

any evidence, at any time, in the record before the TPUC or this Commission, that could support a finding that these three non-recurring charges are cost-based. AT&T 39-43. AT&T further demonstrated that SBC's offer, by means of an Accessible Letter, to suspend collection of these charges beginning March 1, 2000, subject to a true-up should the TPUC so order, merely converted SBC's unlawful permanent rates into equally unlawful interim rates. *Id.* 41-43. The TPUC's comments address none of these matters.

Notwithstanding its Accessible Letter, SBC continues to assess the unlawful glue charges on AT&T. Although AT&T alerted SBC prior to March 1 that AT&T accepted SBC's offer to suspend collection of these charges, SBC has continued to bill AT&T for them through the present day. Chambers Supp. Reply Decl. ¶ 5. SBC's sole explanation is that AT&T refuses to agree to the retroactive application of any charges that the TPUC should subsequently approve to replace the glue charges. *Id.* ¶¶ 6-8

These recent events provide compelling evidence of SBC's intent eventually to collect and retain these baseless phantom glue charges not just on future UNE-P orders, but on all of the UNE-P orders that CLECs have already sent throughout the pendency of the application and that CLECs continue to send today.

In all events, because there is no basis in this record to support the imposition of these charges on an interim basis or otherwise, SBC has not demonstrated that it is providing access to UNE-combinations at cost-based rates. 47 U.S.C. §§ 251(c)(3), 252(d)(2), 271(c)(2)(A)(i)(I), (B)(i), (ii), (d)(3).

IV. SBC'S PERFORMANCE REPORTS CONFIRM ITS CHECKLIST NONCOMPLIANCE

In its initial comments on SBC's first Texas application, the TPUC claimed that the performance measures it adopted would provide objective evidence of SBC's compliance with the competitive checklist. For example, the TPUC began by observing that "[c]lear and precise

which – having adopted performance measures so that it could objectively assess SBC’s performance – has now disregarded them.

V. SBC FAILS TO PROVIDE NONDISCRIMINATORY ACCESS TO OSS.

The comments confirm that SBC is not providing nondiscriminatory access to its operations support systems.²² In its initial evaluation, DOJ expressed “considerable doubt . . . whether carriers would be able to compete effectively using the UNE platform” because of such problems as service outages on UNE-P conversions, SWBT’s extensive manual processing of CLEC orders, inadequate OSS documentation, and lack of compliance with change management procedures.²³ The comments show that those, and other, OSS deficiencies still exist today.

Only the TPUC takes the position that SBC is currently meeting its OSS obligations under the competitive checklist. TPUC II 5. The TPUC’s conclusion, however, is based on SBC’s promises to make improvements in its systems in the future, and on the TPUC’s misreading of the record. Moreover, the TPUC confines its analysis to the issues of integration and rejection rates, without addressing even the concerns raised by DOJ’s previous Evaluation, much less the other OSS issues raised by the CLECs.

A. SBC Has Not Provided CLECs With the Ability to Integrate Its Pre-ordering and Ordering Interfaces

The comments filed by CLECs demonstrate the SBC has still not provided CLECs with integrated (or integratable) pre-ordering and ordering interfaces at a level parity with SBC’s retail operations.²⁴ The TPUC’s contrary claim is wholly unsupported by the record.

For example, although the TPUC asserts that the actual experience of four CLECs –

²² See, e.g., AT&T 45-56; ALTS-CLEC Coalition iv, 1-2; CompTel 2-3; MCI WorldCom 3-33; Rhythms 15-17; Sprint 38-45; TRA 1, 8, 12-17; Z-Tel 2-4.

²³ See DOJ I 49-53.

²⁴ Compare TPUC II 2, 5-7 with AT&T 51-53, MCI WorldCom 4-18 and Sprint 44.

performance measures are critical to ensuring that competing carriers are receiving the quality of access to which they are entitled under the [Act].” TPUC I 103. For that reason, the TPUC “developed measures that will provide objective data to determine whether SWBT has satisfied the competitive checklist.” *Id.* 105 (emphasis added). The TPUC further explained that it provided for penalties “for continued out-of-parity performance for aggregate CLECs” on certain “Tier 2” measures, which were “the most customer and competition affecting.” *Id.* 106 (emphasis added).

Having established this framework, and having claimed that it would provide “objective” data “to determine” whether SBC had satisfied the checklist, the TPUC might reasonably be expected to refer to SBC’s Tier 2 performance in its comments. It does not. The TPUC has not reconciled its conclusion that SBC has fully implemented the competitive checklist with the fact that – on the objective terms that the TPUC established to measure checklist compliance – SBC shows chronically discriminatory performance.

Indeed, during the three month (December – February) period at issue here, SBC has been assessed fines totaling nearly \$1 million for consistently discriminatory performance against all CLECs on the most critical “customer and competition affecting” measures. Pfau Supp. Reply Decl. ¶¶ 12-13. And even though SBC’s self-reported performance was better in March than in February, it still failed to meet the already-low benchmark set by the TPUC. *Id.* ¶¶ 6-7. Indeed, even including the March data, the fact remains that SBC has never met the TPUC’s aggregate benchmark standard for even one isolated month, let alone for two of three consecutive months, which the TPUC had previously indicated would be required to demonstrate checklist compliance. *Id.*

The problem does not lie in the standards. As AT&T has previously shown, the TPUC’s standard for nondiscriminatory performance is already too lenient. Rather, the problem lies with SBC, which has failed to address the root causes of its performance failures, and with the TPUC,

be most concerned regarding the integration issue and the one that AT&T and other CLECs are using) and did not involve the population and submission of actual LSRs. Chambers/DeYoung Supp. Reply Decl. ¶ 23.²⁷

B. SBC's Rejection Rates Remain Unacceptably High.

The comments note the continuing high rejection rate for CLEC orders, SBC's extensive use of manually generated rejection notices, and SBC's lack of timeliness in returning manual rejects. See, e.g., AT&T 47-50; MCI WorldCom 28; Sprint 39-41. The TPUC, however, strains to find a *reduction* in rejection rates – in the face of SBC's own data and SBC's recent admission that rejection rates “have stayed relatively constant.” *See* Chambers/DeYoung Supp. Reply Decl. ¶¶ 27-30. Indeed, SBC's performance data show that its overall rejection rate, and its rejection rate for the EDI interface, *increased* in March 2000 – a fact that the TPUC concedes. TPUC Eval. II 8; Chambers/DeYoung Supp. Reply Decl. ¶¶ 28-29. Even the TPUC's assertion that rejection rates for individual CLECs have “steadily declined” is contradicted by its own graph. See TPUC II 8-9; Chambers/DeYoung Supp. Reply Decl. ¶ 32.

The TPUC's error in finding a “decrease” and “improvement” in rejection rates is compounded by its analysis of the cause of the purported decrease. The TPUC offers inconsistent explanations, asserting at one point that the decrease is attributable to CLECs' greater familiarity with EDI, while stating at another point its unsupported “belief” that

²⁷ It is also clear that the EDI/CORBA interface cannot currently be integrated with EDI for ordering. As the TPUC concedes, SBC does not provide information from the CSR in parsed form on EDI/CORBA, and only upon such provision will all fields in the pre-order information be “fully parsed.” TPUC II 9. Even with the provision of the parsed CSR, EDI/CORBA will be fully integratable only when it provides three key data elements that SBC requires CLECs to populate on UNE-P POTS orders. It does not appear that SBC will provide those elements until 2001. Chambers/DeYoung Supp. Reply Decl. ¶ 25.

relies on SBC's proposal to implement a "programming enhancement" at the end of May that will eliminate the need for CLECs to include service address information on EDI orders for the conversion of a customer's service (other than xDSL loops) to a new carrier. TPUC II 6 & n.15, 10. But these enhancements will not "resolve" or "address" the CLECs' concerns. Id. As the TPUC acknowledges, SBC's proposed enhancement will not affect orders for new connects, which AT&T forecasts will represent 10% of its order volume. Id. 10 n.35. Thus, for orders for new connects and conversion orders involving xDSLs, CLECS using DataGate will still be required to provide parsed address information even after SBC's proposal is implemented, but will be unable to auto-populate service address information obtained from the address validation query into the proper ordering fields. Given increasing consumer demand for speedier Internet access and additional phone lines, this problem will affect a significant portion of orders.

Chambers/DeYoung Supp. Reply Decl. ¶ 17.²⁶

The TPUC's reliance on SWBT's documentation and the recent "supplemental report" of Telcordia regarding integration is equally misplaced. TPUC II 1, 5, 7. The Telcordia report simply confirms what the evidence already shows: CLECs cannot successfully integrate pre-ordering and ordering functions with the use of SWBT's documentation. See Chambers/DeYoung Supp. Reply Decl. ¶¶ 22-23; MCI WorldCom 9-11. Telcordia states in its report that it encountered difficulties during its attempt to parse concatenated address information solely with the use of SBC's documentation, and was therefore required to seek additional assistance from an SBC representative. TPUC II Exh. 5 at 7. Moreover, the Telcordia testing apparently did not address DataGate (the interface with which the Commission appears to

²⁶ Similarly, the TPUC converts an assertion by SBC that it has "retained" General Electric Global Exchange Services ("GE") to assist CLECs with integration into a finding that SWBT and GE have "entered into an agreement." TPUC II 2, 6. SBC's own evidence, however, shows that SWBT and GE had not yet even negotiated an agreement, much less executed one. Chambers/DeYoung Supp. Reply Decl. ¶ 15.

March in a timely manner. In contrast to previous months, when it took no more than a half-hour to return such notices, SBC's mean time to return mechanized rejection notices increased to 6.03 hours for all CLECs, and 9.31 hours for AT&T, in March. *Id.* ¶ 43. These times missed the TPUC benchmark by a wide margin and were only slightly lower than SBC's March mean time for returning *manual* rejects – a clear indication of deficient performance. *Id.* ¶¶ 40, 43.

C. SBC Has Not Demonstrated That Its OSS Are Operationally Ready

Notwithstanding the TPUC's conclusion that SBC has met its OSS obligations under Section 271 (TPUC II 5, 10), the evidence and comments in this proceeding simply highlight SBC's failure to prove that its OSS are operationally ready. March data showed that, as in February, nearly 10 percent of CLEC orders are not being provisioned as ordered.

Chambers/DeYoung Supp. Reply Decl. ¶¶ 65-66. SBC provided only 65.7% of wholesale bills on time in March, a dramatic decline from 100 percent in February. *Id.* ¶ 71.

The comments also cast further doubt on the capacity of SBC's OSS to handle current and future CLEC demand. *Id.* ¶¶ 85-89. Furthermore, MCI's intention to submit 3000-5000 orders per day in full-scale operations means that the combined total of orders submitted by AT&T and MCI alone will severely tax, if not exceed, SBC's claimed capacity of 2,000 orders per hour when their market entry is complete. *Id.* ¶ 87. And, of course, SBC's systems will be further strained by the substantial order volumes that will be submitted by other CLECs. *Id.*

D. The TPUC's Reliance on Post-Regulatory Mechanisms Is Misplaced.

The TPUC urges the Commission to overlook the deficiencies in SBC's application by promising that it will provide mechanisms to enable CLECs to "raise concerns" about SBC's performance after its application has been approved. TPUC II 3. The TPUC's reliance on post-Section 271 approval mechanisms is misplaced, both in law and in fact. Even the availability of effective post-regulatory mechanisms is irrelevant to the issue of whether SBC is currently in compliance with its statutory obligations. In reality, however, the various mechanisms that the

TPUC cites suffer from serious deficiencies that preclude them from being an effective means of ensuring that SBC complies with its statutory obligations, including its obligation to provide parity of access to its OSS.

For example, the TPUC's promise to "monitor" the CLEC Users' Forum ("CUF") is of little benefit to CLECs. Because the CUF is not regulated and its guidelines require unanimity to adopt any proposed solution, SBC can – and does – unilaterally prevent or delay the resolution of many issues. Chambers/DeYoung Supp. Reply Decl. ¶¶ 92-93. Similarly, the TPUC's promise to "monitor" the Change Management Process also rings hollow. *Id.* ¶ 94. SBC has felt free to abuse the CMP even during the pendency of its Section 271 application, so there is no basis for believing that SBC will comply with the CMP once its application has been approved.

The "informal process" that the TPUC has established pursuant to its Project No. 21000 also is unlikely to ensure (or achieve) SBC's compliance with its OSS obligations. The process is designed to handle complaints by individual CLECs regarding OSS problems unique to the complaining CLEC. And experience to date confirms that it is an unsuitable vehicle for resolving the numerous outstanding OSS problems that have industrywide effects. *Id.* ¶¶ 95-97.

VI. SBC'S INTELLECTUAL PROPERTY RESTRICTIONS PRECLUDE A FINDING OF CHECKLIST COMPLIANCE.

In its recent MCI Order, the Commission correctly concluded that "the 'nondiscriminatory access' obligation in section 251(c)(3) requires incumbent LECs to use their best efforts to provide all features and functionalities of each unbundled network element . . . including any associated intellectual property rights." MCI Order ¶ 9. In order to comply with their statutory nondiscriminatory access obligations, incumbent LECs thus "must exercise their best efforts to obtain co-extensive rights for competing carriers." *Id.*

It is undisputed that SBC has consistently refused to satisfy its nondiscriminatory access obligation by negotiating any necessary amendments to its intellectual property licenses. To the

contrary, SBC has taken the position that it is the obligation of AT&T to obtain its own licenses from SBC's vendors, and its only response to AT&T on this issue has been to make the gratuitous promise to comply, in the future, with the Commission's MCI Order. E.g. AT&T 57. The MCI Order thus precludes any claim that SBC has satisfied the checklist's nondiscriminatory access obligation, and a promise by SBC to come into compliance with the Act in the future by securing any necessary license modifications "has no probative value in demonstrating its present compliance with the requirements of section 271." Ameritech Michigan Order ¶ 55.

Indeed, reliance on SBC's promise of future compliance with the Declaratory Order would be particularly arbitrary here, because SBC has adopted the position that the "FCC's decision . . . implicitly recogniz[es] that necessary licenses or agreements must be acquired before access to the intellectual property is provided" and that its interconnection agreement "is consistent" with the Order "in requiring the acquisition of licenses or agreements prior to access being granted." See Attachment 2, hereto. SBC's position that AT&T has no legal entitlement to receive access to SBC's network elements until after SBC completes the process of negotiating license modifications – a position that would permit SBC at any time to cease providing such access -- precludes any claim here that SBC has demonstrated a "concrete and specific legal obligation" to provide such access. Ameritech Michigan Order ¶ 110.

Moreover, SBC's apparent view that the Commission could excuse SBC's failure to comply with its nondiscriminatory access obligation because the MCI Order was issued only recently wrongly assumes that the obligation to secure license modifications arises only by operation of the Order. In fact, as the Order recognizes, that requirement is imposed by the statutory "nondiscriminatory access obligation of section 251(c)(3)," MCI Order, ¶ 12, which explains why the Fourth Circuit could reverse a state arbitration based on § 251(c)(3) before the Commission had issued this Order. AT&T v. Bell Atlantic, 197 F.3d 663 (4th Cir. 1999).

Further, any claim by SBC that the Commission should grant its application

notwithstanding SBC's patent failure to satisfy the competitive checklist on the ground that SBC's intellectual property restrictions are not competitively significant would be both wrong and irrelevant. As a representative of small CLECs explained, SBC's intellectual property restriction "hangs a cloud of uncertainty" over smaller CLECs and was likely to deter entry. Witcher/Rhinehart Decl. ¶¶ 19-22. Indeed, as noted above, SBC is insisting that it may deny access to network elements containing intellectual property at any time prior to its acquisition of any necessary licenses. In any event, because the Commission lacks the authority either to "limit" the terms of the competitive checklist (§ 271(d)(4)) or to "forbear from applying the requirements of section[] 271" (§ 271(d)), the Commission cannot excuse SBC's failure to provide nondiscriminatory access today on the ground that such failure is not deemed of sufficient competitive significance to warrant denial of the application. Indeed, that SBC could satisfy its nondiscriminatory access duty simply by agreeing to indemnify AT&T from intellectual property liabilities while SBC modifies its licenses provides further reason to deny its application.

Finally, even if the Act permitted the Commission to suspend the Act's "full implementation" requirement based on "equitable" factors – which it does not – no such factors exist here. AT&T and other CLECs have challenged SBC's intellectual property restriction since its inception, but SBC has consistently refused to implement its obligation even after (1) the chairman of the TPUC acknowledged, in December, 1998, that the intellectual property provision of the interconnection agreement "doesn't work" (Witcher/Rhinehart Decl., ¶ 26); (2) the TPUC staff, also in December, 1998, recommended a resolution of the issue that is virtually identical to that adopted by the Commission in the MCI Order (*id.*, ¶ 24); (3) the Fourth Circuit issued its decision, in December, 1999, declaring an indistinguishable intellectual property provision unlawful; and (4) the Commission issued its MCI Order.

VII. SBC IS UNLAWFULLY RESTRICTING ACCESS TO COMBINATIONS OF ELEMENTS

AT&T previously demonstrated (Supp. 59-62) that SBC is violating its obligations under section 251(c)(3) by imposing unlawful use restrictions on the availability of unbundled network elements. The record amply confirms this point.²⁹ Indeed, SBC recently imposed yet another unlawful restriction on the availability of unbundled network elements. Specifically, just days ago, SBC informed CLECs that it will not provide access to unbundled elements, including UNE-P, in Richardson, Texas, because SBC has deployed “fiber-to-the-curb” there to serve over 30,000 customers. Chambers/DeYoung Supp. Reply Decl. ¶¶ 55-62. SBC claims that these network facilities are “fully integrated” with one another, and therefore “cannot be unbundled” or “broken up.” See *id.* ¶ 59 & Att. 9.

SBC’s complete exclusion of these facilities from the Act’s unbundling requirements is patently unlawful. When CLECs request access to UNE-P, for example they want SBC to provide the elements in a fully integrated manner – and not “broken up.” See 47 C.F.R. § 51.315(b). According to SBC’s own description of these facilities, therefore, they can certainly be provided to CLECs in combined form. Indeed, AT&T had previously submitted UNE-P orders in Richardson that SBC in fact provisioned. Chambers/DeYoung Supp. Reply Decl. ¶ 58. SBC’s position, if permitted, would not merely foreclose competition for customers in Richardson, but would create a dangerous precedent that incumbents could attempt to use more broadly to evade their statutory duties.

²⁹ In fact, commenters demonstrated that, even apart from its unlawful use restrictions, SBC fails to provide access to EELs on a nondiscriminatory basis. Level 3 at 6-9; MCIWorldCom 37-41. Thus, SBC unlawfully insists on providing access to EELs through collocation, *id.* 39, has persistently delayed converting existing eligible access circuits to EELs, *id.* 40; AT&T Initial 57-59, and insists on a burdensome and unreasonable certification process to enforce its use restrictions. Level 3 at 8; MCIWorldCom 40-41.

VIII. SBC DENIES TECHNICALLY FEASIBLE INTERCONNECTION

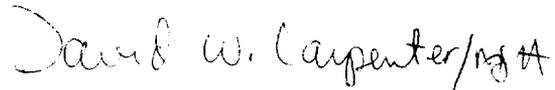
Finally, in an ex parte filed April 26th, 2000, SBC purports to respond to AT&T's showing in its comments on SBC's first application (at 59-61) that SBC is denying CLECs technically feasible interconnection at access tandems serving multiple exchange areas, but must establish one point of interconnection in every local exchange area in which AT&T seeks to offer local service. Just as SBC's reply comments in the previous application, the April 26th submission fails to address the issues raised by AT&T. SBC's interconnection policy is extraordinarily expensive, unnecessary, and anticompetitive. See DeYoung/Fettig Supp. Reply Decl. ¶¶ 6-10.

SBC's attempt to justify its unlawful policy by pointing to language in its interconnection agreement with AT&T is both misleading and legally irrelevant. See id. ¶ 11. The requirement is not unique to AT&T but appears also in the T2A; more importantly, SBC's burden is to demonstrate that its agreements comply with Section 271. See, e.g., Louisiana II Order ¶ 54. This it has not done and cannot do. SBC's continuing denial of technically feasible interconnection violates its duties under the Act and also requires denial of its application.

CONCLUSION

For the reasons stated above and in each of AT&T's prior submissions concerning SBC's Texas application, SBC's application for in-region interLATA authority for Texas should be denied.

Respectfully submitted,



Mark C. Rosenblum
Roy E. Hoffinger
Dina Mack
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4343

Mark Witcher
Michelle Bourianoff
919 Congress Avenue, Suite 900
Austin, Texas 78701-2444
(512) 370-2073

David W. Carpenter
Mark E. Haddad
Ronald S. Flagg
Richard E. Young
Michael J. Hunseder
Ronald L. Steiner
SIDLEY & AUSTIN
555 W. Fifth Street, Suite 4000
Los Angeles, CA 90013

James L. Casserly
James J. Valentino
Uzoma C. Onyeije
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY & POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2608
(202) 434-7300

ATTORNEYS FOR AT&T CORP.

May 19, 2000

ATTACHMENT 1

ORIGINAL

STATE OF CALIFORNIA

GRAY DAVIS, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



EX PARTE OR LATE FILED

April 20, 2000

RECEIVED
APR 21 2000
FCC MAIL ROOM

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: **Ex Parte Comments: In the Matter of Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee, CC Docket No. 98-147/**

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, the California Public Utilities Commission (CPUC) and the People of the State of California submit for filing a notification of an ex parte letter sent on April 20, 2000. The contact involved a discussion of the comments filed in the above referenced case.

Thank you for your assistance in making these materials part of the record.

Sincerely,

Gretchen Therese Dumas
Senior Staff Counsel

No. of Copies rec'd 07/
List ABCDE

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 20, 2000

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20024

Re: Ex Parte Comments: In the Matter of Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee, CC Docket No. 98-147

Dear Ms. Salas:

In accordance with Section 1.1206(b)(1) of the FCC's Rules, the California Public Utilities Commission (California) hereby submits for filing two copies of this presentation for inclusion in the public record in the above-referenced docket.

The FCC released a Public Notice seeking comment on SBC's request for FCC approval regarding the ownership of two pieces of equipment, Combination Plugs/Cards and Optical Concentration Devices ("OCD") to be deployed as part of SBC's new fiber infrastructure. This new fiber infrastructure is intended to address its obligations pursuant to the FCC's advanced services Merger Conditions.¹

In its filings before the FCC, SBC notes that it had initially proposed that all competitive local exchange carriers ("CLECs"), including SBC's Advanced Services affiliate, own their Combination Plugs/Cards and that SBC's incumbent local exchange carriers ("ILECs") would manage and install those pieces of equipment in the remote terminals. However, SBC subsequently concluded that managing this pool of plugs would result in serious administrative, tax and inventory issues that make this approach unworkable. As a result, SBC is proposing that its ILECs own the Combination Plugs/Cards and provide CLECs, including SBC's Advanced Services Affiliate, with non-discriminatory access to that equipment. SBC attaches an Appendix DLE-DSL containing draft contract language to that effect.²

¹ Public Notice, Common Carrier Bureau Seeks Comment on SBC's Request for Interpretation, Waiver of Modification of the SBC/Ameritech Merger Conditions, DA 00-35, CC Docket No. 98-141, ASD File No. 99-49 (Rel. February 18, 2000).

² Letter from Paul K. Mancini, Vice President and Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC (February 15, 2000) at 2-4 and DLE-ADSL Appendix attached thereto.

SBC also explains that its new fiber infrastructure necessitates the deployment of OCDs, which are technically ATM switches. Because OCDs are generally deemed to be Advanced Services Equipment under the FCC's Merger Conditions, SBC initially concluded that they should be owned by its Advanced Services Affiliates. However, a number of CLECs objected to a competitor, SBC's Advanced Services Affiliate, owning the OCDs. For this reason, SBC is proposing that its ILECs own the OCDs.³

While California takes no position, it does have concerns about the ramifications of SBC's request in relationship to the ability of CLECs to deploy advanced services and to compete in the local exchange markets in SBC's territory.⁴

1. SBC's Request Raises Concerns Regarding CLECs' Ability to Deploy Advanced Services

California is concerned that SBC's proposal may impede competition in the advance services market by limiting the types of services and technology that competitors can provide to customers. As indicated in SBC's filings, SBC proposes to upgrade or newly install over 20,000 remote terminals with Litespan 2000, 2012 or UMC 1000 Digital Loop Carrier ("DLC") equipment installed throughout its 13 state region during the life of its proposed plan.⁵ However, SBC does not address the impact of this proposal to increasingly deploy DLC equipment on advanced services providers that rely on SBC's unbundled copper loops to offer service.⁶

Also, California is concerned that SBC's proposed technology may prevent competitors from offering forms of DSL service other than ADSL⁷ and valued added services such as Centrex services and video on demand, among other services.⁸ Moreover, California is concerned that competitors may be precluded from deploying innovative technologies to the extent they are not compatible with the technology selected by SBC.⁹

2. SBC's Request Raises Concerns Regarding CLECs' Ability to Compete in the Local Exchange Market

California is concerned that SBC's proposal to expand deployment of DLCs may impede competition in the local exchange market because deployment of DLCs typically prevents CLECs from accessing customers served by that DLC for purpose of offering local exchange service using their own switches. Instead, the CLEC must rely on the ILEC's switch to serve those customers if alternative unbundled copper loops are not available. While manufacturers

³ Letter from Paul K. Mancini to Lawrence E. Strickling at 5.

⁴ The California Public Utilities Commission voted on April 20, 2000 to support the position espoused in this letter by a 3 - 2 vote.

⁵ Appendix DLE-DSL, Section 22.

⁶ Comments of Prism Communications at 8.

⁷ Reply Comments of DSL Access Telecommunications Alliance at 7.

⁸ Comments of Prism Communications Comments at 6-7.

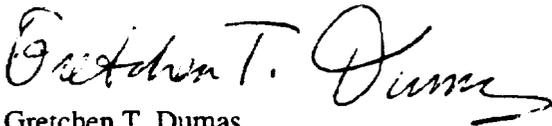
⁹ Comments of MGC at 1-2; Comments of MCI at 4-5; Comments of Prism Communications at 6-7.

are responding to the possible demand for multi-hosted DLC, such technology is not yet widely deployed.¹⁰

Forcing CLECs to depend on SBC's switches may impede competition by decreasing incentives for competitors to install switches and by limiting the array of services and technologies such carriers can make available to their customers. Further, if a CLEC were to install its own switch, SBC's use of DLC technology would hamper a switch-based CLEC's ability to serve the mass market. This is because a switch-based CLEC could access customers served using DLCs only if unbundled loops are available outside the DLC. However, limitations on the number of copper loops may preclude the switch-based CLEC from being able to serve a significant number of customers. From the customer's perspective, such customers would be deprived of the ability to obtain competitive services from the switch-based CLECs.

In closing, California takes no position on these two issues. However, because these issues are so important, California is compelled to bring these issues to the Commission's attention.

Very truly yours,



Gretchen T. Dumas
Public Utilities Counsel IV

GTD:abh

¹⁰ Second Further Notice of Proposed Rulemaking issued by the FCC in CC Docket Nos. 96-98 and 95-185, Initial Comments of MCI at 56.

ATTACHMENT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED

MAY - 9 2000

ROBERT D. DENNIS
U.S. DIST. COURT, WESTERN DIST OF OKLA.
BY _____ DEPUTY

SOUTHWESTERN BELL TELEPHONE)
COMPANY,)

Plaintiff,)

vs.)

ED APPLE, CHAIRMAN, BOB ANTHONY,)
VICE CHAIRMAN, AND DENISE BODE,)
COMMISSIONER (IN THEIR OFFICIAL)
CAPACITIES AS COMMISSIONERS OF)
THE OKLAHOMA CORPORATION)
COMMISSION); OKLAHOMA)
CORPORATION COMMISSION; and)
AT&T COMMUNICATIONS OF THE)
SOUTHWEST, INC.,)

Defendants.)

AT&T COMMUNICATIONS OF THE)
SOUTHWEST, INC.,)

Plaintiff,)

vs.)

SOUTHWESTERN BELL TELEPHONE)
COMPANY; THE OKLAHOMA)
CORPORATION COMMISSION; and ED)
APPLE, BOB ANTHONY AND DENISE A.)
BODE, INDIVIDUALS IN THEIR OFFICIAL)
CAPACITY AS COMMISSIONERS OF THE)
OKLAHOMA CORPORATION)
COMMISSION,)

Defendants.)

Case No. CIV-97-1507-A

CONSOLIDATED

Case No. CIV-97-1514-A

**SOUTHWESTERN BELL TELEPHONE'S NOTICE TO THE COURT
OF FCC DECISION REGARDING INTELLECTUAL PROPERTY**

The Court, in its December 20, 1999, Order, deferred decision on AT&T Counterclaim V pending FCC determination concerning intellectual property rights concerning unbundled network elements.

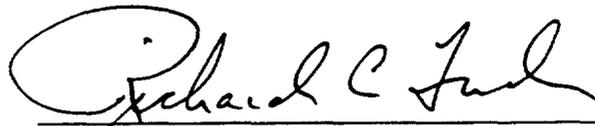
In an Order released April 27, 2000, *In the matter of Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements*, CC Docket No. 96-98, the FCC decided the issues in question. The FCC's decision imposes on incumbent local exchange carriers such as Southwestern Bell the obligation to use their best efforts to obtain any needed licenses or agreements for the use of intellectual property associated with unbundled network elements and to recover the costs associated with such best efforts among all connecting carriers including the LEC itself. The FCC declined to interfere with the rights of owners of such intellectual property, implicitly recognizing that necessary licenses or agreements must be acquired before access to the intellectual property is provided.

The Interconnection Agreement in paragraph 7.3.2 had imposed the obligation to obtain any necessary licenses or agreements for the use of intellectual property on AT&T, and had imposed on SWBT the obligation to use its best efforts to facilitate such acquisition. The FCC Order differs from the Interconnection Agreement provision by imposing on SWBT the obligation to use its best efforts to obtain any necessary licenses or agreements and to spread the cost entailed with those efforts over all connecting carriers, including itself.

The Order is consistent with the Interconnection Agreement in imposing an obligation on the parties to cooperate and negotiate in good faith concerning the acquisition of any necessary licenses or agreements, in requiring the acquisition of licenses or agreements prior to access being granted and to deal with the consequences of any failure to obtain necessary licenses and agreements in a

manner consistent with the obligation to provide non-discriminatory access to the unbundled network elements. Accordingly, to the extent that AT&T's Count V sought to impose in the first instance the obligation on Southwestern Bell Telephone Company to use its best efforts to acquire any necessary licenses or agreements and to recover the cost of such efforts from all carriers including Southwestern Bell Telephone Company, AT&T's motion regarding Count V is consistent with the FCC decision. To the extent AT&T seeks access to intellectual property prior to the acquisition of any necessary licenses or agreements or seeks modification of the negotiation and cooperation obligations provided under the agreement, its motion is inconsistent with the FCC decision and should be denied.

Attached hereto is a copy of the FCC decision.



RICHARD C. FORD, OBA # 3028

- Of the Firm -

CROWE & DUNLEVY
A Professional Corporation
1800 Mid-America Tower
20 North Broadway
Oklahoma City, Oklahoma 73102
(405) 235-7700
(405) 239-6651 FAX

ATTORNEYS FOR SOUTHWESTERN BELL
TELEPHONE COMPANY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 9TH day of May, 2000, to:

William R. Burkett
General Counsel of the Corporation Commission
Rachel Lawrence Mor
Deputy General Counsel
Andrea Johnson
Senior Attorney
P.O. Box 52000-2000
Oklahoma City, OK 73152-2000

A.P. Murrah, Jr.
Melvin R. McVay, Jr.
PHILLIPS McFALL McCAFFREY McVAY & MURRAH
One Leadership Square, Twelfth Floor
211 North Robinson
Oklahoma City, OK 73102

Mark Witcher
Michelle Bourianoff
AT&T COMMUNICATIONS OF THE SOUTHWEST
919 Congress Avenue, Suite 1500
Austin, TX 78701

Michael D. Warden
David L. Lawson
Rudolph M. Kammerer
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, DC 20006

Attorneys for AT&T Communications of the Southwest, Inc.



RICHARD C. FORD

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2000, I caused true and correct copies of the foregoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: May 19, 2000
Washington, D.C.

/ s / Peter M. Andros

Peter M. Andros

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2000, I caused true and correct copies of the foregoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: May 19, 2000
Washington, D.C.


Peter M. Andros

SERVICE LIST

Magalie R. Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, D.C. 20554

Janice Myles
Policy and Programming Division
Federal Communications Commission
445 12th Street, SW
Room 5-C327
Washington, D.C. 20554

Donald J. Russell
David F. Smutny
Frances Marshall
Department of Justice
Telecommunications Task Force
1401 H Street, NW
Suite 800
Washington, D.C. 20530

W. Robert Majure
Matthew Magura
Department of Justice
Economic Regulatory Section
1401 H Street
Suite 8000
Washington, D.C. 20530

Luin Fitch
Ajit V. Pai
Department of Justice
Telecommunications Task Force
1401 H Street, NW
Suite 8000
Washington, D.C. 20530

ITS, Inc.
1231 20th Street, NW
Washington, D.C. 20036

Texas Public Service Commission
1701 North Congress Street
Austin, TX 78711-3326

Michael K. Kellogg
Austin C. Schlick
Kellogg, Huber, Hansen, Todd & Evans,
P.L.L.C.
1301 K Street, NW
Suite 1000 West
Washington, D.C. 20005
Counsel for SBC Communications, Inc.

Russell M. Blau
Edward W. Kirsch
Swidler Berlin Shereff Friedman
3000 K Street, NW Suite 300
Washington, D.C. 20007-5116
Counsel for Level 3 Communications LLC

Sean Minter
IP Communications
17300 Preston Road
Suite 300
Dallas, TX 75252

Russell M. Blau
Michael S. Sloan
Swidler Berlin Shereff Friedman
3000 K Street, NW Suite 300
Washington, D.C. 20007-5116
*Counsel for Allegiance Telecom of
Texas, Inc.*

Robin A. Casey
Eric H. Drummond
Susan C. Gentz
Casey Gentz & Sifuentes
919 Congress Avenue
Suite 1060
Austin, TX 78701
Counsel for ALTS & the CLEC Coalition

Russell M. Blau
Harisha Bastiampillai
Swidler Berlin Shereff Friedman
3000 K Street, NW Suite 300
Washington, D.C. 20007-5116
Counsel for RCN Telecom Services, Inc.

David J. Newburger
Newburger & Vossmeier
One Metropolitan Square
Suite 2400
St. Louis, MO 63102
*Counsel for Telecommunications
Access, et al*

Robert J. Amoth
Steven A. Augustino
Michael J. Francesconi
Kelley, Drye & Warren
1200 19th Street, NW
Washington, D.C. 20036
*Counsel for Competitive
Telecommunications Association*

Richard M. Rindler
Patrick J. Donovan
Swidler Berlin Shereff Friedman
3000 K Street, NW Suite 300
Washington, D.C. 20007-5116
Counsel for CCCTX, Inc. d/b/a Connect!

Thomas M. Koutsky
Covad Communications
600 14th Street, NW Suite 750
Washington, D.C. 20005

Debbie Goldman
Public Policy Chair
Alliance for Public Technology
501 Third Street, NW
Washington, D.C. 20001

Andrew B. Lipman
Patrick J. Donovan
Swidler Berlin Shereff Friedman
3000 K Street, NW Suite 300
Washington, D.C. 20007-5116
Counsel for @Link Networks, Inc. et al

P.B. Parraz
El Paso Hispanic Chamber of Commerce
2829 Montana
Suite B-100
El Paso, TX 79903

Robert Eckels
Harris County Judge
Administration Building
1001 Preston, Suite 911
Houston, TX 77002

Mary L. Brown
Keith L. Seat
Henry G. Hultquist
MCI Worldcom, Inc.
1801 Pennsylvania Avenue, NW
Washington, D.C. 20006

Michael Olson
Christine Mailloux
Northpoint Communications, Inc.
303 Second Street, South Tower
San Francisco, CA 94107

Anita C. Taff-Rice
Larry Blosser
Christy C. Kunin
Lisa N. Anderson
Blumfield & Cohen-Technology Law Group
1625 Massachusetts Avenue, NW
Suite 300
Washington, D.C. 20036

Sue D. Blumfield
Michael G. Jones.
Thomas Jones
Angie Kronenberg
Wilkie, Farr & Gallagher
Three Lafayette Center
1155 21st Street, NW
Washington, D.C. 20036
*Attorneys for Sprint Communications
Company, L.P.*

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW
Suite 701
Washington, D.C. 20006
*Counsel for Telecommunications
Resellers Association*

W.H. Buchholtz
Bexar 911 Metro Network
10715 Gulfdale Street
San Antonio, TX 78216

Laurie Bricker
8006 Candle Lane
Houston, TX 77071

Diana Natalicio, President
The University of Texas at El Paso
El Paso, TX 79968-0500

Richard King, III
Bank of America
Commercial Banking Group
500 North Shoreline Boulevard
Corpus Christi, TX 78471-0001

J. Robert Brown
Desert Eagle Distributing
6949 Market
El Paso, TX 79915

Cassandra Johnson, Administrator
Texas Association of African-American
Chamber of Commerce
807 Brazos Street, Suite 710
Austin, TX 78701

John W. Gray, Regulatory Vice President
LOGIX Communications
3555 N.W. 58th Street, Suite 900
Oklahoma City, OK 73112

Reverend Jesse L. Jackson, Sr., President
Rainbow Push Coalition
930 E. 50th Street
Chicago, IL 60615

Patricia Pliego Stout, CEO
Alamo Travel Group
900 Wurzbach Road
San Antonio, TX 78240

Leo R. Dunn, Staff Vice President
3M
Building A130-5n-01
6801 River Place Boulevard
Austin, TX 78726-9000

Hugh P. Price, President
National Urban League
120 Wall Street
New York, NY 10005

Tom Bannwolf
City Councilman, District 9
P.O. Box 839966
San Antonio, TX 78283

Jesse Ayala
Texas Watch
1304 San Antonio, Suite 218
Austin, TX 78701

Herman L. Lessard, Jr., President
Austin Area Urban League
1825 E. 38 ½ Street
Austin, TX 78722

Jordan Clark, President
United Homeowners Association
655 15th Street, NW, Suite 460
Washington, D.C. 20005

James Firman, President
The National Council of the Aging
409 3rd Street, SW
Washington, D.C. 20024

Daniel B. Hastings, Jr., President
Daniel B. Hastings, Inc.
P.O. Box 673
Laredo, TX 78042-0673

J.R. Gonzales, Chairman
Texas Association of Mexican-American
Chambers of Commerce
823 Congress Avenue, Suite 1414
Austin, TX 78701-2429

Max Navarro, Chairman
Operational Technologies Corporation
4100 Loop 410, Suite 230
San Antonio, TX 78229-1253

David E. Daniel, President
Midland College
3600 N. Garfield
Midland, TX 79705-6399

Joe Vasquez, Interim Chair
The Greater Victoria Hispanic
Chamber of Commerce
P.O. Box 2552
Victoria, TX 77902