

agreement would be inconsistent with the text of the *Merger Conditions* and could impair the ability of unaffiliated third parties to exercise their rights under the *SBC/Ameritech Merger Order* and the Commission's rules.

Please do not hesitate to contact me if I can be of further assistance. You may also contact Anthony Dale in the Common Carrier Bureau directly at (202) 418-2260 for further information on this matter.

Sincerely,

Lawrence E. Strickling  
Chief, Common Carrier Bureau



**RHYTHMS LINKS, INC.**

1/18/00

**DOCKET NO. 21939**

**INTERCONNECTION AGREEMENT § PUBLIC UTILITY COMMISSION**  
**BETWEEN SBC ADVANCED SOLUTIONS, §**  
**INC. AND SOUTHWESTERN BELL § OF TEXAS**  
**TELEPHONE COMPANY AS APPROVED §**  
**ON OCTOBER 13, 1999 IN PROJECT NO. §**  
**16251, ORDER NO. 55, APPROVING THE §**  
**TEXAS 271 AGREEMENT (T2A) §**

**MOTION OF RHYTHMS LINKS, INC., NORTHPOINT  
COMMUNICATIONS, INC. AND COVAD COMMUNICATIONS COMPANY  
TO REQUIRE SBC ADVANCED SOLUTIONS, INC. TO SUPPLEMENT ITS  
INTERCONNECTION AGREEMENT WITH  
SOUTHWESTERN BELL TELEPHONE COMPANY**

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**Date Filed:**  
January 18, 2000

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DOCKET NO. 21939

INTERCONNECTION AGREEMENT	§	PUBLIC UTILITY COMMISSION
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**MOTION OF RHYTHMS LINKS, INC., NORTHPOINT COMMUNICATIONS, INC. AND COVAD COMMUNICATIONS COMPANY TO REQUIRE SBC ADVANCED SOLUTIONS, INC. TO SUPPLEMENT ITS INTERCONNECTION AGREEMENT WITH SOUTHWESTERN BELL TELEPHONE COMPANY**

TO THE HONORABLE COMMISSION:—

NOW COME Rhythms Links, Inc. (“Rhythms”), NorthPoint Communications, Inc. (“NorthPoint”), and Covad Communications Company (“Covad”) (collectively referred to as the “DSL CLECs”), and files this Motion to Require SBC Advanced Solutions, Inc. (“SBC ASI”) to Supplement its Interconnection with Southwestern Bell Telephone Company (“SWBT”) (collectively referred to as the “Applicants”), and in support thereof respectfully show as follows:

**I. Overview**

Southwestern Bell, and its affiliate SBC ASI, claim that they wish to interconnect pursuant to the T2A<sup>1</sup>. The DSL CLECs do not oppose SWBT and its affiliate, or any other carrier, interconnecting pursuant to the terms of the T2A. However, this is not the full set of facts in this

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<sup>1</sup> *Investigation of Southwestern Bell Telephone Company’s Entry Into the Texas InterLATA Telecommunications Market*, Project No. 16251, Order No. 55, Approving the Texas 271 Agreement (October 13, 1999) (“Texas 271 Agreement” or “T2A”).

instance. As with the earlier agreement filed by SWBT and SBC ASI, the companies also operate under additional terms and conditions that are not contained within their interconnection agreement, whether it is the T2A, or some other contract. Indeed, SWBT permits line sharing with SBC ASI that it does not permit with other companies at this time. To the extent there are additional terms and conditions, including line sharing, those additional points of interconnection should be fully available to other similarly situated carriers. As described in detail below, the FCC, in a letter to the Kansas Corporation Commission, on January 12, 2000 confirmed that SWBT must file all the terms and conditions in place with its affiliate regarding line sharing. This same logic and mandate must apply in Texas as well. Therefore, the DSL CLECs urge that the Commission order SWBT and SBC ASI to file their complete set of terms, rates and conditions, including those applicable to line sharing, so that other carriers may opt into that portion of an agreement under Section 252(i) of the Telecommunications Act of 1996 (“FTA”)<sup>2</sup>.

## II. Background

The Applicants originally filed a Joint Application for Approval of Interconnection Agreement under the terms of the FTA and the Public Utility Regulatory Act (“PURA”)<sup>3</sup> on October 5, 1999. On December 15, 1999, the Applicants withdrew their application, citing the “lengthy exceptions by DSL CLECs to the negotiated agreement”, as well as the fact that the Texas 271 Agreement had not been approved at the time of filing the application. The Applicants filed on

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<sup>2</sup> 47 U.S.C. (West Supp. 1997).

<sup>3</sup> TEX. UTIL. CODE ANN. §§ 11.001-63.063 (Vernon 1998).

January 7, 2000, an executed signature page opting into the T2A, and the DSL CLECs oppose this filing for the same reasons argued in the Exceptions to the Proposed Order Approving Interconnection Agreement, filed in P.U.C. Docket No. 21481 on December 7, 1999. As mandated in FTA § 252(e), the standard for review must include whether the Interconnection Agreement would discriminate against a telecommunications carrier that is not a party to the Agreement and whether the implementation would be consistent with the public interest. The Agreement between SWBT and SBC ASI is discriminatory and contrary to the public interest because it does not contain all the terms and conditions under which the Applicants *actually* interact. In order to cure this deficiency, the Agreement must be supplemented to include in sufficient commercial detail the precise conditions under which services, including line sharing, would be available to SBC ASI. Unless SBC ASI is required to provide such details, CLECs cannot be assured they can fully exercise their rights under the FTA § 252(i) to opt into the precise provisions SWBT is offering SBC ASI.

### **III. The Agreement Does Not Include All Terms and Conditions**

Merger Condition I.5. a requires that SBC ASI include all terms and conditions. Specifically, the FCC required as a condition of SBC's merger with Ameritech, that SBC ASI:

. . . file for approval pursuant to 47 U.S.C. Sections 251 and 252 interconnection agreement(s) with the affiliated incumbent LEC setting forth terms, conditions and prices for the provision of interconnection, telecommunications services, and network elements that the affiliated incumbent LEC shall provide to the separate Advanced Services affiliate for the purposes of the separate affiliate's provision of Advanced Services. Such agreement(s) shall be sufficiently detailed to permit telecommunications carriers to exercise effectively their "pick-and-choose" rights under 47 U.S.C. § 252(i) and the Commission's rules implementing that section. (Merger Order, Attachment on Merger Conditions, Paragraph I.5.a)

While the T2A may be a complete agreement, it is clear from SWBT's own Internet cite, as well as its testimony in the 271 proceeding in Texas, that it is offering line sharing to its affiliate, yet nothing in the T2A expresses terms and conditions under which other CLECs can obtain line sharing arrangements.

this can be done. Therefore line sharing is being provided pursuant to some other special agreement, that is neither publicly filed, nor available to other carriers. This is de facto discriminatory.

#### A. Line Sharing

##### 1. The Lack of Terms and Conditions is Discriminatory Per Se.

Line sharing refers to the ability to use the same loop to provision both POTS and data services. SWBT and its affiliates stand to gain significant competitive advantage from line sharing because they can provision DSL-based services on the same loop that is already used to provide POTS service to a customer. Thus far, SWBT has refused to permit line sharing with non-affiliated CLECs. There is no technical reason that a CLECs' DSL-based service should be precluded from the loop while SWBT's DSL service is allowed to share the spectrum on the loop. Allowing line sharing with its own affiliate, while flatly denying it to any non-affiliated entity is *per se* discriminatory.

SWBT recently acknowledged publicly that it permits line sharing between itself and SBC ASI. In a discussion during Panel 5 of the Public Interest Workshop in the Section 271 proceeding on November 2, 1999,<sup>4</sup> SWBT made it clear that it will not allow line sharing with non-affiliated

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<sup>4</sup> Project No. 16251; *Investigation of Southwestern Bell Company's Entry into the Texas IntraLata Telecommunications Market*. Sworn statement of SWBT witness, Glen Sirles. (Tr. p. 373).

CLECs until it is ordered to do so by the Commission.

Additionally, SWBT reiterated that it will allow line sharing only with SBC ASI. In a recent news release, dated October 18, 1999, SBC indicates that it intends to offer its DSL service on shared lines to residential customers to reach 80% of its customer base in all of its franchised territories, including Texas. Such disparate treatment, which favors SWBT's own affiliate at the expense of CLECs is unreasonably discriminatory. Indeed, Covad, Rhythms and NorthPoint have requested line sharing, but SWBT has rejected these requests. (See correspondence on this issue, Attachment A).

In order to comply with the FTA and the FCC's SBC merger conditions, the SBC ASI Agreement must contain sufficient detail concerning the line sharing issue to enable other carriers to opt into that portion of the Agreement pursuant to FTA § 252(i). As noted above, the T2A simply does not address line sharing, and to the extent SWBT and SBC ASI wish to utilize the T2A, either line sharing must be affirmatively precluded, or those terms, rates and conditions must be filed and made available to other carriers. The type of detail necessary to fully address line sharing must include installation intervals, placement of splitters and cross-connects or other necessary elements of xDSL service. It must describe the rates, and precise terms and conditions associated with line sharing. Indeed, one can only glean that line sharing is being offered to ASI by exploring the SBC web site and finding that SWBT and SBC ASI have a two page agreement entitled, "Services: Interim Line Sharing" that allows line sharing (Attachment B).

The Interim Line Sharing Agreement is an exclusive agreement between SWBT and SBC ASI, and is not available to other carriers. It clearly is not part of the T2A. To make a bad situation

worse, the terms of the line sharing contained within the Interim Line Sharing Agreement are not detailed, and do not meet the requirements of the Merger Conditions for sufficient detail to enable an informed competitor to "Pick and Choose" the terms and conditions, even if these had been properly filed with the Texas Commission. Not only does this side agreement between SWBT and SBC ASI limit the availability of the line sharing to any other CLEC, its lack of detail makes it impossible for CLECs to determine whether SWBT is treating affiliated and non-affiliated DSL providers at parity as required by the FTA. Without such information, there is little that an aggrieved CLEC can do to protect its interests.

SWBT may argue that its version of "surrogate" line sharing is sufficient to avoid charges of discrimination. However, surrogate line sharing is not adequate to remedy the discriminatory effects of the Agreement. Surrogate line sharing will greatly favor SBC ASI over other competitors. SBC ASI will not be required to pay the nonrecurring and recurring costs that DSL CLECs must incur. Moreover, there is a much higher incremental cost to competitors than to SBC ASI. Finally, because SBC ASI and SWBT are not financially divested, the 50% charge SBC ASI pays is a mere fiction. The actual cost to SBC ASI is the incremental cost of the loop expressed in their federal ADSL tariff cost studies. As a fundamental matter of fairness, and in accordance with state and federal law, the charges SWBT assesses should be identical to the charges SWBT's own affiliate pays. Therefore, only actual identical treatment on the issue of line sharing will ameliorate the concerns of discriminatory treatment.

Most noteworthy, the Federal Communications Commission released a letter to the Kansas Corporation Commission on January 12, 2000 addressing this very issue. The Kansas Corporation

Commission inquired of the FCC whether the line sharing terms and conditions with SBC's affiliate must be provided directly to the State Commission for review or whether posting the general terms on the SBC Web site is adequate. The Common Carrier Bureau unequivocally required the filing of such information. In particular, the FCC stated:

In accordance with the *Merger Conditions*, the interconnection agreement between SBC/Ameritech incumbent LECs and their advanced services affiliate must contain information about the Interim Line Sharing arrangement, even though SBC/Ameritech incumbent LECs may provide such arrangements to their affiliates on an exclusive basis for the interim period. . . . inclusion of information about the Interim Line Sharing arrangements is necessary to show that the affiliates operate at arm's length, and to inform the Commission, state commissions, and the public about important operational aspects of the relationship. Moreover, inclusion of the Interim Line Sharing arrangements is necessary to satisfy the "sufficiently detailed" requirement for interconnection agreement between SBC/Ameritech incumbent LECs and their advanced service affiliates. (Letter at p. 2, Attachment C).

The FCC went on to conclude:

The plain language of the *Merger Conditions* requires the Surrogate Line Sharing Charges to be contained within the interconnection agreement filed with the appropriate state commissions. Failure to include the Surrogate Line Sharing Charges in the interconnection agreement would be inconsistent with the text of the *Merger Conditions* and could impair the ability of unaffiliated third parties to exercise their rights under the *SBC/Ameritech Merger Order* and the Commission's Rules. (Attachment C, pp. 2-3).

## 2. Remedy for Line Sharing Omission

While the DSL CLECs acknowledge that the Commission already approved the adoption of the T2A, it is likely that these facts were not known by the Commission at the time of approval. The proper remedy for the lack of detail on line sharing in the T2A is to require SBC ASI immediately to supplement its agreement with SWBT with the precise terms, conditions, rates and details of Line Sharing as well as anything else that may not be contained within the T2A master agreement. The Commission should suspend SBC ASI's ability to interconnect under the T2A until all terms and

conditions are fully available publicly. If the Commission allows the use of the T2A, it should do so only after SWBT and SBC ASI supplement the filing to include the precise details, terms, and conditions of how line sharing will occur, including provisioning intervals and all relevant cost and pricing information. In addition, there should be an affirmative statement that carriers can opt into the terms, conditions and provisions of SBC ASI's line sharing agreement without having to terminate their current agreements with SWBT, or modify any existing terms and conditions. The DSL CLECs specifically propose the following ordering language:

The Commission finds good cause to suspend SWBT/ SBC ASI's adoption of the T2A based on the fact that the T2A does not contain the full set of terms and conditions for interconnection between the Parties. SWBT and SBC ASI must file within five days the detailed terms and conditions, including ordering, qualification if any, provisioning, maintenance, and rates associated with line sharing. These terms and conditions must indicate that they are equally available, on a pick and choose basis to any other carrier seeking to opt into the specific terms and conditions applicable to line sharing only. The Commission shall reconsider final approval of the T2A adoption after the terms and conditions associated with line sharing are clearly delineated and fully implemented by SWBT making available line sharing under the same terms and conditions to CLECs.

#### **IV. CONCLUSION**

The Commission should suspend SBC Advanced Solutions, Inc.'s use of the T2A for interconnection with Southwestern Bell Telephone Company until such time as SBC ASI and SWBT file the complete terms and conditions associated with line sharing, and make those available on a pick and choose basis to all carriers.

WHEREFORE PREMISES CONSIDERED, the DSL CLECs respectfully request that SBC ASI's adoption of the T2A be suspended until such time as the issues raised in this Opposition can be fully addressed, and nondiscriminatory terms and conditions fully implemented, and for such further relief to which they show themselves to be entitled.

Respectfully submitted,

Stephen P. Bowen  
Blumenfeld & Cohen  
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San Francisco, California 94111  
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Facsimile:(415) 394-7505

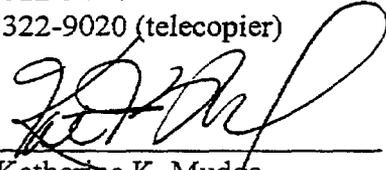
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Dineen J. Majcher  
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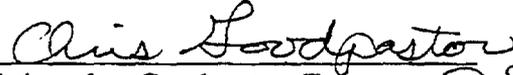
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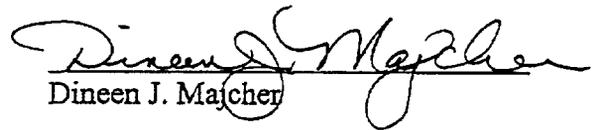
By:   
Christopher Goodpastor, Esq.   
State Bar No. 00791991

ATTORNEYS FOR COVAD  
COMMUNICATIONS COMPANY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the counsel of record via hand-delivery, first-class mail, or telecopier this 18<sup>th</sup> day of January, 2000.

Mr. Robert J. Hearon, Jr.  
Graves, Dougherty, Hearon & Moody  
A Professional Corporation  
515 Congress Avenue, Suite 2300  
P.O. Box 98  
Austin, Texas 78767-0098

  
Dineen J. Majcher

ATTACHMENT A



April 22, 1999

Ms. April Rodewald-Foul, Esq.  
Pacific Telesis Group  
2500 Camino Ramon, 2W904  
San Ramon, CA 94583

Amy Wagoner, Esq.  
Southwestern Bell Telephone Company  
One Bell Central  
800 N. Harvey, Room 310  
Oklahoma City, OK 73102

Re: Provisioning DSL over SBC Voice Service

Dear April and Amy,

As you know, most consumers in California and Texas have SBC (Pacific Bell in California and Southwestern Bell in Texas) analog voice service. Covad is requesting the right to provision its high-speed ADSL data service over the existing unused high frequency portion of the same loop over which SBC provides its analog voice service. Both SBC companies currently provision their own ADSL data service in this fashion. Please let me know by this Tuesday, April 27, 1999 if SBC will agree to Covad's request.

Very truly yours

A handwritten signature in dark ink, appearing to read "Dhruv Khanna", written over a horizontal line.

Dhruv Khanna  
Executive Vice President & General Counsel

Andy R. Wagner  
Senior Counsel

Southwestern Bell Telephone  
One Bell Center  
800 N. Harvey, Room 510  
Oklahoma City, OK 73102  
Phone: (405) 251-6754  
Fax: (405) 252-7773  
E-Mail: arw6078@sbccom



FAX: (408) 844-7501

April 26, 1999

Dhruv Khanna  
Vice President & General Counsel  
Covad Communications Company  
2330 Central Expressway  
Santa Clara, California 95050

Dear Dhruv:

On behalf of Southwestern Bell Telephone Company ("SWBT"), this is in response to your April 22, 1999 letter requesting the right for Covad "to provision its high-speed ADSL data service over the existing unused high frequency portion of the same loop over which [SWBT] provides its analog voice service." You allege that SWBT currently provisions its own ADSL data service in this fashion. Finally, you demanded a response by Tuesday, April 22, 1999, advising whether SWBT will agree to such request. Given the fact that your letter was not faxed to my office until after the close of business on Thursday, April 22, I can only assume that you intended to demand a response by Tuesday, April 27.

In any event, this is to advise you that SWBT is not amenable to your proposal. As you probably know, the California Public Utilities Commission, in the PDO Arbitration,<sup>1</sup> explicitly found that SWBT's affiliate, Pacific Bell, could not be compelled to make available as a separate unbundled network element a portion of the capacity of a local loop which Pacific Bell was currently using to provide voice communications or other services to its own end user/customer. Like Covad's request now, that dispute arose as a result of PDO's request that Pacific Bell make available a portion of the existing local loop to allow PDO to provide high-speed DSL service.

<sup>1</sup> See In the Matter of the Petition of PDO Communications, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell; Public Utilities Commission of the State of California; Application 98-06-052.

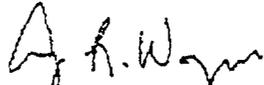
Dhruv Khanna  
April 26, 1999  
Page Two

In addition, the FCC recently issued a Further Notice of Proposed Rulemaking which addresses the issue of whether "line sharing" between two different providers should be required.<sup>2</sup> The term "line sharing" as used in the Advanced Services NPRM, refers to "whether two different service providers should be allowed to offer services over the same line, with each provider utilizing different frequencies to transport voice or data over that line." Thus, while this issue is currently subject to comment before the FCC, it is SWBT's position that it should not be compelled to share lines with its competitors due to a host of operational issues that would arise as a result.

Until such time as the FCC's current rulemaking has been completed, FCC Rule 51.309, adopted by the FCC in its First Report and Order, remains in effect and will continue to govern the use of unbundled network elements. That Rule expressly provides "(c) [a] telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility...."<sup>3</sup> Therefore, SWBT is currently under no obligation to allow Covad to provision its high-speed ADSL data service over the same loop SWBT provides its analog voice service.

Finally, Covad's proposal is clearly different from the manner in which SWBT currently provisions its tariffed ADSL service since SWBT's provision of such service does not involve line sharing by two carriers. In the case of SWBT's ADSL service, SWBT controls the loop, the electronics placed on the loop as well as all installation and maintenance of the loop and associated facilities used for both voice and data traffic.

Yours very truly,

  
AMY R. WAGNER

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<sup>2</sup> See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-43 (rel. March 31, 1999), Paragraphs 92-107 (Advanced Services NPRM).

<sup>3</sup> See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98 and 95-183, FCC 96-325 (rel. August 8, 1996) (First Report and Order), Appendix B "Final Rules" at B-17. See also Paragraph 385, First Report and Order.



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Regional Counsel

direct dial: (512) 502-1713  
email: cgoodpas@covad.com

November 18, 1999

Ms. Amy Wagner  
Southwestern Bell Telephone  
One Bell Central  
300 N. Harvey, Room 310  
Oklahoma City, OK 75102

*Via Facsimile and US Mail*

Mr. Thomas Powell  
SNET, Inc.  
530 Preston Ave.  
Meriden, CT 06450

*Via Email and US Mail*

Re: *ADSL - Request for new unbundled network element*

Dear Ms. Wagner and Mr. Powell:

Pursuant to section 251(c)(3)<sup>1</sup> and other provisions of the Communications Act of 1934, as amended, Covad Communications Company, on behalf of itself and its affiliate, DIECA Communications Inc., hereby requests from Southwestern Bell Telephone Company ("SWBT") and SNET, Inc. immediate access to the high frequency portion of the loop as an unbundled network element (UNE). The Federal Communications Commission, in an order adopted today in CC Docket Nos. 98-147 and 96-98, required incumbent LECs to provide unbundled access to the high frequency portion of the loop, also known as line sharing, upon request from a carrier. This request is made pursuant to today's FCC decision.

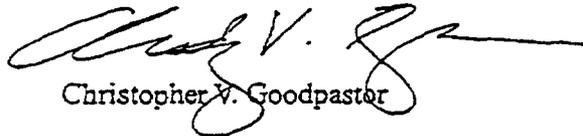
We encourage SWBT and SNET to make this new UNE available to us as soon as possible, and we look forward to positive discussions and implementation of such access with you in the immediate future. Nothing in this request shall be construed as a waiver of our claims related to previous denials of such access to Covad and its affiliates by SBC Communications, Inc., SWBT, SNET or any of their affiliates.

<sup>1</sup> 47 U.S.C. § 251(c)(3).

November 18, 1999  
Page 2

Please contact me as soon as possible to set up a time to begin our discussions.

Very truly yours,



Christopher V. Goodpastor

Cc: Ms. Patricia Hogue  
Lead Negotiator, Local Provider Account Team  
Southwestern Bell Telephone  
Four Bell Plaza, 7<sup>th</sup> Floor  
Dallas, Texas 75202-5398

Amy R. Wagner  
Senior Counsel

Southwestern Bell Telephone  
One Bell Central  
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Phone 405 291-6754  
Fax 405 256 7773  
E-Mail: aw567@sbcc.com



FAX: (419) 818-5568

November 19, 1999

Christopher V. Goodpastor  
Regional Counsel  
Covad Communications Company  
9600 Great Hills Trail  
Suite 150 W  
Austin, Texas 78759

Dear Mr. Goodpastor:

This is in response to your November 18, 1999 letter requesting that Southwestern Bell Telephone Company ("SWBT") and SNET, Inc. provide Covad with "immediate access to the high frequency portion of the loop as an unbundled network element (UNE)."

In your letter, you state that the FCC, in an order adopted yesterday in CC Docket Nos. 98-147 and 96-98, required incumbent LECs to provide unbundled access to the high frequency portion of the loop, also known as line sharing, upon request from a carrier. You also note that your request is being made pursuant to the FCC's decision.

As I am sure you are aware, the FCC's Advanced Services Third Report and Order adopted yesterday by the FCC has not yet been issued. Rather, the FCC has only issued a press release which indicated that it has adopted rules to promote competition for advanced services, by directing local telephone companies to share their telephone lines with providers of high speed Internet access and other data services. The FCC also noted that the Order permits competitive carriers to obtain access to the high-frequency portion of the local loop from the incumbent LECs over which the incumbent LEC provides voice services.

Christopher V. Goodpastor  
November 19, 1999  
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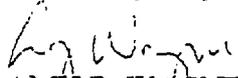
It is our understanding the FCC has determined that unbundling of the upper portion of the loop frequency—line sharing, can be implemented in up to 180 days and that the 180 day clock will not begin until the Order is effective (30 days after publication of such Order in the Federal Register).

This represents a change in policy which had previously been embraced by regulators. As you know, the California Public Utilities Commission, in the PDO Arbitration<sup>1</sup>, previously found that Pacific Bell could not be compelled to make available as a separate unbundled network element a portion of the capacity of a local loop which Pacific Bell was currently using to provide voice communications or other services to its own end user/customer.

Consequently, we would like the opportunity to receive and evaluate the Order before we commence negotiations regarding line sharing. Upon completion of our review and evaluation, we would be happy to discuss these issues further with Covad.

In the meantime, however, Covad continues to have the opportunity under the SBC/Ameritech Merger Conditions to avail itself of the 50 percent discount off the lowest monthly recurring charge and 50 percent off the lowest non-recurring line or service connection charge then effective (as more specifically set forth in such Conditions) in those geographic areas where the SBC/Ameritech incumbent LEC provides Interim Line Sharing to a separate Advanced Services Affiliate. Covad also continues to have the ability to maximize the revenue derived from the use of a "line" by buying a UNE loop and using the data part of the spectrum to provide DSL service and the voice spectrum to provide voice telephony and related services.

Yours very truly,

  
AMY R. WAGNER

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<sup>1</sup> See *In the Matter of the Petition of PDO Communications, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell*; Public Utilities Commission of the State of California; Application 98-06-052.

John T. Stankey  
Vice President  
Industry Markets

SBC Telecommunications, Inc.  
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October 28, 1999

*Advance Copy Via Facsimile.*

*Original Letter To Follow Via U.S. Mail.*

Mr. Eric H. Geis  
Vice President-National Deployment  
Rhythms Links Inc.  
6933 South Revere Parkway  
Englewood, Colorado 80112-3931

Request for Line Sharing

Dear Eric:

This is in response to your October 21, 1999 letter demanding a response to ACI's request for SWBT to immediately provide line sharing to Rhythms in Texas by October 28, 1999. We also note that your letter indicated that it was sent via facsimile and via U.S. Mail. In fact, we did not receive such letter via either method. Instead, such letter was sent via Federal Express and was not received by SWBT until October 27, 1999.

As I am sure you are aware, the FCC currently has pending a Further Notice of Proposed Rulemaking in which it is considering whether "line sharing" between two different providers should be required.<sup>1</sup> Until such a decision is rendered, our position remains that we should not be compelled to share lines with our competitors pending resolution of operational issues that arise as a result of such sharing. At least one state agency regulating SBC's telephone subsidiaries has expressly upheld SBC's position that line sharing should not be required.

Also, FCC Rule 51.309, adopted by the FCC in its First Report and Order, remains in effect and will continue to govern the use of unbundled network elements. That Rule expressly provides: "(c) [a] telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility..."<sup>2</sup> Therefore, mandatory line sharing would be contrary to the governing rules.

<sup>1</sup> See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), Paragraph 92-107 (Advanced Services NPRM).

<sup>2</sup> See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98 and 05-185, FCC 06-325 (rel. August 8, 1996) (First Report and Order), Appendix B "Final Rules" at B-17. See also Paragraph 385, First Report and Order.

October 28, 1999

In any event, pursuant to the SBC/Ameritech Merger Conditions, recently approved by the FCC<sup>3</sup>, SBC/Ameritech has committed to provide "virtual" line sharing until line sharing is found to be technically feasible by the FCC, placing Rhythms in the same economic position as though it were actually line sharing. Those Merger Conditions, which were approved by the FCC, state that SBC/Ameritech may provide Interim Line Sharing to a separate Advanced Services Affiliate on an *exclusive* basis pursuant to the terms and conditions set forth in such Conditions. However, where the SBC/Ameritech incumbent LEC provides Interim Line Sharing to a separate Advanced Services Affiliate, the incumbent LEC will charge unaffiliated providers of Advanced Services the Surrogate Line Sharing charges for use of an unbundled local loop in the same geographic area as more specifically described in such Conditions. The Merger Conditions state that the Surrogate Line Sharing Charges shall be 50-percent of the lowest monthly recurring charge, 50 percent of the lowest non-recurring line or service connection charge, and 100 percent of the lowest non-recurring service order charge for the unbundled local loop then effective that have been established by the state commission pursuant to Section 252(d)(1) of the Act.

Finally, Rhythms has the same ability as SBC to maximize the revenue derived from the use of a "line" by buying a UNE loop and using the data part of the spectrum to provide DSL service and the voice spectrum to provide voice telephony and related services.

Eric, in the future, we would request that you extend SWBT the courtesy of "allowing" us more than one day to respond to a letter.

Thank you for your assistance.

Sincerely,



John T. Stankey  
Vice President-Industry Markets

<sup>3</sup> See *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, CC Docket No. 98-141 (rel. October 8, 1999).

## SERVICES: INTERIM LINE SHARING

The following provisions shall apply to Interim Line Sharing (the "Service") furnished to SBC Advanced Solutions, Inc. ("Buyer") by Southwestern Bell Telephone Company ("Seller") pursuant to this Schedule and the General Services Agreement (the "Agreement") to which it is attached and of which it forms a part:

### Section 1. SCOPE OF SERVICES

Services covered under this Schedule shall consist of those functions performed by Seller as hereafter specifically described below and in individual Pricing Addenda attached hereto.

Southwestern Bell Telephone Company shall provide interim line sharing capability (Line Sharing) to ASI on an exclusive basis in accordance with the Federal Communications Commission's Merger Conditions in CC Docket No. 98-141 (Merger Conditions), pursuant to the follow terms and conditions:

The Parties understand that Southwestern Bell Telephone Company may provide Line Sharing to ASI within a certain geographic area for the provision of Advanced Services activated prior to the time that line sharing is provided to unaffiliated providers of Advanced Services with the same geographic area. Advanced Services as used herein is as defined in the Merger Conditions.

Southwestern Bell Telephone Company shall provide ASI with such Line Sharing in those instances where: 1) Southwestern Bell Telephone Company is able to provision the Advanced Service over the same loop that Southwestern Bell Telephone Company is using to provide voice grade services, a that terms is defined in the Merger Conditions, on either a retail or wholesale basis, and (2) the Advanced Service fits within the spectral map as described in the non-overlapping option contained in ANSI standard T1.413-1998, as that standard evolves from time to time and is used by Southwestern Bell Telephone Company.

In each instance the Telco provides such Line Sharing to ASI, the Telco shall charge ASI a Surrogate Line Sharing Charge which shall s shall be fifty (50) percent of the lowest monthly recurring charge, fifty (50) percent of the lowest non-recurring line or service connection charge, and 100 percent of the lowest service order charges (i.e. there is no discount for non-recurring charges), for the unbundled local loop then effective that have been established by the relevant state commission pursuant to 47 U.S.C. §252(d)(1). Surrogate Line Sharing Charges shall not apply retroactively to charges for Line Sharing incurred prior to the effective date of the Surrogate Line Sharing Charges, but will apply to charges incurred after the effective date of the Surrogate Line Sharing Charge for both i) recurring charges for qualifying loops in-service, and ii) recurring and non-recurring charges for new installations of qualifying loops. In order to be entitled to the Surrogate Line Sharing Charges, however, ASI must first certify to the Telco that it is not providing voice grade service in conjunction with Advanced Services over the broadband channel.

**Section 2. PRICE**

Buyer agrees to pay for the Services provided by Seller in accordance with the fee schedule set forth in the Pricing Addendum attached hereto and by reference made a part hereof.

**SECTION 3. TERMS**

This Schedule will cover the period from 10 business days following the Ameritech Merger Order, and will continue thereafter until canceled by either party, as provided in the Agreement.

**Section 4. LIMITATION OF LIABILITY**

SOUTHWESTERN BELL TELEPHONE COMPANY WILL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, ATTRIBUTABLE TO OR RESULTING FROM ITS PERFORMANCE HEREUNDER. In no event will Southwestern Bell Telephone Company's liability for damages caused by its failure to supply material or perform services in a proper or timely manner exceed the amount paid by Buyer to Seller for such materials or services.

IN WITNESS WHEREOF, the parties have caused this Schedule to be executed, in duplicate, by their duly authorized representative as of the dates set forth below.

Nothing herein shall be construed to supercede the separate Advanced Solutions Affiliate sunset provisions or the sunset provisions set forth in the merger conditions.

**BUYER:**  
SBC Advanced Solutions, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SELLER:**  
Southwestern Bell Telephone Company

By: \_\_\_\_\_  
Name: Karol Sweitzer  
Title: Exec. Dir. - Finance  
Date: \_\_\_\_\_