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June 23, 2000

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Notice of Ex Parte Presentation

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

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JUN 23 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Dear Ms. Salas:

This letter is filed at the request of Commission Staff to provide updated performance measurement information and reconciled hot cut data, and to address certain issues that have been raised by commenters in recent ex parte submissions and supplemental reply comments.

1. **May Performance Results**

Attachments 1 through 4 provide the most recent 3-month and 12-month performance reports for Texas, on both a statewide and a geographically disaggregated basis. These reports show continued improvement in SWBT's already-nondiscriminatory performance. For instance, page 12 of the statewide "hit or miss" report (Exhibit 1) shows that SWBT met the applicable performance standard for better than 91% of the measures with hit/miss results – an improvement over both March and April. SWBT also had a success ratio above 91% for Tier 2 (competition affecting) measures; Tier 1 and 2 measures combined; and the 20 measures incorporated into this Commission's SBC/Ameritech Merger Conditions. In short, SWBT's excellent performance is getting even better over time.

The May results also incorporate corrections to April data that were filed on May 19, 2000. In performing its routine internal review of performance data, SBC identified eleven

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submeasures out of over 1900 reported submeasures that originally were reported incorrectly for April. Six of these errors reflect a failure of SWBT's systems to "recognize" certain April data for frame due time ("FDT") orders in the Dallas market area. Inclusion of the Dallas data, however, does not significantly change the statewide results previously reported. PM 114-06 (Percent of Premature Disconnects – FDT – LNP With Loop), PM 114.1-05 (Loop Disconnect/Cross Connect Interval – FDT – LNP), PM 115-05 (Percent SWBT Caused Delayed Coordinated Cutovers – FDT – LNP), and PM 115-06 (Percent SWBT Caused Delayed Coordinated Cutovers – FDT – LNP With Loop) all met the Texas PUC's standards before the correction, and continue to meet those standards after the correction. PM 114.1-06 (Loop Disconnect/Cross Connect Interval – FDT – LNP With Loop) did not meet the Texas PUC's 100% on-time benchmark standard before or after the correction, but timeliness remained at 98.8% under the Texas PUC's two-hour benchmark. One local number portability ("LNP") measure (PM 114-05 (Percent of Premature Disconnects – FDT – LNP)) became a "miss" as a result of the correction.

SBC identified reporting errors for five OSS-related measures. Specifically, SBC's review revealed an outage that was not captured in the original data for PM 4-01.03 (OSS Interface Availability – LEX) in April. As a result, this measure is no longer in parity for April, dropping from 99.8% availability to 97.9%. This marks the first time since August 1999 that this measure has not been in parity. On the other hand, PM 5.1-01 (Percent Firm Order Confirmations Relating to xDSL-capable Loops Returned Within "X" Hours – Mechanized LSRs – LEX (1-20 Loops)) met the Texas PUC standard with the correction, and results for mechanized LSRs returned within 24 hours via EDI (PM 5.1-3) – already reported as a "hit" – improved as well. For diagnostic PMs 8-01 and 8-02 (Average Time to Return Mechanized Completions (Hours) – LEX and EDI), the corrections increased the average time slightly for EDI, and shortened the interval slightly for LEX.

2. Hot Cut Data Reconciliations

As discussed in paragraphs 6 through 44 of the Noland/Dysart Supplemental Reply Affidavit (filed May 19, 2000), SWBT has been engaged in ongoing reconciliations of hot cut performance results with interested CLECs, under the supervision of the Texas PUC. Confidential Attachments 5 through 9 are affidavits reporting the results of reconciliations with NEXTLINK and WorldCom (MCI) for March and April 2000, covering PMs 114, 114.1, and 115. These affidavits provide further confirmation of the reliability of SWBT's originally reported data.

To the same point, Attachment 10 updates a previously filed chart (SBC June 6, 2000 Hot Cuts Ex Parte, Ex. 2) in light of the recent data reconciliations for March and April. The reconciled March and April results for PM 114 (Premature Disconnects) show that SWBT's on-

time performance changed hardly at all as compared to the originally reported performance, and remains outstanding at 98.76% overall in March and 98.95% overall in April.

Finally, Attachments 11 and 12 provide the verified final results of the AT&T/SWBT Provisioning Process Performance Group (“PPIG”) outage reconciliations for March and April 2000. The reconciled results for March and the number of SWBT-caused outages for April are exactly as stated in SBC’s June 6 Hot Cuts Ex Parte (Ex. 9). These new materials directly address the Justice Department’s suggestion, in its June 13, 2000 Ex Parte (at 14), that the Commission should confirm the accuracy of SWBT’s previously submitted April outage data. PPIG did not produce a summary of percentage outage results for April. Moreover, AT&T has indicated that it will not file joint affidavits with SWBT confirming these results, even though the charts provided in Attachments 11 and 12 were prepared by AT&T.

3. Hot Cut Pricing

In one of its series of recent ex partes, AT&T has maintained that SWBT’s Time and Material charges for the work involved in performing coordinated hot cuts (“CHCs”) are not sufficiently supported. AT&T June 8, 2000 Hot Cut Ex Parte at 4-6. AT&T cannot deny that these charges were arbitrated by the Texas PUC in its second Mega-Arbitration proceeding. The Texas Commission specifically approved these charges for services related to UNEs in its Second Arbitration Order on Prices (Jan. 10, 2000 Application App. F, Tab 17, at 5), and they withstood all appeals from that order. The charges were again subject to review and approved as part of the Texas 271 Agreement. Thus they are found not only in the UNE price schedule of the AT&T contract, but also in the UNE pricing schedule of the Texas 271 Agreement (Attach. 6: UNE, App. Pricing UNE, at 16-18). For reference, these labor rates are substantially below the levels established in Section 13.4.4 of SWBT’s access tariff, F.C.C. No. 73.

AT&T’s attempt to compare SWBT’s time-based labor charges for *all* hot cuts in an order to Bell Atlantic’s nonrecurring charge for a single loop is misguided on its face. *See* AT&T June 8 Hot Cut Ex Parte at 5. More fundamentally, however, it is absurd for AT&T to claim that SWBT harms CLECs by voluntarily *waiving* labor charges for FDT hot cuts. *Id.*; *see generally* Noland/Dysart Supp. Reply Aff. ¶¶ 48-53 (discussing SWBT charges). As SWBT has stated on the record, SWBT no longer has any policy of suggesting that CLECs use the FDT process rather than the CHC process for hot cuts of up to 19 loops; this decision is solely up to the CLEC. Noland/Dysart Supp. Reply Aff. ¶ 54. SWBT’s provision of free labor on FDT hot cuts is a benefit to CLECs that choose that method; it may be a reason why CLECs find that option increasingly attractive as compared to the nondiscriminatory CHC process. *See* SBC June 6, 2000 Hot Cut Ex Parte, Ex. 17 (CHC and FDT volumes). Contrary to AT&T’s overheated rhetoric, SWBT’s decision to introduce the FDT process without assessing Texas PUC-approved labor charges does not transform the Texas PUC-approved charges for work actually performed into “penalties.” *See* AT&T June 8, 2000 Hot Cut Ex Parte at 6.

4. Access to UNEs in Richardson, Texas

The Department of Justice has noted an AT&T allegation that SBC does not allow AT&T access to UNE Platform (UNE-P) arrangements in Richardson, Texas, where SWBT has deployed a fiber-to-the-curb architecture on a trial basis. DOJ June 13, 2000 Ex Parte at 19 n.54; *see also* Chambers/DeYoung Supp. Aff. ¶¶ 55-62 (filed May 19, 2000). SBC's investigation of this claim has confirmed that some AT&T UNE-P orders in Richardson were rejected due to a misunderstanding among some SWBT personnel about the service offerings available over this trial architecture. Other AT&T UNE-P orders, however, were provisioned correctly over the fiber-to-the-curb architecture. The last known occurrence of this problem was in February 2000. Confidential Attachment 13 provides SWBT Local Service Center ("LSC") internal bulletins (called Jumpstarts), dated September 26, 1999 and January 6, 2000, describing the correct procedures for handling UNE-P orders for a fiber-to-the-curb architecture. SWBT intends to cover this issue once again with LSC personnel, as part of their routine training.

5. Global Crossing/Frontier UNE-P Conversions

Global Crossing/Frontier suggests that SWBT "stonewalled" a request for conversion of resale customers to the UNE-P. Global Crossing/Frontier Supp. Reply at 2-3 (filed May 19, 2000). SBC's Global Crossings/Frontier account team was changed from a regional structure, with one account manager representing each SBC region, to a national approach, with one account manager covering Global Crossing/Frontier's account throughout SBC's 13 states. The account manager assigned to Global Crossing/Frontier under the new structure did not have prior experience in the SWBT region and was not appropriately familiar with the Texas UNE-P offering at the time Global Crossing/Frontier presented its request.

SWBT has since agreed that resale-to-UNE-P conversions are already part of Global Crossing/Frontier's current interconnection agreement in Texas. SWBT has begun work to accomplish the conversions. SBC also attempted to hold a conference call with Global Crossing/Frontier to resolve this issue. That call, which was to involve subject matter experts from the SWBT, Pacific Bell, Nevada Bell, and SNET states, was scheduled for June 16th. Global Crossing/Frontier, however, cancelled the call.

To better serve Global Crossing/Frontier in the future, SBC has recently adopted a revised regional approach for that company's account management. SBC now has two account managers assigned to Global Crossings/Frontier, which should result in improved customer service.

6. Posting Timeliness

At paragraph 76 of the Chambers/DeYoung Supplemental Reply Affidavit (filed May 19, 2000) (and at paragraph 119 of their Supplemental Affidavit filed April 26, 2000), AT&T discusses raw data relating to posting of AT&T's 8db loop orders for the months of December through March. AT&T contends that its analysis demonstrates substantial delays in posting of AT&T's completed orders.¹

AT&T's analysis is flawed in several respects. There is no significant delay with respect to SWBT's posting timeliness on AT&T orders. Further, SWBT's posting performance for AT&T's 8db loops shows consistent improvement on a month-to-month basis.

First, AT&T's analysis is highly selective, focusing on 8db loop orders sent by its affiliate TCG. For December 1999 through April 2000, only 1.2% of the orders AT&T sent through SWBT's systems were 8db loop orders sent by TCG. Accordingly, AT&T's complaints relate to an extremely small – and obviously carefully selected – subset of AT&T's overall order volume.

Second, AT&T cites postings that are “one day delayed” beyond service order completion, implying that a high percentage in that category is unacceptable. But because posting cycles do not run until the night following the cycle for completion of the service orders, posting almost always occurs more than one day after completion. The “one day delayed” category therefore does not provide any significant information about posting timeliness.

Third, AT&T's use of calendar days rather than business days inflates the posting interval. Because SWBT's systems do not run posting cycles on weekends or holidays, stating posting timeliness for an order in terms of calendar days significantly overstates the applicable posting time frame. Using the same data as AT&T, SWBT has recalculated the results on a business-day basis. The results are provided as confidential Attachment 14.² These results demonstrate consistent improvement in the average time it takes to post TCG's 8db loop orders, as well as improvement in the percentage of such orders taking 5 days or less to post.

¹ The term “completed” refers to completion of the physical work (whether electronic or manual) required for provisioning of an order. Once completed, the order either “posts” to (i.e., updates) the billing systems, or is placed into error status. The LSC Error Resolution Team (“ERT”) is responsible for clearing posting errors on CLEC orders. Once any errors are cleared, posting occurs and account ownership is fully transferred to the CLEC.

² As with AT&T's analysis, SWBT has used raw data for PM 58 to make these calculations.

As part of the Texas PUC's six-month performance measurement review, SWBT and interested Texas CLECs are negotiating a new diagnostic Performance Measurement ("PM") 17.1, specifically designed to track posting timeliness. This measure will track the number of business days required to post a service order to the CRIS or CABS billing system at the 85th, 90th, and 95th percentiles, and the percentage of orders that post within 5 business days. As Attachment 14 shows, SWBT's average posting time for TCG 8db loop orders is well within the 5 business day mark suggested by CLECs in Texas. In April, for example, 94.5% of TCG's orders posted within 5 days of completion.

Currently, PM 17 (Billing Completeness) measures the percentage of service orders that post prior to the customer's billing cycle. SWBT's results on PM 17 for AT&T are excellent, averaging in excess of 99% over the last four months. While PM 17 results for TCG have shown larger variation with smaller volumes, these results still average to 91% for January through May 2000.

PM 17: Billing Completeness

	AT&T	TCG	AT&T/TCG Combined
January	97.7%	81.0%	97.6%
February	99.2%	97.3%	99.2%
March	99.6%	96.6%	99.5%
April	99.0%	72.4%	99.0%
May	98.1%	95.0%	98.1%
Jan-May Average	98.8%	90.9%	98.8%

As discussed in SBC's Locus Reply Affidavit ¶¶ 10-13 (filed Feb. 22, 2000), SWBT has established appropriate processes to mechanically handle the overlapping billing that may occur when customers change their local service provider. These processes include automatic credits to the customer and the issuance of revised bills that inform the customer of their exact account status with SWBT. These processes were tested successfully during the Texas PUC-supervised carrier-to-carrier test. Although AT&T complains that posting delays have created a "risk" of double billing to the end user, it has failed to present any evidence that such billing has actually occurred at any significant level, or that SWBT's processes for dealing with overlapping billing – when it does occur – are not sufficient.

7. Timeliness of Service Order Completions (“SOCs”)

In another one of its surrebuttal ex partes, this one filed on June 14 regarding OSS (at page 10), AT&T suggests both that SWBT’s performance on SOC returns as measured by PM 7.1 is deficient, and that delays in returning SOC returns equate to delays in posting completed orders to SWBT’s legacy billing systems. Both contentions are incorrect.

As noted earlier, a service order goes into “completion” status in SORD when all of the physical work necessary for the provisioning of the service is completed. Completion of the order triggers a SOC notice to the CLEC, and initiates posting of the order to SWBT’s billing systems.

Under the current benchmark, SWBT is required to return 97% of SOC returns within 24 hours of service order completion. Thus, PM 7.1 measures the length of time it takes to *return a notice of that completion to the CLEC*. Because posting stems from completion and occurs independently of delivery of the SOC notice to the CLEC, SOC timeliness is not necessarily indicative of posting timeliness, or vice versa.

That said, SWBT provides CLECs in general, and AT&T in particular, timely SOC notices in the vast majority of cases. SWBT consistently meets the 97% PM 7.1 benchmark for orders submitted via EDI. Completions returned via LEX have been consistently improving over the last 6 months, even with increasing volumes, and have been within the Texas PUC benchmark measure since March.

Completion of TCG’s 8db UNE loop orders has not been on par with these overall averages. Because these loops are provisioned as designed circuits for switch-based carriers, order completion involves other databases (i.e., WFA and TIRKS) – and therefore potential delays in order completion – not at issue with UNE-P orders or other non-designed services. SWBT has devoted considerable efforts to improving SOC return, focusing first on the most common order types sent via EDI and LEX. Having implemented effective improvements in those areas (as illustrated by the significantly improved results for completions returned via LEX) SWBT is continuing to review its processes and implement improvements aimed at bringing all order types for all carriers to similarly satisfactory levels of performance.

8. Posting of “N” Orders

In the paragraphs 35-39 of the McMillon/Sivori/Lichtenberg Joint Supplemental Reply Declaration (filed May 19, 2000), and again in an ex parte filed on June 21 (at page 4), MCI maintains that the failure of an “N” order to post on a timely basis could impact services such as LIDB and branding. In fact, the end-user-impacting items in the LIDB database – namely the service provider identifying code (indicating that the end user’s local exchange provider has

changed to the CLEC), third party billing information (if ordered by the customer), and collect call billing information (if ordered by the customer) are updated on *completion* of the N order – not the posting of the order. Because they are updated on completion, a delay in posting would not affect any of the services provided through use of these items, including branding (which is driven by the service provider identifying code).

Although other LIDB fields, including the fields for the end-user's interLATA and intraLATA PIC selections, ZIP Code and Calling Name information ("CNAM"), are updated on posting of the N order, a delay in updating these fields should have no significant end-user impacts. No end-user service is dependant on the PIC fields in LIDB. While CNAM information is utilized for services that require calling name identification – such as Caller ID service – there is seldom a change in that information on conversion of the end-user.

Similarly, ZIP code information seldom changes on conversion of the end-user. The LIDB ZIP code field is used to provide Intellinumber™ service. Intellinumber is primarily utilized by multi-location businesses with delivery services (such as pizza parlors, for instance). When a caller dials a number in a metropolitan area for a business with Intellinumber service, the caller is routed to the closest business location based on the caller's nine-digit ZIP code. As discussed in paragraph 62 of SBC's Rogers Affidavit (filed January 10, 2000), SWBT has undertaken to ensure that customer information is held intact in the LIDB database on conversion of the end-user. In the case of a delay in posting of the N order, the existing information remains intact and usable in the LIDB database until such time as the order posts. Thus, even when posting is delayed, CNAM and ZIP code information will continue to be delivered to Caller ID and Intellinumber subscribers, using the existing information in the LIDB database.

As noted above, SWBT and CLECs are negotiating a new PM 17.1 that will track the number of days required to post a service order to the CRIS or CABS billing system and the percentage of orders that post within 5 business days. The measurement will include all SORD orders produced as a result of an LSR request (i.e., the C, N and D orders), divided by the total number of SORD orders that post in a month. During the course of the current PM review in Texas, MCI withdrew its initial request for specific LIDB performance measurements, in favor of looking at the information generated by PM 17.1. Using this measure as a guide, SWBT's average time to post all MCI service orders in April was 2.09 days, and in May was 2.8 days. SWBT's average time to post just the MCI "N" orders (which would have impacted the LIDB updates) was 1.59 days in April and 2.75 days in May. Thus, SWBT's average "time to post" in April and May on MCI orders was well within the 5 business day time frame CLECs have suggested for the new measure. The fact that MCI waits as little as 2 to 3 days to check the LIDB before declaring an order "incorrect," *see* McMillon/Sivori/Lichtenberg Joint Supp. Reply ¶ 26, goes far toward explaining MCI's exaggerated claims of posting "errors." MCI's LIDB checks often reveal nothing more than the normal posting process.

9. EBI Trouble Reporting

In its June 21 ex parte, at 6, MCI asserts that “SWBT remains unable to accept trouble tickets submitted via electronic bonding until orders have posted to billing.” In fact, after MCI requested this capability (outside the change management process), SWBT made EBI available as of June 20 to receive trouble tickets prior to posting of the order.

10. Rights to Use Intellectual Property

AT&T’s newest out-of-time claim, made in an ex parte filed on June 22, is that SWBT is violating the Commission’s April 27, 2000 *Intellectual Property Order*³ – which post-dates SWBT’s Application. To support this assertion, AT&T relies solely on testimony from SWBT in a recent arbitration in Texas and a motion submitted in a district court case reviewing an arbitration in Oklahoma. See AT&T June 22 Intellectual Property Ex Parte (dated June 21). In both of those state proceedings, SWBT expressly acknowledged its obligation to use its best efforts to obtain co-extensive use rights on behalf of AT&T. See Testimony at 6, 9 (attached to AT&T June 22 Ex Parte); Oklahoma Motion at 3-4 (attached to AT&T June 22 Ex Parte). In the Texas proceeding, SWBT merely contests AT&T’s claim that SWBT is under an obligation to provide an absolute warranty that all of the services, facilities, equipment, and software that SWBT provides to AT&T are free from all possible third-party intellectual property infringement claims. Testimony at 3. In the Oklahoma proceeding – a proceeding that is irrelevant to SWBT’s Texas section 271 Application – SWBT asked a district court judge to remand his review of a state arbitration in light of the Commission’s intervening decision in the *Intellectual Property Order*, so that the Oklahoma Corporation Commission could determine, in the first instance, the effect of the *Intellectual Property Order* on the parties’ agreement. Oklahoma Motion at 4-7.

SWBT’s position in both of these proceedings, and in other related proceedings, is consistent with the *Intellectual Property Order*. SWBT pledged in both cases that it would use its best efforts to obtain the appropriate licenses for AT&T. Moreover, the Commission made clear in its order that ILECs “cannot unilaterally extend third-party intellectual property rights to competing carriers.” *Id.* ¶ 15. The Commission additionally refused to “mandate a particular method of satisfying” the best efforts obligation. *Id.* ¶ 9. Instead, the Commission relied on precisely the type of negotiation and arbitration taking place in Texas and Oklahoma to determine whether an ILEC is satisfying its best efforts obligation. See *id.*

³ See Memorandum Opinion and Order, *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, CCB Pol. 97-4, FCC 00-139 (rel. Apr. 27, 2000) (“*Intellectual Property Order*”).

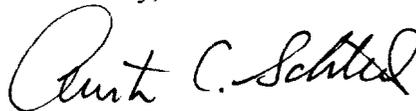
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The Texas 271 Agreement already reflects the Commission's approach, providing that "[a]ny disputes between SWBT and CLEC regarding the implementation of the [*Intellectual Property Order*] will be subject to expedited dispute resolution procedures before the Texas Commission." T2A § 7.3.5; *see also* Auinbauh Supp. Reply Aff. ¶ 37. And as SWBT pointed out in its Supplemental Reply Brief, filed May 19, 2000 at page 64, the Texas 271 Agreement holds SWBT to following the industry rules enacted by the Commission. *See* T2A § 7.3.5 ("The Parties agree that the provisions of the [*Intellectual Property Order*] shall control over the terms of Sections 7.3.2 through 7.3.4 above, upon the effective date of the FCC Order, unless subsequently stayed.").

* * *

An original and two copies of this cover letter and a redacted version of the confidential materials, are being submitted for inclusion in the public record. Please let me know if you have any questions about this matter.

Sincerely,



Austin C. Schlick

cc: Mr. Jennings
Mr. Dever
Ms. Egler
Mr. Fried
Ms. Lien
Ms. Rosenworcel
Mr. Stanley
Ms. Wright
Ms. Attwood
Mr. Goldstein
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