

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

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)
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)

CC Docket No. 98-141
ASD File No. 99-49

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**Reply Comments of AT&T Corp. in Response to
SBC's Request for Interpretation, Waiver or Modification of the
SBC/Ameritech Merger Conditions**

In response to the Common Carrier Bureau's invitation,¹ AT&T Corp. ("AT&T") submits this reply to comments to the letter request² by SBC Communications Inc. ("SBC") for interpretation, waiver or modification of the merger conditions adopted by the Commission in conjunction with its approval of SBC's acquisition of Ameritech Corporation.³

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¹ Common Carrier Bureau Seeks Comment on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Merger Conditions, FCC Public Notice, CC Docket No. 98-141, ASD File No. 99-49 (rel. Feb. 18, 2000).

² Letter from Paul K. Mancini, Vice President and Assistant General Counsel, SBC, to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC (dated Feb. 15, 2000) ("SBC Letter").

³ 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, CC Docket No. 98-141, Memorandum and Order, FCC 99-279 at ¶¶ 348-518 and Appendix C (rel. Oct. 8, 1999) ("SBC/Ameritech Merger Order"), app. pend. sub. nom. Telecommunications Resellers Ass'n v. FCC, Case No. 99-1441 (D.C. Cir.).

INTRODUCTION AND SUMMARY

The initial comments present an abundance of valuable information and insights that the Bureau must consider in deciding whether to grant SBC's request that, pursuant to the merger conditions, certain items of network equipment may be owned and used by its incumbent local exchange carriers ("ILECs"), such as Southwestern Bell Telephone Company ("SWBT"), rather than SBC's newly formed "separate affiliate," Advanced Solutions, Inc. ("ASI").⁴ While different parties have asked the Bureau to respond to SBC's request in a variety of ways in order to address the potential anticompetitive aspects of SBC's proposal, there is more consensus than may be apparent from a first reading of the comments. In particular, nothing that has been said undermines AT&T's pending plea for prompt resolution of impediments to DSL competition, most notably SBC's continuing failure to enable CLECs using UNE-P to add DSL capabilities to their competitive offerings.

Indeed, there appears to be widespread agreement that SBC's request raises issues that transcend the interpretation of the merger conditions and instead impact fundamental requirements of the Telecommunications Act and of the Commission's implementing orders.⁵ As ALTS and other commenters have correctly recognized,⁶ the Bureau must ensure that the nondiscrimination requirements of the Act are preserved and enforced. Thus, although not everyone shares AT&T's view that SBC's ILECs, not ASI, should own the OCDs and the ADLU cards, the requirements of the statute and of the Commission's implementing orders, and not the

⁴ SBC's inquiry focuses upon ownership of two pieces of network equipment, the Optical Concentration Devices ("OCDs") and ADSL Distribution Line Units ("ADLU cards"), that are a part of SBC's plans to provide DSLAM capabilities through next-generation Digital Loop Carriers ("DLC") deployed in upgraded or newly placed remote terminals ("RTs") throughout SBC's territory (the "Project Pronto architecture").

⁵ See, e.g., ALTS Comments at 4-9, 11-14; DSL Access Telecommunications Alliance ("DATA") Comments at 2-3, 9-22; MCI Comments at 5-7.

⁶ See, e.g., ALTS Comments at 11-13; DATA Comments at 11-13; MCI WorldCom Comments at 5-7.

merger conditions, must in all events control the manner in which all carriers are able to use SBC's proposed network architecture.⁷

There is a general recognition that SBC's proposed Project Pronto architecture will affect competition not only for data but also for voice services and bundled service packages.⁸ This is of special concern to CLECs, such as AT&T, that seek to provide bundled services on a ubiquitous basis. As explained in several other recent filings, AT&T needs, and the law demands that it have, the nondiscriminatory capability to provide a combined package of voice and DSL services to its customers in competition with SBC no later than the time when SBC obtains authority to offer these same services to its customers.⁹ To do so, AT&T needs decisive FCC action to end SBC's obstruction of AT&T's effort to add DSL capabilities to UNE-P.

SBC's obstructionism, as made plain in the materials provided with SBC's request, is not limited to the current operating environment where SBC is preventing AT&T from connecting DSL capabilities to its UNE-P loops in an efficient and non-disruptive manner. It is now evident that SBC intends to resist otherwise technically feasible and pro-competitive uses of its network even when it transitions to forward-looking technologies.¹⁰ SBC's initial filing makes clear the disturbing fact that SBC is unilaterally developing and implementing a network system architecture in an anticompetitive manner. SBC's proposal, as filed, provides incremental

⁷ AT&T Comments at 4 & n. 10 (citing SBC/Ameritech Merger Order at ¶¶ 356, 357, 511).

⁸ AT&T Comments at 2-3, 9-13; ALTS Comments at 1, 8-9; DATA Comments at 18.

⁹ See, e.g., Application of 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 ("SWBT Section 271 Application"), CC Docket No. 00-4, Comments of AT&T in Opposition at 9-27 (filed Jan. 31, 2000); Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147, 96-98, Petition of AT&T for Expedited Clarification or, in the Alternative, for Reconsideration of the Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (filed Feb. 9, 2000).

¹⁰ See ALTS Comments at 5-7; DATA Comments at 2-4, 13-19; MGC Comments at 1-4; Prism Comments at 6-8.

improvement to the pace of deployment of advanced services, but at the same time limits the choice of most retail customers to only SBC – a clearly expressed objective of the company’s Chairman.¹¹

Accordingly, the Commission must reiterate here its commitment to the fundamental requirements of federal law, such as unbundling (including subloop unbundling), remote terminal collocation, operation support systems (“OSS”) provisioning, and nondiscriminatory access to the high-frequency portion of an ILEC’s loops. The Commission should also make clear that such federal law requirements must be implemented across SBC’s multi-state operating territory in a pro-competitive manner and cannot be left to SBC’s unilateral interpretation or lengthy state arbitrations.¹² Such action is necessary to minimize the risk of anti-competitive policies being inextricably interwoven into an SBC network that will serve both its ILECs and CLECs for many years to come.¹³ Finally, the Commission must take action on an expedited

¹¹ SBC Communications, Inc., “SBC Launches \$6 Billion Initiative to Transform it into America’s Largest Single Broadband Provider,” SBC News Release at 5 (Oct. 18, 1999) (SBC’s avowed goal is to ensure that “only SBC will have all the pieces” needed to provide the full package of services that customers want) (quoting SBC Chairman Edward E. Whitacre, Jr.).

¹² Commission guidance on federal law obligations that attach to SBC’s deployment, implementation, and operation of its 13-state network architecture initiative, which covers a sizeable percentage of all local lines in the United States, is critical to facilitate competitive entry, promote deployment of advanced services by all carriers, and enable competitors to provide bundled voice and data services in a prompt, efficient, and non-disruptive manner. Such guidance is also necessary to facilitate consistent interpretation of federal law on a state-by-state basis.

¹³ Although SBC’s data affiliate purports to operate at arm’s length, no efforts were made to determine from the CLEC industry where RT upgrades should occur first, what manufacturer of DLC would best fit the industry’s needs, nor what service capabilities should be deployed as a first priority. See Rall Declaration ¶ 17 (attachment to AT&T’s Comments); see also DATA Comments at 20 (“At the Dallas meeting, SBC made it clear that ‘no CLEC input’ had been sought or obtained in developing their proposed change in network topology”). SBC’s failure to seek unaffiliated carrier input in designing the Project Pronto architecture -- particularly its decision not to include any forecasted demand by unaffiliated CLECs for RT space -- strongly suggests that SBC designed its architecture to accommodate only its own ILECs, and their not-so-separate affiliate, ASI. Indeed, the Commission should separately inquire whether, and to what extent, SBC consulted with ASI before filing its proposed Project Pronto architecture with the Commission.

basis because the architecture is being developed now, and redesign would be costly and time consuming.

II. ARGUMENT

SBC's filing makes clear that its proposed network architecture has the *potential* of becoming an efficient and technically feasible means of allowing both voice and data services to be carried over the same loop. But this potential will be realized only if SBC is required to comply with its nondiscrimination obligations under the Telecommunications Act, and the Commission's implementing rules and orders. As demonstrated by its past behavior, SBC's representations to this Commission are insufficient to guarantee SBC's compliance with the law.¹⁴ Regulatory intervention from the Commission, and not reliance on oral commitments from SBC, is necessary to assure that SBC's design and operation of its proposed network architecture will promote its competitors' use of SBC's network on a full and fair basis.

On its face, SBC's proposed architecture has the potential to create an open, efficient, and forward-looking loop architecture that decreases significantly the length of a copper loop to a subscriber's home. This shorter loop length, in turn, increases the number of overall consumers who can obtain DSL services. If properly implemented, SBC's proposal will also permit all carriers to provide higher data transmission speeds to those customers served by SBC's network architecture.¹⁵ Currently, however, only SBC's not-so-separate affiliate has the opportunity to realize the full benefit of this architecture.¹⁶

¹⁴ For example, as the Commission is surely aware, SBC previously represented to Congress that it could lawfully transfer from the courts to the Commission the prohibition on RBOC provision of interLATA service, only to later pursue a lawsuit challenging the constitutionality of that very action.

¹⁵ See Rall Declaration ¶11.

¹⁶ SBC's supporting materials, coupled with recent statement made by SBC representatives, make clear that SBC intends to deny AT&T, and any other CLEC, access to SBC's network to provide combinations of voice and high-frequency services in the same manner SBC provisions such combinations to its retail consumers. AT&T Comments at 11, 14; Rall Declaration at ¶¶7-11.

The Commission has the authority to assure that SBC implements its network architecture in accordance with the openness and flexibility envisioned by the Act. By ensuring that SBC deploys an open and flexible architecture designed to accommodate the services that all competitors seek to offer consumers, the Commission will promote the goals of the Act to further voice competition and foster the widespread deployment of advanced services. To accomplish these goals, the Commission must take action to minimize concerns regarding certain fundamental issues, such as RT collocation and subloop access, and the ability of CLECs to provide a voice and data service via UNE-P in a prompt, efficient and non-disruptive manner.

In its initial comments, AT&T explained that the Commission's rules and orders, as well as SBC's acknowledgement of the functions provided, support a determination that ownership of the OCDs and ADLU cards should rest with the ILEC.¹⁷ AT&T maintains this view. Nevertheless, the Bureau's resolution of the ownership asset issue presented is secondary to the task of ensuring that all of the nondiscrimination requirements of the Act are enforced against SBC's proposed deployment and operation of its Project Pronto architecture. Indeed, while there may be a range of views with respect to certain aspects of SBC's asset ownership proposal, there is virtual unanimity regarding the fundamental principle: all of the Commission's rules governing collocation, UNEs, OSS provisioning, and access to the high-frequency portion of the loop attach and will be enforced against SBC or -- where necessary -- its unregulated affiliate.¹⁸

In any event, the comments reflect widespread agreement that SBC's ILECs should own the OCD and, more importantly, that SBC's ILECs must provide competitors with access to the OCD as an unbundled network element when it is used to provide fundamental interconnection

¹⁷ AT&T Comments at 3-4, 6-9.

¹⁸ See, e.g., AT&T Comments at 4-5, 9-18; ALTS Comments at 11-14; DATA Comments at 11-19; MCI Comments at 5-8.

capability to CLECs.¹⁹ As SBC states, the “primary function of the OCD is to concentrate and route data signals to various CLECs rather than to provide retail Advanced Services to customers.”²⁰ The OCD, therefore, provides CLECs with access to advanced services, which is different than providing the advanced service itself. Without this functionality, an ILEC could not carry and deliver to a CLEC the traffic generated by the CLEC’s retail customer. Indeed, the record provides sufficient evidence to warrant a finding that SBC must provide unbundled access to the OCD because it is necessary and the CLECs would be impaired in their efforts to compete without it.²¹

On the surface, there appears to be less agreement as to whether SBC’s ILECs should retain ownership of the ADLU cards in the RT.²² As proposed, SBC’s ADLU cards contain a multiplexing function (not unlike that of any other Digital Loop Carrier) and a spectrum splitter, which is used to separate the voice communications from those carried in the high-frequency spectrum. Pursuant to the merger conditions, SBC may not transfer mixed-use equipment that provides such voice/data spectrum separation to its unregulated affiliate.²³ Thus, because the

¹⁹ See, e.g., ALTS Comments at 10-11 (supporting a waiver to the Merger Order to require the SBC ILECs to retain ownership of all OCDs and to require SBC to provide nondiscriminatory access in accordance with federal law to those OCDs); MCI Comments at 7 (“MCI WorldCom does not object in principle to SBC ILECs owning OCDs”).

²⁰ Ex Parte Letter from Paul K. Mancini to Lawrence Strickling dated (March 3, 2000) (“SBC Ex Parte Letter”).

²¹ See 47 U.S.C. § 251(d)(2).

²² Compare ALTS Comments at 9-10 (maintaining that it is “unclear whether SBC must own and control” the ADLU cards) and MCI Comments at 3-4 (claiming that ADSL cards can reasonably be categorized only as advanced service equipment) with AT&T Comments at 6-9 (stating that ADLU cards provide voice/data stream separation and other functions that are essential functionalities of the loop that must remain with the ILEC). To the extent that the Commission determines that modification of merger conditions is required, AT&T agrees with the standard for modification of Commission orders outlined by MCI. See MCI Comments at 2-3.

²³ See SBC/Ameritech Merger Order ¶ 365 & n.682, Appendix C at ¶ 3(d). SBC’s explanation of the ADLU cards, see SBC Ex Parte Letter at 1, provides further support for AT&T’s position that the Commission erred in deciding to classify the DSLAM as part of the switching element rather than the loop element. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 Petition of AT&T for Reconsideration and Clarification of the Third Report and Order at 1-11 (filed Feb. 17, 2000).

splitter functionality is integrated within the ADLU card, the ownership of the ADLUs card should remain with the ILEC.²⁴

It is, therefore, AT&T's position that ownership of the ADLU card must reside with the ILEC. Regardless of whether such ownership resides with the SBC's ILECs, or its unregulated affiliate, the ADLU function remains a network element that must be unbundled.²⁵ But beyond determining ownership and affirming unbundling obligations, the Commission must also clarify that nothing in SBC's request will in any way impair the CLECs' right to provide their own compatible line card for delivering such functionality, or otherwise compromise their rights to subloop unbundling and collocation at the RT.²⁶ Accordingly, the Commission should clarify that CLECs have the right to deploy their own line card functionality at the RT, limited only by constraints of technical feasibility.²⁷

Furthermore, when the ADLU card is deployed by SBC's ILECs pursuant to its unbundling obligations, the Commission should also make clear that CLECs should not be limited to providing only one form of service (ADSL) and no other types of xDSL. All compatible plugs, and necessary supporting procedures, must be made available to CLECs in

²⁴ The Commission should clearly state that SBC, and any other ILEC, must provide unbundled access to the splitter, at the option of the CLEC.

²⁵ See, e.g., AT&T Comments at 6-9; ALTS Comments 11-12; MCI Comments 6-7.

²⁶ See, e.g., ALTS Comments at 11-13 (urging the Commission to ensure that SBC provides collocation to all SBC RTs and reaffirm SBC's obligations to "provide both voice-grade and xDSL-capable loops, subloops and loop make-up information to all CLECs"); MCI Comments at 5-7 ("Nondiscriminatory access to the RT, and associated subloop unbundling and line sharing will be critical to the plans of CLECs to provide advanced services").

²⁷ Indeed, the Commission must ensure that every effort is made to provide collocation at all SBC RTs at nondiscriminatory rates, terms, and conditions. ILEC ownership of the ADLUs cards does not relieve SBC's ILECs of their obligation to accommodate collocation at the remote terminal. See UNE Remand Order ¶ 313. It will not be sufficient, however, to simply state that SBC's ILECs must permit installation of a compatible line card. The Commission must also make clear that SBC's ILECs must: (1) perform necessary DLC traffic engineering upon request; and (2) accommodate all technically feasible requests at the OCD to ensure that transmissions from the CLEC-deployed line card are properly directed without degradation.

reasonable time frames. Further, CLECs must not be limited to arbitrary transmission speeds predetermined by SBC.

Finally, it is AT&T's position that the Commission should not delay action in this proceeding in order to address all of the operational and implementation issues raised by SBC's request -- as reflected in its supporting documents it filed with the Commission on February 15, 2000. Several commenters have requested that the Commission conduct a further review of SBC's proposal in order to understand more fully the consequences of SBC's selected network architecture and technology.²⁸ AT&T agrees that such further review could provide the Commission and interested parties with a better understanding of SBC's proposal, which is, as many commenters note, a work-in-progress.²⁹ Indeed, various other points seem to be in dispute, or require additional information to resolve.³⁰ Accordingly, the Commission may wish to arrange some kind of forum to explore all of the issues raised in the comments.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in its initial comments, AT&T urges the Commission to follow the recommendations set forth herein. First, the Commission should find that ownership of the ADLU cards and OCDs should rest with the ILEC. Second, the Commission should clarify that classification of this equipment does not constitute fulfillment of SBC's statutory obligations to support competitive provision of DSL services in a nondiscriminatory manner, including its obligation to enable CLECs using UNE-P from adding DSL capabilities to their competitive offerings. Third, while the Commission must

²⁸ See ALTS Comments at 2, 15; DATA Comments at 2, 13-14; Prism Communications Comments at 8.

²⁹ See, e.g., AT&T Comments at 10; Rall Declaration ¶¶ 5-6, 8; ALTS Comments at 2; DATA Comments at 5-8.

³⁰ See, e.g., DATA Comments at 5-8 and Attachment A ("Technical and Operational Questions Remaining Unanswered Regarding SBC's New Network Topology").

certainly reiterate that all of the nondiscrimination requirements of the Act are preserved and enforced, it should be careful to foreclose any possibility that a ruling on SBC's request could be interpreted as approval of any of the specific terms and conditions of the Project Pronto Architecture set forth in SBC's underlying documents submitted with its request.

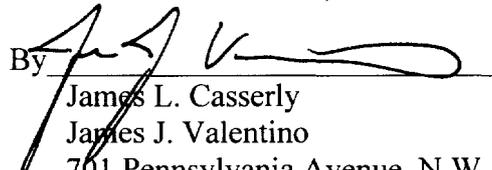
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