs the offering of these services, which in turn harms competition in long distance and local exchange markets.

⁵⁷ *CPP Rulemaking Notice* at para. 21.

⁵⁸ *Id.*

⁵⁹ *CPP Rulemaking Notice*, Comments of SBC Communications Inc., filed Sept. 17, 1999, at 8.

⁶⁰ *Id.* at 10.

SBC has a long track record of trying to restrict information and services to new entrants in the local exchange and long distance markets. SBC has been able to harm competitors because it has monopoly control over such information and services. To allow SBC to enter a new market, such as long distance, would not work to increase competition in that new market. Instead, it would give SBC additional opportunities and incentives to attempt to reduce competition in the long distance market. SBC cannot show that such an outcome would be in the public interest.

VI. CONCLUSION

For the reasons set forth above, the Commission should deny the SBC application for authorization to provide in-region, interLATA service in the State of Texas, pursuant to Section 271 of the Communications Act. SBC has not made the required showings under Section 271, and the Commission therefore must act to protect consumers and competition in the State of Texas. Until SBC demonstrates that it is committed to providing competitors like Pilgrim with nondiscriminatory access to real time billing name and address, call blocking information, and billing and collection services, it must not be allowed to enter the long distance market and leverage its monopoly power to stifle competition.



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CERTIFICATE OF SERVICE

I, Joelle Zajk, a Professional Assistant with the law firm of Greenberg Traurig, hereby certify that on January 31, 2000, a true and correct copy of the foregoing COMMENTS OF PILGRIM TELEPHONE, INC., were served by hand delivery (except as otherwise noted) upon the following:

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Joelle Zajk

**Comments of Pilgrim Telephone, Inc.
SBC Communications Inc. - Texas
CC Docket No. 00-4
January 31, 2000**

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May 17, 1999

VIA FACSIMILE

210-351-2029

Without Prejudice

Ms. Cassandra Carr
Senior Vice President
External Affairs
SBC Corporation
175 East Houston
San Antonio, TX 78205

Re: Provision of Billing and Collection,
Interconnection Agreements and
Internet and Communications Image Policy

Dear Cassandra:

This follows our conversation last week regarding the inconsistent application of "Image Policies" imposed by various subsidiaries of SBC.

We represent Pilgrim Telephone, Inc. ("Pilgrim"). Pilgrim provides interstate interexchange common carrier, enhanced, telemessaging and information services. For its casual calling traffic, primarily consisting of common carrier collect calling services, and calling card access to enhanced and telemessaging services, Pilgrim relies exclusively on the provision of local exchange carrier ("LEC") billing and collection to collect compensation for its services. Pilgrim relied on Southwestern Bell Telephone Company ("SWBT") for billing and collection in its five state region until approximately three years ago, when SWBT applied its "Image Policy" to deny billing and collection for Pilgrim's services. A copy of SWBT's Image Policy is attached as Exhibit A.

Pacific Bell and Nevada Bell Telephone Companies continue to provide billing and collection for Pilgrim's casual calling and calling card services in California and Nevada. Upon acquisition of Pacific Bell by SBC, Pilgrim was notified that the SWBT Image Policy would be applied in the Pacific Bell and Nevada Bell territories as well.

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Pilgrim has a number of concerns regarding the application of the Image Policy to billing and collection for third party collect, enhanced and telemessaging services. There are two specific issues which require review by yourself or other senior corporate officers. Perhaps with senior level involvement the dispute between Pilgrim and SWBT can be resolved amicably.

As we are both aware, the SWBT Image Policy arose from a series of proceedings before the Texas Public Utility Commission ("TPUC") spanning from approximately 1987 to 1988. SWBT, in response to pressure from the TPUC, discontinued most of its "976" services and applied an Image Policy to all other billing and collections of third party services. This Image Policy is presented to us by SWBT as a corporate policy.

The billing and collection group in Dallas, headed primarily by Dick Oxler, Mark Farrell, Esq., and Larry Olsen, apply the SWBT Image Policy strictly to all third party billings, even when the third party provider provides common carrier services and no content. Pilgrim operates a number of group access bridging ("GAB") services as well as voice mail and telemessaging services which permit gay, lesbian and other customers to discuss various topics regarding sex and sexuality, medical and HIV topics, religion and sexual politics. The telemessaging services permit gay, lesbian and other users of the Pilgrim network to set up voice mailboxes on a temporary basis, paying only for actual time used accessing the mailbox. Pilgrim charges no monthly fees for these services. Pilgrim supplies no content to any of these services.

Under the Image Policy, Dick Oxler has stated that SWBT would require Pilgrim to censor the content of private communications over its network to ensure that private parties do not engage in communications containing sexual content. We believe this is not proper conduct for a communications common carrier, and would appear to be in violation of 18 U.S.C. § 2511. Pilgrim cannot legally or rationally justify this censorship requirement.

The absurdity of SWBT's conditions is pointedly illustrated by SWBT's own failure to censor communications over its own networks. SBC provides access to implicit and explicit sexual content on its Internet site, particularly through SNAP.COM, and bills and collects for this access. SWBT provides billing for access to sexual content dialed through 900-numbers. SWBT's hypocritical and discriminatory application of an Image Policy to third party providers competing for the same or similar market as SBC, while not applying to SBC itself, is inconsistent with a policy and legal requirement of fair and equal treatment of SBC's affiliates and third party providers.

SWBT's application of its Image Policy to third party providers is not only discriminatory, it is inconsistent with the activities of SBC's other affiliates. Perhaps the personnel in the billing and collection group do not have exposure to the overall corporate philosophy, or knowledge of SBC's treatment of its own affiliates. Through your intervention, or the supervision of someone else with a more global view of SBC's policies, we can reach a

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fair and equitable resolution of the application of the Image Policy to SBC's Internet services and Pilgrim's communications and enhanced services.

Fair and equal treatment is required under federal law. While extensive legal recitations are not necessary, Sections 251, 256, 257, 259, 260 and 274 (among others) of the Communications Act of 1934, as amended, 47 U.S.C. § § 251, 256, 257, 259, 260 and 274, all contain provisions for non-discriminatory treatment, particularly in the context of services provided to affiliates and third party providers. Setting aside whether billing and collection is a network element that must be provided by a Bell Operating Company, it is clear that Bell Operating Companies must apply non-discriminatory treatment to the provision of services, including billing and collection services.

In addition, and separate from the problems associated with discriminatory treatment, the billing and collection group in Dallas is attempting to apply an Image Policy in the Pacific Bell territory which is directly contrary to Pacific Bell's tariff on file with the California Public Utility Commission ("CPUC"). Even a most rudimentary education in regulatory law would dictate that one may not apply a corporate "Image Policy" in violation of tariffs.

Clearly, the billing and collection group in Dallas should be more sensitive to the needs and requirements of its customers in California, particularly in the San Francisco Bay area. We note that you had been the liaison of the Board of Directors to gay and lesbian employees of SBC in the past. In this role, you must be sensitive to gay politics and to any actions which can be perceived as discriminatory with respect to sexual preference. A clear and consistent statement of SBC corporate policy of non-discrimination based upon sexual content in communications would be consistent with SBC's role in having acquired Pacific Bell.

As a separate matter, due to past conflicts between Pacific Bell and SWBT, the billing and collection group still refuses to provide Pilgrim billing and collection for even MTS collect calling services in the five state SWBT region. SWBT provides billing for collect calling services to itself and other parties in the five state region. It is in violation of both state and federal law for SWBT to not make this service available Pilgrim, regardless of any disputes it may have regarding the application of the Image Policy to other services of Pilgrim. We seek the assistance of you or someone else at SBC in helping us to resolve this deadlock as well.

We note with concern the application of the Image Policy by the billing and collection group in Dallas to all third party providers in each territory acquired by SBC. As soon as SBC acquired Pacific Bell, the billing and collection group began applying the policy to all third party providers in that region. As soon as SBC announced it was acquiring Ameritech, we saw the same discriminatory application of the Image Policy.

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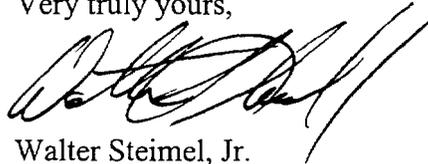
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We also note with similar concern the statement in the Image Policy that SBC will not bill and collect for any services which are contrary to its corporate image. Certainly billing and collecting for competitive services is contrary to the corporate image as it harms the bottom line profits of the corporation. We believe SWBT's Image Policy requirement to be inconsistent with the Section 271 approvals to which SBC aspires. As part of the *quid pro quo* in the 1996 amendments to the Communications Act of 1934, we would expect that SBC would go out of its way to treat its competitors and its affiliates on a fair and equal footing in order to enhance the probability that it may some day achieve Section 271 relief in any or all its states.

We only turn to you at this point out of our frustration with the inconsistent and discriminatory application of the policy to SBC affiliates and third party providers, and the consistent denial of SWBT billing and collection for collect call services to Pilgrim. We seek your assistance or the direction to someone at SBC who has an overall view of the operations of the various affiliates and the corporate direction of SBC so that these policies may be properly dictated to the personnel in the billing and collections group in Dallas. As you and I have known each other for a long time, I am also sending this letter as a courtesy and seeking assistance in arriving at a settlement of this matter in order to avoid potentially complicated and expensive litigation. Resolution of these issues would be in both parties' interests, and I have no interest in engaging in unnecessary litigation.

Thank you for your attention to this matter. I enjoyed speaking with you the other day and apologize for having to bring a delicate issue such as this to your attention.

Very truly yours,



Walter Steimel, Jr.