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June 6, 2000

The Honorable William E. Kennard
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Application by 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, CC Docket No. 00-65

Dear Chairman Kennard:

On November 18, 1999, the Federal Communications Commission took a bold and historic step to accelerate the deployment of competitive broadband services to all Americans. On that date, you announced that the Commission had adopted the Line Sharing Order, which would ensure that multiple broadband providers could deploy new technologies on a faster, more cost-effective basis. Moreover, because incumbent LECs offer their own retail DSL services using line sharing technology, the Commission's action placed competitive carriers on a more equal footing with incumbent LECs.

The Commission took the additional step of concluding that incumbent LECs should be operationally ready to provide the line sharing UNE pursuant to the just, reasonable, and nondiscriminatory terms and conditions of section 251(c)(3) of the Act within six months of the adoption of the line sharing order. Today marks the date six months from the adoption of that order. Covad has been working aggressively to deploy line sharing capabilities to the benefit of all consumers, and as of today we have successfully reached agreements with Bell Atlantic, Bell South, and U S WEST, and are in the process of rapidly rolling out line sharing across those regions. At the same time, only one remaining Bell Operating Company – SBC – has refused to take the steps necessary to comply with the Commission's line sharing rules. As such, the date by which the Commission anticipated that the pro-competitive benefits of line sharing would be available to all Americans is going to pass by leaving millions of Americans in SBC's territories unable to procure those benefits, due to the unlawful behavior of this single BOC.

In the context of its section 271 application for long distance authority in Texas, SBC has certified to the Commission that the carrier is in full compliance with federal line sharing rules, and indeed signaled its intent to comply with those rules a full week

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early – by May 29, 2000. The facts belie that contention, and Covad respectfully requests that the Commission ensure that SBC take the steps necessary to make line sharing available to competitors *before* the long distance entry that it seeks.

SBC clearly recognizes its obligation to make line sharing available to competitive LECs by June 6, 2000.¹ At the same time, SBC has steadfastly refused to negotiate a line sharing agreement – offering a “take it or leave it” document that SBC has made clear is not subject to any revision. For the entire six months after Covad first requested negotiations from SBC, the BOC maintained steadfastly that it had no obligation to negotiate in good faith pursuant to sections 251 and 252 of the Act, because the line sharing agreement SBC had presented to Covad was an interim agreement not subject to the requirements of the Act. Even as late as a meeting held last week, SBC refused to bring any technical experts to meet with Covad, contending that such experts were not necessary because the SBC contract proposal was not subject to negotiation. In sum, Covad’s wholesale supplier of the line sharing UNE has refused to listen to its customer – Covad has been unable to negotiate network architecture, provisioning intervals, splitter placement, and pricing issues, and as such stands today without access to the line sharing UNE.²

SBC states that it has reached agreement with certain carriers that are willing to accept the terms and conditions imposed on them by SBC. At the same time, it is Covad’s belief that the Commission did not intend to grant SBC the power unilaterally to deny line sharing to any carrier that refuses to adopt SBC’s unlawful terms. Line sharing is of vital importance to the future of the competitive broadband industry, and SBC’s intransigence – combined with its misrepresentation of line sharing compliance to the Commission – compel us to ask for your assistance in ensuring that the procompetitive benefits of line sharing are available to all consumers in SBC’s region. All BOCs but SBC have recognized that implementation of line sharing requires negotiation and compromise, and all BOCs except SBC stand ready to implement line sharing throughout their regions. Now that the June 6 deadline has arrived, SBC’s willingness to *begin* the negotiation process will be too little, too late. Covad would welcome the Commission’s assistance in convincing SBC of its obligation to negotiate in good faith on an accelerated timetable for deployment of the line sharing UNE. Consumers in Texas and throughout SBC’s territories are the losers if the Commission approves SBC’s Texas 271 application without ensuring that SBC is in full compliance with the Commission’s line sharing rules.

¹ See Application by 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, CC Docket No. 00-65, Reply Comments at 19 (filed May 19, 2000) (“... this Commission allowed incumbent LECs until June 6, 2000 to make the system modifications necessary to offer unbundled access to the high frequency portion of the local loop”).

² For example, SBC has proposed a line sharing UNE monthly loop price of 50% of the stand-alone loop rate, despite the fact that U S WEST, Bell South, and Bell Atlantic have all signed agreements with competitors offering a monthly loop price of \$0. As a result of SBC’s proposal, the line sharing UNE in Illinois, which SBC has priced at 50% of the UNE loop charge plus other recurring charges, will be more expensive than the price of a stand-alone loop. This could not have been the Commission’s intent.

Respectfully submitted,



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