

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company, and)
Southwestern Bell Communications Services,) CC Docket No. 00-65
Inc. d/b/a/ Southwestern Bell Long Distance)
for Provision of In-Region, InterLATA)
Services in Texas)

**COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC
REGARDING SBC'S SUPPLEMENTAL
SECTION 271 APPLICATION FOR TEXAS**

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EXECUTIVE SUMMARY

Level 3's experience in negotiating with SBC for interconnection underscores the need for the Commission to scrutinize SBC's Application and to address specifically SBC's continuing obligation to comply with the Competitive Checklist even after any grant of interLATA authority in Texas. Among other things, the Commission should require that SBC provide nondiscriminatory access to subloops and combinations of network elements consistent with the Competitive Checklist, the Act, and the Commission's *UNE Remand Order*. SBC's refusal to negotiate meaningfully with Level 3 regarding subloops, and loop and transport combinations that conform to the Act and the Commission's implementing orders, raises a concern that absent the section 271 review process, SBC would not provide competitive local exchange carriers ("CLECs") the services they need to compete effectively.

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REGARDING SBC'S SUPPLEMENTAL
SECTION 271 APPLICATION FOR TEXAS**

Level 3 Communications, LLC (“Level 3”), pursuant to the Commission’s April 6, 2000 *Public Notice*,¹ submits these Comments regarding the application (“Application”) of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance (collectively “SBC”), as supplemented by SBC on April 5, 2000, for authority to provide in-region long distance services in Texas pursuant to Section 271 of the Communications Act of 1934, as amended (the “Act”).² For the reasons stated below, the Commission should ensure that SBC has fully complied, and will continue to comply, with each element of the section 271 Competitive Checklist and the Act prior to granting SBC’s Application to offer interLATA service in Texas.

¹ Comments Requested on the 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, Public Notice, CC Docket No. 00-65, DA 00-750, April 6, 2000.

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, (1996), at § 271 (*codified at* 47 U.S.C. § 251 *et seq.*) (“Act”). Hereinafter, all citations to the Telecommunications Act of 1996 will be to the Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934.

SUMMARY AND INTRODUCTION

Level 3's experience in negotiating with SBC for interconnection underscores the need for the Commission to scrutinize SBC's Application and to address specifically SBC's continuing obligation to comply with the Competitive Checklist³ even after any grant of interLATA authority in Texas. Among other things, the Commission should require that SBC provide nondiscriminatory access to subloops and combinations of network elements consistent with the Competitive Checklist, the Act, and the Commission's *UNE Remand Order*.⁴ SBC's refusal to negotiate meaningfully with Level 3 regarding subloops, and loop and transport combinations conform to the Act and the Commission's implementing orders, raises a concern that absent the section 271 review process, SBC would not provide competitive local exchange carriers ("CLECs") the services they need to compete effectively.

³ The "Competitive Checklist" consists of fourteen critical market-opening measures set forth in Section 271(c)(2)(B) of the 1996 Act. BOCs must affirmatively demonstrate compliance with these exacting market-opening measures as a prerequisite to BOC entry into the in-region interLATA telecommunications market.

⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order (rel. Nov. 5, 1999) ("*UNE Remand Order*").

ARGUMENT

I. The Commission Should Ensure That SBC Complies With Its Obligation to Unbundle Subloops

In order to obtain authorization to provide in-region, interLATA services under section 271, the applicant BOC must show, *inter alia*, that it has “fully implemented” each item of the Competitive Checklist.⁵ Section 271(c)(2)(B)(ii) of the Act, item (ii) of the Competitive Checklist, requires that SBC provide “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)” of the Act. Also, Section 271(c)(2)(B)(iv) of the Act, item (iv) of the Competitive Checklist, requires that SBC provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”⁶ In order to establish that it is “providing” unbundled subloops as required under Competitive Checklist items (ii) and (iv), SBC must show not only “a concrete and specific legal obligation” to furnish the subloops pursuant to an interconnection agreement, but “must demonstrate that it is presently ready to furnish each Checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.”⁷

Level 3 and SBC began negotiating a successor interconnection agreement on November 12, 1999, approximately one week after the release of the *UNE Remand Order*. In the *UNE Remand*

⁵ 47 U.S.C. §§ 271(c)(2)(A), (c)(2)(B), (d)(3)(A)(i).

⁶ The subloop network element is defined as any portion of the *loop* that is technically feasible to access at terminals in the ILEC’s outside plant. *UNE Remand Order*, at ¶ 206. As a component of the loop, the subloop network element is within the purview of Competitive Checklist item (iv). 47 U.S.C. § 271(c)(2)(B)(iv).

⁷ *Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 13 FCC Rcd. 20543, ¶ 110 (1997) (“*Ameritech Michigan Order*”).

Order, the Commission concluded that ILECs must provide unbundled access to subloops nationwide, where technically feasible.⁸ Level 3 proposed contract language that follows the Commission's rules promulgated in the *UNE Remand Order*⁹ for incorporation into the SBC 13 State Agreement¹⁰ that formed the baseline for the parties' negotiations. Level 3 insisted that some language acknowledging SBC's obligation to provide subloops be incorporated into the Agreement, because of SBC's insistence upon provisions intended to waive Level 3's right to seek subloops at a later date. For example, to date, SBC has refused to add a clause acknowledging a CLEC's section 252(i) pick-and-choose rights, and continues to insist that the Agreement include the following provision at section 43.1 of the General Terms:

This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein.¹¹

With the effective date of the subloop obligation a mere twenty one (21) days away, SBC has not yet negotiated meaningfully even the most basic terms to acknowledge its obligation to provide unbundled access to subloop network elements. In fact, Level 3 has been forced to incur the expense

⁸ *UNE Remand Order*, at ¶¶ 205-207.

⁹ The contract language proposed by Level 3 is attached as Exhibit A hereto.

¹⁰ The SBC 13 State Agreement can be downloaded from SBC's website at <https://clec.sbc.com/clechb/unrestr/custguide/>.

¹¹ SBC 13 State Agreement, General Terms & Conditions, Section 43.1. Until recently, SBC also insisted upon including a provision in the UNE Appendix to the 13 State Agreement at section 1.5 that provides: "SBC-13STATE has no obligation to provide access to any network element, or to provide terms and conditions associated with any network element, other than expressly set forth in this Agreement."

of arbitrating this issue, among others, before the Public Utility Commission of Texas (“Texas PUC”) and the Public Utilities Commission of California under section 252(b) of the Act in order to preserve its rights to access unbundled subloop elements.¹²

Even if SBC were to offer contract language to implement subloop unbundling on May 17, 2000, CLECs would be forced to make a Hobson’s choice between accepting SBC’s language “as is” or foregoing their right to subloops until acceptable language can be negotiated or arbitrated. If SBC is going to be given relief pursuant to Section 271, it must be made to furnish the full panoply of subloops mandated by the *UNE Remand Order* immediately upon the effective date of SBC’s subloop unbundling obligation¹³ as required by Competitive Checklist items (ii) and (iv).

II. The Commission Should Ensure That SBC Offers Unbundled Access To Loop/Transport Combinations To The Extent Required By Law

Section 271(c)(2)(B)(ii) of the Act, item (ii) of the Competitive Checklist, requires SBC to provide “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)” of the Act.¹⁴ To date, SBC has refused Level 3’s proposals for

¹² Petition of Level 3 Communications, LLC For Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and PURA for Rates, Terms, and Conditions with Southwestern Bell Telephone Company, Docket No. ___, Issue 21 (filed Apr. 20, 2000), at 27.

¹³ In the *UNE Remand Order*, the Commission determined that ILECs are required to provide dark fiber, subloops, and inside wire effective May 17, 2000. *UNE Remand Order*, at ¶ 525. With only twenty one (21) days remaining before the effective date of its subloop unbundling obligation, the only subloop provisions firmly offered by SBC address narrow DSL deployment issues, including the situation where SBC has deployed a Digital Loop Carrier system or fiber such that an uninterrupted copper loop is not available for CLEC provision of DSL services. *See, e.g.*, SBC 13-STATE Agreement, Appendix DSL, § 14.1.4. These provisions and SBC’s “Broadband UNE” offering fall short of the *UNE Remand Order* mandate to offer the subloop network element at points that are “technically feasible to access at terminals” in the ILEC’s outside plant. 47 C.F.R. §319(a)(2).

¹⁴ 47 U.S.C. § 271(c)(2)(B)(ii).

combinations of the local loop, multiplexing, and transport, often called “Enhanced Extended Loops” (“EELs”), in Texas, except as SBC would make EELs available pursuant to the Texas 271 Agreement.¹⁵ SBC maintains that it has no obligation to provide EELs under the Act, in part, because it is offering unbundled local switching in all of its markets in Texas and each of the thirteen states in which SBC is an ILEC.

The Commission held in the *Local Competition Order*¹⁶ and rule 51.315(b) that ILECs may not separate requested network elements that the ILEC “currently combines” in its network. The FCC determined that “currently combines” means “ordinarily combined within [the ILEC] network, in the manner in which they are typically combined.”¹⁷ The FCC elaborated on the issue in its recent *UNE Remand Order* and stated that “to the extent an unbundled loop is in fact connected to unbundled dedicated transport, the [Act] and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form.” The Commission concluded that “in specific circumstances, the incumbent is presently obligated to provide access to the EEL.”¹⁸

¹⁵ The T2A Agreement is available on SBC’s website at <https://clec.sbc.com/clechb/unrestr/custguide/>. SBC has recently sent letters to CLECs notifying them of potential termination of the T2A Agreement by Oct. 13, 2000.

¹⁶ *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, 15648, at ¶ 296.

¹⁷ *Id.*

¹⁸ *UNE Remand Order*, at ¶¶ 479-480, 486; Level 3 notes that until June 30, 2000, the FCC has permitted ILECs to “constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access services” until it addresses the issue in a pending rulemaking. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, at 2-5 (rel. Nov. 24, 1999).

Notwithstanding these directives,¹⁹ SBC has only offered to provide Level 3 sixty (60) days advanced notice if SBC ever determines to offer the EEL under its 13 State Agreement,²⁰ and to reconfigure special access arrangements as unbundled loop/transport combinations under restrictive conditions. Specifically, SBC seeks to unilaterally impose unreasonable conditions regarding the amount of local exchange traffic that must be carried before SBC will permit CLECs to reconfigure Special Access arrangements to UNE-based combinations of transport and loops. SBC proposed these unreasonable conditions to the Commission in an *ex parte* filing on February 29, 2000.²¹ In an effort to implement these unreasonable conditions, SBC insists that CLECs provide a certification, attached as Exhibit C, that each of the identified circuits a CLEC provides to a specified end user customer meets one of the following three options:²²

Option 1

1. The carrier is the exclusive provider of the end user's local exchange service

Option 2

1. Carrier handles at least one third of the identified customer's local traffic; and
2. On the loop portion of the UNE loop-transport service, at least 50

¹⁹ During interconnection negotiations, SBC has drawn a distinction between EELs and loop/transport combinations that has not been fully explained to Level 3. These Comments reflect Level 3's present understanding of SBC's positions regarding EELs and loop/transport combinations.

²⁰ SBC 13 State Agreement, Appendix UNE, at § 8.2.3.

²¹ The conditions are attached as Exhibit B. *Ex Parte, CC Docket No. 96-98; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, (filed Feb. 29, 2000), at 2-3.

²² SBC's certification form and rules regarding reconfiguration of Special Access services can be found on its website at <https://clec.sbc.com/clechb/unrestr/custguide/>. The certification form is invoked in the SBC 13 State Agreement in sections 7.3 and 14.1 of Appendix UNE. Level 3 does not object generally to providing a certification regarding significant local traffic, but rather, Level 3 objects to SBC's unilateral and unreasonable definition of significant local traffic embodied in the certification form.

percent of the activated channels have at least 5 percent local voice traffic individually and,

3. For the entire facility, at least 10 percent of the traffic is local voice traffic.
4. If the unbundled loop/transport combination includes multiplexing (e.g. DS1 multiplexed to DS3 level), each of the individual DS1 circuits meets the above criteria for this option.

Option 3

1. At least 50% of the channels are used to provide local dial tone service and at least 50% of the traffic on each of those local dial tone channels is local voice traffic
2. The entire loop facility has at least 33% local voice traffic and
3. If a loop/transport combination includes multiplexing (e.g. DS1 multiplexed to DS3 level), each of the individual DS1 circuits meets the above criteria for this option.

The restrictions embodied in SBC's certification are not binding law merely because SBC has filed them with the Commission. Level 3 recognizes that the Commission is currently considering the question of how Special Access reconfigurations should be governed, and Level 3 has proposed to abide by such a determination. Nonetheless, SBC is unyielding in insisting upon its unilateral interpretation of significant local traffic as embodied in its certification.

These restrictions on reconfiguration of Special Access arrangements to UNE based services are unreasonable, and deny customers the benefits of state of the art technologies. Level 3 has deployed one of the world's most advanced Internet Protocol based networks. Level 3's advanced network architecture incorporates state-of-the-art soft switches and network components that enable Level 3 to leverage advanced, cost efficient technologies to provide customers with innovative services at highly competitive prices that were often unavailable in the legacy networks. SBC's conditions would in many instances preclude Level 3 from offering innovative services, including local voice service over IP. SBC must be prevented from imposing such competitive roadblocks if it is to be awarded interLATA relief.

CONCLUSION

For the foregoing reasons, the Commission should ensure that SBC has fully complied, and will continue to comply, with each element of the section 271 Competitive Checklist and the Act prior to granting SBC's Application to offer interLATA service in Texas.

Respectfully submitted,

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Its Attorneys

Dated: April 26, 2000

EXHIBIT A

8. SUBLOOP

- 8.1 The Subloop network element is defined as any portion of the Loop that is technically feasible to access at terminals in the ILEC's outside plant, including inside wire. An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the fiber or wire within. Such points may include, but are not limited to, the pole or pedestal, the NID, the minimum point of entry, the main distribution frame, the remote terminal, and the feeder/distribution interface.
- 8.2 Best Practices. Once one state has determined that it is technically feasible to unbundle Subloops at a designated point, an SBC-13 STATE shall have the burden in any state in which it is an ILEC of demonstrating to the State Commission that it is not technically feasible, or that sufficient space is not available to unbundle its own Loops at such a point.
- 8.3 Single Point of Interconnection. SBC-13 State shall provide a Single Point of Interconnection at multi-unit premises that is suitable for use by multiple carriers.

EXHIBIT B

EXHIBIT C

CERTIFICATE OF SERVICE

I, Edward W. Kirsch, hereby certify that on April 26, 2000, I caused to be served upon the following individuals the Comments of Level 3 Communications, LLC in CC Docket 00-65:

Edward W. Kirsch

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