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

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FEDERAL COMMUNICATIONS COMMISSION
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In the matter of:)	
)	
Implementation of the Telecommunications Act of 1996;)	CC Docket No. 96-115
)	
Telecommunication Carriers' Use of Customer Proprietary Network Information and Other Customer Information)	
)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
Provision of Directory Listing Information Under the Communications Act of 1934, As Amended)	CC Docket No. 99-273

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell, Nevada Bell, the Southern New England Telephone Company, and Ameritech Corporation (collectively "SBC") hereby reply to the opposition of Listing Services Solutions, Inc. ("LSSII") to SBC's petition for clarification or reconsideration of the Commission's *SLI Order*.¹

1. Listing Solutions Misconstrue SBC's Petition.

In its Petition, SBC argued that, in light of the Commission's conclusion in the *UNE Remand Order* that incumbent local exchange carriers ("ILECs") need not provide unbundled access to OS/DA services, LECs should not be required, pursuant to section

¹ *Implementation of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, FCC 99-227 (rel. Sept. 9, 1999) ("*SLI Order*").

251(b)(3), to unbundle the facilities used to provide these services, and, in particular, adjunct features and software. SBC does not propose to limit competing carriers' access to the DA listings contained in LEC databases in a readily accessible electronic format, including daily updates.² Moreover, in its reply to oppositions by AT&T and INFONXX to its petition for reconsideration, SBC reiterated that it does not seek to deny other carriers access to DA listing data. Indeed, SBC already provides DA listings to third-party DA providers.

LSSI's opposition, like those of AT&T and INFONXX before it, misconstrues SBC's petition and opposes a request SBC did not make. In particular, LSSI argues that SBC is proposing that the Commission no longer require LECs to provide competing carriers with access to DA database listings.³ SBC, however, agrees that pursuant to section 251(b)(3), the Commission may require LECs to provide access to LEC OS/DA listings in electronic format (including daily updates) to the extent necessary to enable competing carriers to provide customers with DA listings, without dialing delays. Moreover, SBC does not propose that the Commission lift such a requirement here.

However, SBC does not agree that, pursuant to section 251(b)(3), the Commission can or should require all LECs to provide competing carriers unbundled access to all of the facilities (including ancillary services and software) used to provide OS/DA services.

² SBC notes that, in its petition, it argued that the Commission should not require LECs to provide competing carriers access to their DA databases pursuant to section 251(b)(3) if it found that access to such databases was not required under section 251(c)(3). After SBC filed its petition for reconsideration, the Commission released the *UNE Remand Order*, in which it concluded that competitors are not impaired without access to ILEC OS/DA services because, *inter alia*, they can obtain nondiscriminatory access to all LECs' OS/DA, including OS/DA databases. *UNE Remand Order*, FCC 99-238 at para. 441-42. In light of this conclusion, SBC does not here challenge the right of competing carriers to obtain nondiscriminatory access to DA data or DA databases.

³ LSSI Opposition at 2, 5-6.

As SBC pointed out in its petition, unbundling is the exclusive province of section 251(c)(3), and is an obligation specifically limited to incumbent LECs. Moreover, unbundling is an obligation that is specifically subject to the “necessary and impair” standard in section 251(d)(2). As such, the Commission may not require all LECs to provide unbundled access to all of the facilities they use to provide OS/DA services under section 251(b)(3). Such a requirement plainly is inconsistent with the careful balance of obligations adopted in section 251.⁴

Having concluded that competing carriers are not impaired if they are denied access to incumbent LEC’s OS/DA services, the Commission should not, even if it could, require all LECs to provide unbundled access to ancillary OS/DA systems pursuant to section 251(b)(3). In the *UNE Remand Order*, the Commission found that competition for OS/DA services has existed since “divestiture,” and indeed has “accelerated.”⁵ The Commission further found the quality of “the functionality of third-party supplied OS/DA sufficiently equivalent to that of the incumbent’s service . . . that a requesting carrier’s ability to provide the services it seeks to offer is not impaired without access to the incumbent’s OS/DA service.”⁶ This competition has developed even though third-party providers have never obtained unbundled access to LEC ancillary services. As such,

⁴ Indeed, it would be ironic in the extreme if incumbent LECs are not required to offer unbundled access to OS/DA under the more onerous provisions of section 251(c)(3), while all LECs are required to provide such access to ancillary proprietary OS/DA services and software pursuant to 251(b)(3).

⁵ *UNE Remand Order*, FCC 99-238 at para. 447.

⁶ *Id.* at para. 456. The Commission may only require unbundling pursuant to section 251(c)(3), and only where the necessary and impair standard in section 251(d)(2) is satisfied. And having concluded that competing carriers are not impaired without unbundled access to ILEC OS/DA, the Commission cannot require all LECs to unbundle all of their DA facilities pursuant to section 251(b)(3). Accordingly, the Commission should clarify that, while LECs must provide competing LECs nondiscriminatory access to DA data in an electronic format (including through daily updates), they need not provide unbundled access to all DA facilities, and, in particular, adjunct features.

LSSI' claim that competing carriers require access to ancillary proprietary OS/DA services and software to offer OS/DA service strains credulity.

LSSI, however, argues that granting SBC's petition "would reverse the DA access rights that have increased competition in the DA market."⁷ In particular, LSSI contends that "SBC's request regarding adjunct features, if granted, would anticompetitively and unduly limit competitors' ability to offer the types of services that they now offer."⁸ LSSI' claim is meritless. Indeed, it is contradicted by the very evidence the Commission relied upon in the *UNE Remand Proceeding* to lift the OS/DA unbundling requirement. In that proceeding, the Commission concluded that that there is vibrant and growing competition for OS/DA services, even though SBC and other LECs have never provided unbundled access to adjunct features. Consequently, the Commission should reject LSSI's contention that competing providers of OS/DA services require unbundled access to adjunct features to offer the types of services they now offer.

The Commission therefore should clarify that LECs need not provide unbundled access to ancillary OS/DA services and software that are separate from their databases, and which they use to facilitate their utilization of those databases. Granting this request will not deny competing carriers access to the listing information and facilities they need (including subscriber list information and directory assistance listings, either in bulk, with daily updates, or by query via direct access to the DA database) to obtain dialing parity or provide competing DA services.

⁷ LSSI at 3.

⁸ *Id.* at 8.

2. SBC Proposes That The Commission Adopt The Same Mechanism To Respond To Excessive And Conflicting Requests That It Authorized For SLI.

In its petition, SBC also asked the Commission to extend to DA listing data requests the same procedure it adopted in the *SLI Order* for responding to “multiple or conflicting” requests for subscriber list information (“SLI”) that “overburden a carrier’s internal systems.”⁹ LSSI opposes SBC’s request. In particular, LSSI mischaracterizes SBC’s proposal as an “attempt to dilute competitors’ rights” by “independently control[ing] the delivery times of listing information.”¹⁰ It claims that, unlike SLI, DA listing data requests are predictable and, therefore, LECs should be able to accommodate all such requests.

SBC, however, does not seek unfettered discretion to control or delay delivery of DA listing data, or to dilute competitors’ access rights. Rather, SBC seeks merely to establish a procedure for responding to multiple or conflicting requests that overwhelm its systems and, thereby, preclude delivery in the normal timeframe. Although SBC will always work to fulfill its customers expectations,¹¹ its proposal simply recognizes that there may be instances in which multiple or conflicting requests for DA listings will exceed capacity, and establishes a procedure in advance for dealing with such requests on an expedited and nondiscriminatory basis. As is the case with SLI, if any dispute regarding a LEC’s ability to respond to multiple DA listing requests arises, the burden

⁹ SBC Petition at 1, 3-4 (citing *SLI Order*, FCC 99-227 at para 68.).

¹⁰ LSSI at 9-10.

¹¹ Indeed, because DA listings are a product that SBC offers on a wholesale basis, it is in SBC’s business interest to ensure that it promptly fulfills all DA listing requests.

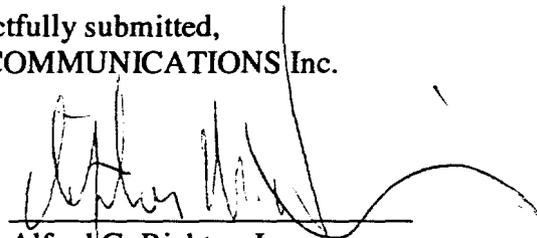
will be on the LEC to show that its systems cannot accommodate all such requests within normal timeframes.

LSSI's assertion that SBC's proposal is anticompetitive therefore is a red herring. To the contrary, SBC's proposal is designed to assure nondiscriminatory treatment for all. Moreover, a LECs' ability to delay delivery of DA listings data under SBC's proposal would be narrowly circumscribed, and the Commission would retain the authority to deal harshly with any abuses if they arise. Thus, there is little or no risk that that granting SBC's proposal would hinder competition.

CONCLUSION

For the above reasons, SBC urges the Commission to clarify that LECs need not provide unbundled access to OS/DA ancillary services and software. The Commission also should clarify that the procedure it adopted for processing multiple or conflicting SLI requests on a nondiscriminatory and expedited basis also applies to DA listing requests.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of **SBC Communications, Inc., Reply Comments** has been served on the party below via first class mail – postage prepaid on this 23rd day of February 2000.

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