

Pat Wood, III
Chairman
Judy Walsh
Commissioner
Brett A. Perlman
Commissioner
W. Lane Lanford
Executive Director



EX PARTE OR LATE FILED

ORIGINAL

Public Utility Commission of Texas

June 19, 2000

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Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Rm. TW-B-204
Washington, DC 20554

Re: CC Docket No. 00-65: *Application of SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Texas*

Dear Ms. Salas:

Enclosed for filing in the above referenced docket are one (1) original and two (2) copies of the *Ex Parte* Submission of the Public Utility Commission of Texas, with confidential information redacted. We are filing the confidential version of the *Ex Parte* Submission under separate cover.

Thank you for your attention to this matter.

Sincerely,

Donna Nelson
Director - Telecommunications
Legal Division

Enclosures

REDACTED—FOR PUBLIC INSPECTION No. of Copies rec'd 0+2
List A B C D E

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Ex Parte Submission

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
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Re: CC Docket No. 00-65; *Application of SBC Communications Inc. et al pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*

Dear Ms. Salas:

The Public Utility Commission of Texas (Texas Commission) files this *ex parte* to update the Federal Communications Commission (Commission or FCC) on further efforts the Texas Commission has taken to ensure that the Texas local market remains open to competition.

In previous filings with this Commission, the Texas Commission has expressed its commitment to working with competitive local exchange carriers (CLECs) and with SWBT to add, delete, or refine performance measures as necessary to reflect the competitive marketplace. In order to meet that goal, the Texas Commission has been conducting a six-month review of performance measures. Texas Commission Staff held 11 days of workshops between April 12 and June 9. Transcripts of the June 1, 6, 8 and 9 workshops are attached to this *ex parte*.¹ In addition, SWBT and CLECs met informally in several daylong sessions in an effort to resolve disputes regarding revisions to performance measures. SWBT and the CLECs are now in the

¹ *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUCT Project No. 20400 *Implementation of Docket Nos 20226 and 20272*, PUCT Project No. 22165, Workshop Transcript (June 1, 2000) (attached hereto as Exhibit 1); *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUCT Project No. 20400, Workshop Transcript (June 6, 2000) (attached hereto as Exhibit 2); *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUCT Project No. 20400 *Implementation of Docket Nos 20226 and 20272*, PUCT Project No. 22165, Workshop Transcript (June 8, 2000) (attached hereto as Exhibit 3); *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUCT Project No. 20400 *Implementation of Docket Nos 20226 and 20272*, PUCT Project No. 22165, Workshop Transcript (June 9, 2000) (attached hereto as Exhibit 4). Transcripts of previous workshops were attached to the Texas Commission's April 26 and May 19 filings in this docket.

process of briefing the Texas Commission on any remaining disputes. The Texas Commission will finalize changes to the performance measures at its July 12 open meeting and the measures will be implemented shortly thereafter by SWBT.

In its Evaluation submitted on May 19th, the Texas Commission noted that a line sharing arbitration was pending at the Texas Commission.² The Texas Commission also noted its interest in making line sharing available to CLECs pursuant to the *Line Sharing Order* issued by this Commission.³ On May 10th, Texas arbitrators granted the petitioners' request for a hearing to determine interim relief. Pursuant to the arbitrators' Order, the interim relief hearing was held on May 22 and 23, 2000. The arbitrators recognized the importance of the need for an interim solution and issued an Interim Award on June 6, 2000. The Award stated in part:

Line sharing is essential for CLECs' broad-based entry into the digital subscriber line (xDSL) market. Delay in provisioning the high frequency portion of the loop will have a significant adverse impact on competition in the provisioning of advanced services to customers that want both voice and data over a single line. Because ILECs are currently the only carriers able to use line sharing to provide advanced services, any delay in the line sharing availability because of the timeframes under section 252 could deny mass market consumer access for nine months or more. Thus, delay in implementation could severely undermine any pro-competitive effects of line sharing. Parity between CLECs and the ILECs advanced services retail offering or the ILEC advanced services affiliate is essential to guarantee nondiscriminatory access to line sharing. This interim arbitration award is designed to enable rapid entry by new competitors, thus furthering the goal of deployment of advanced services to all Americans.⁴

² *Petition of IP Communications, Corp. to Establish Expedited Public Utility Commission of Texas Oversight Concerning Line Sharing Issues*; PUCT Docket No. 22167, and *Complaint of Covad Communications Co. and Rhythms Links, Inc. against Southwestern Bell Telephone Co. and GTE SW, Inc. for Post-Interconnection Agreement Dispute Resolution and Arbitration under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions, and Related Arrangements for Line Sharing*, PUCT Docket No. 22469.

³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 98-147, and Fourth Report and Order, CC Docket No. 96-98 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

⁴ *Petition of IP Communications, Corp. to Establish Expedited Public Utility Commission of Texas Oversight Concerning Line Sharing Issues*; PUCT Docket No. 22167, and *Complaint of Covad Communications Co. and Rhythms Links, Inc. against Southwestern Bell Telephone Co. and GTE SW, Inc. for Post-Interconnection Agreement Dispute Resolution and Arbitration under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions, and Related Arrangements for Line Sharing*, PUCT Docket No. 22469, Interim Award (June 6, 2000) at 4.

Further, to assist the parties to the line sharing arbitration and provide a mechanism to enable CLECs to enter the market rapidly, the arbitrators included interim contract language as part of the Award.⁵

In its June 13, 2000 *ex parte*, the Department of Justice (DOJ) recommended approval of SWBT's application to provide long distance service in Texas, subject to "important qualifications."⁶ The Texas Commission appreciates the DOJ's thoughtful analysis throughout this process. The DOJ wanted the Commission to confirm that CLECs had the option of using either the coordinated hot cut (CHC) process or the newer, alternate frame due time (FDT) process.⁷ The DOJ also wanted the Commission to be "assured that SBC's reported CHC outage data for April accurately reflect its performance." The DOJ noted that the outage data was produced very late in the application process and the normal reconciliation process did not accompany the data. The DOJ apparently refers to a June 6, 2000 *ex parte* filing with the Commission. Exhibits 9 through 11 of SWBT's June 6, 2000 *ex parte* show outage data for CHCs as follows for April:

SWBT Caused Outage Percentage for CHC Conversions

	Total No. of Orders	Total No. of Lines	No. of Orders with Outages	No. of Lines with Outages	% of Orders with Outages	% of Lines with Outages
April	****	****	****	****	****	****

On June 15, 2000, SWBT filed an affidavit with the Texas Commission. The affidavit indicates that, after reconciliation, SWBT and AT&T recognized outages on * REDACTED * orders and * REDACTED * lines, instead of * REDACTED * of each. Therefore, the chart showing April data would change as follows:

SWBT Caused Outage Percentage for CHC Conversions

	Total No. of Orders	Total No. of Lines	No. of Orders with Outages	No. of Lines with Outages	% of Orders with Outages	% of Lines with Outages
April	****	****	****	****	****	****

⁵ A copy of the Interim Award is attached hereto as Exhibit 5.

⁶ Letter from Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 (June 13, 2000).

⁷ The Texas Commission understands that CLECs may use either option, but SWBT should confirm such through an *ex parte* filing with this Commission.

Even after the reconciliation, SWBT's outage percentages fall well within the standards set by this Commission under *Bell Atlantic New York*.⁸ SWBT also filed affidavits with the Texas Commission on June 16, 2000, that completed the reconciliation of March and April data for PMs 114 and 114.1, the remaining hot cut measures. Based upon the affidavits, March and April data changed less than a percentage point for PM 114 after the reconciliation.⁹ No changes resulted from the reconciliation of PM 114.1 data.

In its *ex parte*, the DOJ also raised concerns about allegations regarding SWBT's inability to provide nondiscriminatory access to updating the line information database ("LIDB") in a timely and accurate manner. This issue has been raised by MCI WorldCom at the Texas Commission through informal complaints addressed to the Commissioners. Although MCI has not filed a formal complaint, Texas Commission staff is, nonetheless, working with both SWBT and MCI to determine if a problem exists and, if it does, to determine how it should be resolved.

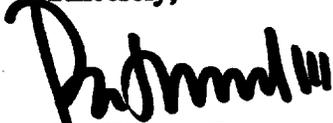
The DOJ also noted "two recent disturbing allegations regarding limitations on the availability of the UNE-platform to SBC's competitors." The DOJ acknowledged that the allegations cannot be resolved based on information currently in the record. The DOJ refers to complaints raised by AT&T and Global Crossings. The Texas Commission first became aware of these complaints when it reviewed the May 19, 2000, filings in this docket of AT&T and Global Crossings. As detailed in its April 26, 2000 Evaluation, the Texas Commission has several forums in place to allow CLECs to address issues of this nature. Neither AT&T nor Global Crossings has availed itself of those forums. The Texas Commission would welcome the opportunity to work with the parties to resolve any potential issues.

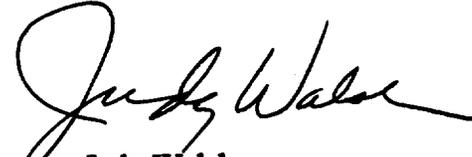
As the DOJ points out, SWBT's performance continues to improve. The Texas Commission continues to believe that SWBT meets the requirements of Section 271 and should be granted relief under the federal Telecommunications Act and should be allowed to enter the long distance market in Texas.

⁸ *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (Dec. 1999).

⁹ Prior to reconciliation, only 0.81% of CHCs resulted in premature disconnect in March. After reconciliation, 1.08% of CHCs resulted in premature disconnect in March. Prior to reconciliation, only 1% of CHCs resulted in premature disconnect in April, while after reconciliation, 1.55% of CHCs resulted in premature disconnect.

Sincerely,


Pat Wood, III


Judy Walsh


Brett A. Perlman

Cc: Governor George W. Bush
Lieutenant Governor Rick Perry
Speaker Pete Laney
Senator David Sibley
Representative Steven Wolens
Senator Phil Gramm
Senator Kay Bailey Hutchison
Texas Delegation, United States House of Representatives