

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
	)	
Joint Application by SBC Communications, Inc.,	)	CC Docket No. 00-217
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 Kansas and Oklahoma	)	
	)	

**Comments of  
Metromedia Fiber Network Services, Inc.**

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## SUMMARY

Metromedia Fiber Network Services, Inc. (“MFNS”) submits its comments on the application filed by SBC Communications, Inc. and its subsidiaries, Southwestern Bell Telephone Company (“SWBT”) and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (collectively, “SBC”). SBC filed an application with the Federal Communications Commission (“Commission”) on October 26, 2000 for authority to offer interLATA services in Kansas and Oklahoma pursuant to section 271 of the Telecommunications Act of 1934, as amended (“the Act”). 47 U.S.C. § 271. The Commission issued a Public Notice on October 26, 2000 seeking comments on SBC’s application by interested third parties.

As a telecommunications services provider,<sup>1</sup> carriers’ carrier and facilities provider, MFNS has the critical need to have ready access to all Incumbent Local Exchange Carrier (“ILEC”) central offices in order to build its high-bandwidth, fiber optic communications infrastructure and offer competitive telecommunications services to its customers.

The Commission should deny SBC’s application. SBC has failed to completely open its network to competition and refused to permit lawful collocation and interconnection using excuses that often change like the wind, have no basis in law, and serve only to stall competition. If the Commission does approve SBC’s application, it should condition the approval with the requirement that SBC must permit the collocation of only a fiber distribution frames (FDF) so that MFNS may *directly* interconnect to SBC Unbundled Network Elements (UNE) to offer telecommunications to its end users.

Despite submitting many collocation orders, SBC continues to deny MFNS collocation based on the position that a FDF is not sufficient equipment by itself to warrant collocation. SBC contradicts its statements in its application for interLATA relief concerning its willingness to provide interconnection and collocation to requesting carriers. This refusal to permit interconnection to MFNS clearly demonstrates that SBC's networks are not fully open to competition as required by the Act for the interLATA authority that SBC seeks in Kansas and Oklahoma.

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<sup>1</sup> MFNS is a certified telecommunications service provider in 41 states and the District of Columbia. It was certified in Kansas on February 3, 2000. It was certified in Oklahoma on October 26, 2000.

**Table of Contents**

**SUMMARY ..... II**

**TABLE OF CONTENTS..... IV**

**I. INTRODUCTION..... 1**

**II. SBC HAS REPEATEDLY USED DELIBERATE CONFUSION OF THE ISSUES, SHAM ARGUMENTS, AND INADEQUATE COMMUNICATIONS AMONG MEMBERS OF ITS INTERCONNECTION TEAM TO DENY MFNS ITS RIGHTS UNDER § 251(C) OF THE ACT ..... 3**

**III. CUSTOMERS AND TECHNOLOGY DESERVE MORE THAN WHAT SBC HAS OFFERED TO OPEN ITS MARKETS TO COMPETITION ..... 13**

**IV. GIVEN SBC’S COMMENTS IN THE COMMISSION’S COLLOCATION RULEMAKING, IT IS CLEAR SBC IS NOT READY TO COMPETE FAIRLY AND SHOULD NOT BE GRANTED THE REQUESTED AUTHORITY ..... 15**

**A. SBC ENCOURAGES THE STATUS QUO FOR COMPETITIVE CARRIERS..... 15**

**B. SBC CANNOT COMPLAIN IN ONE PROCEEDING THAT COLLOCATED EQUIPMENT TAKES UP TOO MUCH ROOM AND IN ANOTHER PROCEEDING REQUIRE IT ..... 17**

**V. CONCLUSION..... 19**

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**Comments of  
Metromedia Fiber Network Services, Inc.**

**I. Introduction**

MFNS is a leader in providing dedicated fiber optical infrastructure and high-bandwidth advanced services for communications intensive customers throughout the nation. MFNS is leading the country's transition from a legacy copper telecommunications infrastructure to a fiber infrastructure.

MFNS or its affiliates currently provide high-bandwidth fiber optic communications facilities in New York, Philadelphia, Washington, D.C., Chicago, Dallas, San Francisco, and Boston offering telecommunications services and network elements to carriers and end user customers. Within the next several years MFNS plans to complete expansion into 50 U.S. markets. MFNS intends to start providing service in Kansas within the next few months.

MFNS endeavors to compete directly with incumbent local exchange carriers ("ILECs") including Southwestern Bell Telephone Company ("SWBT") and the other SBC

ILECs in the provision of interoffice transport to competitive local exchange carriers (“CLECs”) and others and telecommunications services to end users. In the Commission’s current Collocation Rulemaking,<sup>2</sup> SBC’s competitors and equipment manufacturers recognize the need for that transition infrastructure transition to an open and robust competition and cite many examples where ILEC networks -- including SBC’s -- are not open to competition. The comments filed in that proceeding and this proceeding will demonstrate that SBC is not entitled to interLATA relief in Kansas and Oklahoma.

As a facilities provider and competitive carrier, MFNS is in a unique position to facilitate telecommunications competition by providing state-of-the-art facilities to telecommunications service providers anxious to serve end-user customers but unable to build their networks in a time responsive and cost effective manner without help from a facilities provider such as MFNS. MFNS also provides technically advanced services to bandwidth-hungry customers. MFNS’ comments to the Commission on SWBT’s actions to prevent full and robust competition demonstrate SWBT is not ready to assume the responsibilities and privileges of section 271 of the Act.

In support of these comments, MFNS also submits the Affidavit of Robert Riordan (“Riordan Aff.”) attached hereto as Exhibit A. The affidavit attests to the facts that MFNS relies on within these comments.

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<sup>2</sup> In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local Competition Provision of the Telecommunications Act of 1996, CC Docket No. 96-98, rel. August 10, 2000. (*Collocation Rulemaking*)

**II. SBC HAS REPEATEDLY USED DELIBERATE CONFUSION OF THE ISSUES, SHAM ARGUMENTS, AND INADEQUATE COMMUNICATIONS AMONG MEMBERS OF ITS INTERCONNECTION TEAM TO DENY MFNS ITS RIGHTS UNDER § 251(c) OF THE ACT**

MFNS has negotiated or opted into state-approved interconnection agreements with SBC in Illinois and Texas. Riordan Aff. ¶¶ 7-8. MFNS is attempting to negotiate an interconnection agreement for the remaining 11 states in the SBC region. Those negotiations are at an impasse because of SBC's refusal to process MFNS' lawful collocation orders in Illinois and Texas. Riordan Aff. ¶ 9. That impasse denies MFNS the ability to serve customers in those states. Despite negotiating collocation implementation for more than **1½ years**, SBC still refuses to provide MFNS with collocation that it requires, is entitled to, and provides for under these agreements. SBC's behavior during this time has consisted of making and renegeing on commitments to MFNS, changing its legal arguments repeatedly, and introducing new asserted legal arguments when old issues have finally been resolved. As a result of the delay resulting from this erratic and indefensible behavior, MFN has been unable to provide service to waiting customers in both Illinois and Texas. Ironically, the Commission found that SBC's Texas network is open to competition and granted SBC's application to offer interLATA services in that state.<sup>3</sup> Since this SBC policy is region-wide, applications for collocation and interconnection in Kansas and Oklahoma will be rejected for the same reason. Riordan Aff. ¶¶ 15-16.

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<sup>3</sup> Memorandum Opinion and Order, *Application by SBC Communications, Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services In Texas*, CC Docket No. 00-65, FCC 00-238 (rel. June 30, 2000) ("Texas Order"). This new "excuse" to refuse collocation of only a FDF and interconnection of UNEs started after the Texas 271 Order was issued. Riordan Aff. ¶ 13.

SBC refuses to permit collocation and interconnection for the purposes of serving end user customers by MFNS collocating only a FDF within the SBC central office. SBC refuses to permit such collocation arguing that: (1) section 251(c) requires collocation of equipment for interconnection with the LEC's network; and (2) a FDF is not equipment, but rather a facility, because it does not draw power. SBC claims the language of § 251 supports this position. Even a narrow reading of section 251 does not support such an interpretation of section 251.

Neither the Act nor the Commission's Rules restrict the type of equipment that a competitive carrier may locate on the basis of its power consumption. In fact, both the statute and the Commission's rules expressly provide otherwise. Indeed, the Commission's rules expressly provide that a requesting carrier such as MFNS *shall not be required* to collocate its own transmission equipment as a prerequisite to obtaining collocation in the ILEC central office. A piece of equipment's power consumption does not have anything to do with equipment being necessary or labeling it necessary. A FDF is necessary for the interconnection on UNEs although it does not have to be plugged in. Those are not inconsistent positions.

SBC has made it clear that this position is a region-wide position for all 13 states in which SBC is the Incumbent LEC. Riordan Aff. ¶¶ 15-16. MFNS will not be permitted to collocate only a FDF or to interconnect with SBC UNEs in Kansas or Oklahoma until SBC is ordered to do so by the Commission. Even SWBT acknowledges that collocation orders in Kansas will be handled the same way they are in Texas.<sup>4</sup>

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<sup>4</sup> "Shawn M. McKenzie, president of Southwestern Bell-Kansas, said the telco's terms and conditions for carrier interconnection and network unbundling in Kansas are 'based substantially' on those adopted in Texas." *Telecommunications Reports*, October 30, 2000, p. 14.

While SBC has been unyielding in its opposition to MFN's attempts to roll out its service, MFN has suggested alternative network configurations to satisfy SBC's objections. For instance, MFN has proposed to forego physical collocation under § 251 of the Communications Act, and accept virtual collocation that SBC routinely provides to customers under its federal tariff. To date, MFNS' virtual collocation compromises have been rejected or ignored.

Using a variety of ever changing and increasingly less tenable legal arguments, SBC has bitterly opposed MFNS' every attempt to order collocation and access to UNEs under its approved interconnection agreements. Where SBC has no legal arguments, it has resorted to stonewalling and bad faith negotiating tactics. These tactics are also reflected in the comments filed by in the Collocation Rulemaking.

In MFNS' filing in opposition to SBC's Texas application,<sup>5</sup> MFN described that it negotiated an interconnection agreement with Ameritech in the weeks prior to approval of Ameritech's merger with SBC. Correspondence between MFN and the Ameritech negotiator make clear that MFN may collocate fiber cross-connect panels in a cageless physical collocation arrangement, pull its high-count fiber into the collocation arrangement from a single, defined manhole, and establish dark-fiber cross-connects to other collocated carriers. After the SBC merger was completed, SBC rescinded Ameritech's commitments on these documented commitments, and refused to provide similar arrangements in Texas.<sup>6</sup>

SBC has raised a series of issues in an attempt to explain its refusal to fulfill its commitments to MFN and its obligations under the Act. At different times, SBC has

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<sup>5</sup> Texas Order, comments of Metromedia Fiber Network Services, Inc. filed January 31, 2000.

argued that MFN cannot collocate or order UNEs because: it is not a telecom carrier; it is a carrier's carrier; that the applications approved in Illinois do not constitute access to SBC UNEs; that its federal tariff prevents MFN from accessing UNEs via a virtual collocation arrangement; and other arguments. These arguments have not been consistent, but have been introduced and withdrawn at different times and by different personnel.

In the time since MFN has been discussing this issue with SBC, sometimes with the assistance of the Enforcement Bureau, SBC has continued to reverse course on many of these issues. SBC's latest position – one that was only introduced in last spring – appears to be that MFN may not interconnect even when it is serving its own end-user customers through UNEs purchased from SBC because it is not collocating “enough” equipment to satisfy SBC.<sup>7</sup> What appears to be the simplest of collocation scenarios is flatly rejected and not permitted by SBC. Below, MFN provides a detailed chronology of SBC's contradictory and erratic responses, which so far have denied collocation and access to UNEs to MFN for 24 months.

### **Chronology of MFN/SBC Collocation Negotiations**

#### Whether MFN can collocate fiber distribution panels; Cross-connecting to other carriers:

- In January 1999, MFN reached agreement with Ameritech in January of 1999, that expressly provided for MFN's ability to collocate fiber cross-connect panels – and no other electronics – and to establish cross-connects to other collocated carriers. This provision was voluntarily negotiated by Ameritech, long before the Commission's *Advanced Services Collocation Order* mandated carrier-to-carrier cross connections.

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<sup>6</sup> SBC has agreed to provide a stable manhole assignment for all central offices within its ILEC region for fiber distribution for MFNS' carrier customers but still refuses to allow collocation of a FDF for interconnection with SBC UNEs to serve end-user customers.

<sup>7</sup> MFNS gratefully acknowledges the great assistance of the Enforcement Bureau staff. Through their efforts, MFNS and SBC have been able to reduce the outstanding issues to MFNS' right to collocate only a FDF to serve end users. It is MFNS' understanding that the Enforcement Bureau is awaiting the completion of the current Collocation Rulemaking before taking further action in their attempts to resolve this final issue.

See Exhibit A, January 27, 1999 Letter from Don DeBruin, Director, Interconnection Agreements, Ameritech, to Robert Riordan, MFN. In reliance on this understanding, MFN signed a negotiated interconnection agreement with Ameritech on May 10, 1999.<sup>8</sup>

- Ameritech reiterated its understanding of MFN's right to collocate fiber panels and cross-connect to other carriers in April 1999. Don DeBruin, Ameritech's Director, CLEC Interconnection Agreements, described the parties' agreement in a letter to Robert Riordan dated April 7, 1999:

Upon written request, [MFN] can interconnect its fiber network with that of other collocating carriers by connecting, via either fiber or electrical facilities, its collocated equipment (or fiber distribution panels) to the collocated equipment of other carriers so long as the fiber and collocated equipment of MFN and the cross-connected carrier(s) is used for interconnection with Ameritech or for access to Unbundled Network Elements by which MFN and the cross-connecting carrier are providing a Telecommunications Service(s). . . . MFN may, itself, provide [this cross-connection].

- Later in 1999, MFN contacted SBC seeking similar interconnection arrangements throughout SBC's region, but specifically in Texas. In October of 1999, SBC negotiator Janice Krzesinski, SWB's Lead Negotiator, for the first time denied MFN's request for collocation for the sole purpose of establishing dark fiber cross-connects to other collocated carriers.<sup>9</sup> **However, SBC represented that MFN could collocate its fiber panel where MFN provided services to customers using UNEs purchased from SBC.** Ultimately, and in reliance upon this representation by SBC, MFN opted into SBC's "T2A" interconnection agreement, which previously had been approved by the Texas Public Utility Commission.
- Following execution of the T2A, MFN sought collocation throughout the SBC service territory. On February 17, in a letter to Robert Riordan, Director, LEC Relations, MFN, from John Stankey, President, Industry Markets, SBC, Mr. Stankey reiterated SBC's position that it would not allow MFN to collocate for the sole purpose of cross-connecting to other collocated carriers. **Mr. Stankey, however, stated that because MFN "will be offering telecommunications services to local end users by purchasing [UNEs] from SBC and using the UNEs to provision local exchange services and/or advanced services to retail end users," SBC would be willing to**

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<sup>8</sup> The agreement was approved by the Illinois Commerce Commission on July 28, 1999.

<sup>9</sup> MFN's had sought, and SBC rejected, a form of interconnection called Competitive Alternate Transport Terminal or "CATT". CATT is technically equivalent to cageless collocation, and allows MFN to extend its multiple high-count dark fiber directly to a universally accessible distribution point within an ILEC's central office offering CLECs with access to unlimited bandwidth. CATT eliminates multiple fiber pulls into the central office thereby reducing space constraints and expenses for both the collocated CLECs and the ILEC. SBC is a part owner of Williams Communications. Because CATT has been deployed in the Bell Atlantic and GTE regions, SBC, through its partial ownership of Williams, will be able to gain the benefits of the efficient interconnection that CATT provides.

**“expeditiously negotiate MFN’s requested changes to the SBC 13-State Interconnection Agreement.”**

- In a letter from Christopher Heimann, SBC, to Jon Canis and David Konuch, Kelley Drye & Warren, which was undated but which MFN received on March 10, 2000, **SBC indicated that MFN would be entitled to interconnection under the Act if it “intends to pre-position dark fiber and collocate fiber distribution frame(s) in SBC’s Central Office(s) to enable MFN to interconnect with SBC’s network facilities for MFN’s transmission and routing of telephone exchange traffic, exchange access traffic, or both, and/or for MFN to access SBC’s unbundled network elements for the provision of telecommunications services by MFN.”**
- In a March 27, 2000 fax to MFN’s counsel, **SBC again stated that “to the extent MFN intends to collocate equipment (including fiber and fiber distribution frames) to interconnect with SBC’s network for MFN’s transmission and routing of telephone exchange traffic, exchange access traffic, or both, and/or to access UNEs so that MFN itself can provide telecommunications services, SBC has been, and remains, willing to negotiate an interconnection agreement.”**
- In contrast to, and conflicting with these repeated assurances that MFN *could* collocate dark fiber and fiber distribution panels, SBC at other times changed its position appearing to require MFN to deploy electronics in every central office in which it wanted collocation as a pre-requisite to collocation. In SBC’s February 10, 2000 letter to MFN SBC stated: **MFN “will provide a ‘curl’ of dark fiber cable into a collocation cage but will not deploy the electronics to light the fiber and provide transmission of information. Based on this information, it does not appear that MFN meets the definition of a telecommunications carrier entitled to negotiate a 251/252 interconnection agreement.”** Letter from Susan Lord, SBC, to Karen Nations, MFN, February 10, 2000, at 1-2. Again on May 10, 2000, in its written rejection of a compromise proposal put forth by MFN, SBC argued that: “SBC has refused to provide collocation, interconnection, and access to UNEs to MFN to the extent MFN seeks merely to provide dark fiber facilities (which are incapable of transmitting information **because they lack the electronics necessary to energize the facilities to transmit telecommunications**) to collocated CLECs.”<sup>10</sup>

Whether MFN can collocate as a carrier’s carrier:

- In a mediation session conducted at the Commission on March 28, 1999, SBC Counsel stated that, to the extent MFN were deemed a “telecommunications carrier” and is interconnecting with SBC’s UNEs, MFN could collocate solely to provide service as a carrier’s carrier, and need not provide retail service to end users.

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<sup>10</sup> SBC May 10, 2000 Letter to Glenn Reynolds, FCC, from Christopher Heimann, SBC, at 1 (emphasis supplied).

- In its April 21, 2000 response to MFN's Statement of Agreed and Disputed Issues, SBC stated at page 6: "Subject to the FCC's current and future rules relating to the use of UNEs to displace access services, SBC *will* provide collocation to a carrier's carrier." (emphasis supplied).
- In a May 16, 2000 conference call mediated by the Commission on March 28, 1999, SBC Counsel reiterated the position that MFN could collocate to be a carrier's carrier.
- During the same May 16, 2000 conference call, Larry Cooper, the SBC Vice President in charge of interconnection policy, stated that "MFN believes it has the right to be a carrier's carrier, and we [SBC] don't."

As the above chronology makes clear, over the course of 24 months, SBC has changed its position repeatedly:

- ✓ first approving collocation of fiber panels and MFN's ability to cross-connect to other carriers; then reiterating its approval of collocation of fiber panels, but denying MFN's ability to cross-connect;
- ✓ arguing that MFN could only collocate if it was providing retail telecommunications services to end users; then agreeing that MFN could act as a carrier's carrier, providing only wholesale services;
- ✓ affirming repeatedly for more than a year that MFN could collocate fiber and cross-connect panels only; and then inventing the argument that MFN must collocate electronics to "light" its fiber.

Unbelievably, in a meeting between the parties earlier this year on this subject, the SBC personnel in attendance disagreed on SBC's positions, providing inconsistent position statements **within the same meeting**.

- During a May 17, 2000 conference call attended by representatives of MFN, SBC and the Commission, Christopher Heimann, Senior Counsel with SBC, stated that his view that MFN could collocate a fiber distribution panel for the purpose of accessing SBC's UNEs in order to provide a telecommunications service, and that the lighting of this fiber could occur elsewhere in the network and did not have to occur in SBC's central office.
- During the same May 17 conference call with the FCC, Chad Townes, an SBC collocation manager, stated that SBC did not consider a fiber distribution frame to be "equipment," and that MFN could not collocate unless it installed within the central office electronics necessary to light the fiber and "draws power". The Commission

should note that this new position came after the Texas 271 Order and could not be raised in that proceeding.

- Also during the May 17 conference call, in response to a question by MFN counsel Jon Canis, SBC counsel Heimann clarified SBC's position that MFN need not provide retail services to end users in order to collocate, but instead could function exclusively as a carrier's carrier, providing wholesale services.
- Not ten minutes after that statement, SBC Vice President Larry Cooper stated that the basic dispute between the parties was that "MFN believes it has the right to be a carrier's carrier, and we [SBC] don't."

This failure to allow lawful collocation contrasts sharply with Ameritech's prior (pre-SBC merger) policy, as shown in two letters from Ameritech's Don DeBruin, in which Ameritech chose the most efficient configuration and agreed to allow cross-connections to obviate the need for multiple cable installations into the cable vault. It could not be that Ameritech's views are so contrary of its obligations to the Act to warrant SBC's immediate reversal because they are not. The only explanation is that SBC has adopted anti-competitive policies throughout its entire 13-state region to thwart competition and should not be granted interLATA authority until it actually and fully opens its network to competition. SBC's continued refusal to provide efficient and lawful access and egress to the CO for a carrier's carrier such as MFNS and denying MFNS' ability to service end user customers can only be attributed to a desire to prevent competition within SBC's region including Kansas and Oklahoma.

SBC's rejection of MFNS' collocation application for SBC's Richardson, Texas central office represents a low point in the interaction between the parties. MFNS has been unable to announce its market entry to end users by reselling SBC dark fiber loops in the SBC region because of these unlawful order rejections. The Richardson, Texas application is, in all material respects, identical to a collocation application that SBC granted for a

central office in Chicago.<sup>11</sup> SBC initially granted the Richardson application, and later the same day, rescinded the grant. Upon receiving this information, MFN's counsel contacted SBC's counsel Christopher Heimann and asked why SBC had refused to honor its obligations under the parties' interconnection agreement. SBC's counsel replied that, if in fact MFNS was serving customers through the Richardson CO, he saw no reason why MFNS would be refused interconnection. At the same time that MFNS' counsel contacted SBC's counsel, MFNS' Director, LEC Relations, Robert Riordan, also made contact with SBC's negotiating team to ask why SBC had failed to honor its agreement. SBC's negotiator told Mr. Riordan that SBC would not allow MFN to interconnect or collocate until ordered to do so by the FCC.<sup>12</sup> On May 16, 2000, SBC rejected MFN's collocation applications for seven additional central offices in Texas with no explanation given. To date, MFNS has 16 held orders for collocation within SBC central offices and has not been allowed collocation in any SBC central office. Riordan Aff. ¶ 12. Although MFNS has additional collocation requirements, it sees no reason to submit orders that will simply be rejected.

In the past, SBC has cited MFNS efforts to build fiber networks as an example of the interoffice transport competition that exists in Texas. As the foregoing demonstrates, SBC has even reneged on its promise to permit MFNS to collocate in offices where it is

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<sup>11</sup> The Chicago applications have been subsequently rejected citing the Advanced Services Order claiming "the FCC requires LECs to allow collocation equipment that is considered to be 'used and useful for interconnection or access to unbundled network elements.' In addition, the FCC specifically declined in the Advanced Services Order to require collocation of equipment that is not necessary for either access to UNE's or for interconnection." A copy of the rejection letter from Kenneth B. Van Proyen is attached hereto as Exhibit B.

<sup>12</sup> Although MFNS has not filed a formal complaint against SBC pursuant to section 208, it has been working with Commission staff to help SBC "see the errors of its way". MFNS hopes the Collocation Rulemaking and the denial of 271 authority in this proceeding will provide a sufficient order to force SBC to finally do what it has always been required to do without additional excuses and Commission resources.

servicing customers through UNEs purchased from SBC. SBC has characterized that it is continuing to negotiate with MFNS. However, MFNS already has signed and the appropriate Commission has approved the interconnection agreements in place that allow MFN to interconnect with unbundled elements – there is nothing more to negotiate. SBC has refused to process orders that clearly conform with the approved agreements in Texas and Illinois. SBC negotiators have confirmed this is a region-wide policy and that orders in all of SBC’s 13 states – including Kansas and Oklahoma – will similarly be stopped. This unlawful behavior based on the interconnection agreements that have been signed and statements made by SBC negotiators in the context of the remaining SBC 11 states in which MFNS is attempting to negotiate an agreement represents the most basic and blatant of checklist violations – a failure to interconnect. MFNS is deeply concerned that, unless ordered to follow the law by the Commission, SBC will continue to deny interconnection in order to prevent MFNS’ market entry.<sup>13</sup> SBC has thus far flatly refused to provide MFNS with interconnection and collocation in Texas and Illinois. It has indicated it will do the same in Kansas and Oklahoma.<sup>14</sup> These are not the actions of a company that has complied with Section 271.

MFNS has demonstrated significant flexibility in implementing several different innovative interconnection arrangements with different ILECs.<sup>15</sup> MFNS cannot be flexible in its need to collocate only a FDF in SBC central offices so that it can directly interconnect with SBC UNEs – the most basic of interconnection scenarios. Until SBC

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<sup>13</sup> SBC has already indicated that it will not follow the law until specifically ordered to do so by the Commission.

<sup>14</sup> It should be clear to the Commission that a similar policy in effect in the former Southwestern Bell and Ameritech regions indicates that this is a policy for the entire SBC 13-state region.

permits such basic interconnection it has failed to meet the requirements of checklist item i of the competitive checklist in all of its 13 state region.

SBC's actions in dealing with MFN are indefensible, and demonstrate patently anticompetitive behavior. SBC is well aware that this new optical infrastructure needs fiber to work but continues to thwart the ability of other competitors to offer it. SBC uses its monopoly power and "more equal status to abuse the system by imposing their own baseless barriers to interconnection and collocation. BellSouth and Qwest currently process collocation orders identical to those SBC has refused to process. They also illustrate that SBC has failed in its obligation to provide collocation under § 271 checklist item i, and access to UNEs under items ii, iv, and v. Moreover, SBC's documented conduct in response to MFNS' requests for collocation and access to UNEs demonstrate unquestionable bad faith on SBC's part, in contravention of the public interest standard that is part of the § 271 review process. For all these reasons, SBC's application for interLATA relief in Kansas and Oklahoma must be rejected.

### **III. CUSTOMERS AND TECHNOLOGY DESERVE MORE THAN WHAT SBC HAS OFFERED TO OPEN ITS MARKETS TO COMPETITION**

In its application, SBC discusses how long-distance customers in Texas have benefited from SBC's entry into the long distance market stating that the result is a bonanza for consumers in Texas.<sup>16</sup> There is *no* mention of the benefits to Texas consumers because the local market has been opened to competition. There is no mention of the benefits that Kansas and Oklahoma consumers are receiving because those local markets

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<sup>15</sup> MFNS has negotiated CATT with the former Bell Atlantic. MFNS negotiated indirect interconnection with the former GTE. MFNS negotiated stable manhole zeros with SBC.

<sup>16</sup> SBC Application, p. v-vi.

are opened to competition. The Act was not enacted to give long distance consumers another choice from the hundreds that are already available to them. The Act was enacted to Act “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”<sup>17</sup>

CLECs are still struggling with the most basic of interconnection issues as demonstrated in the comments and replies filed in the Collocation Rulemaking. As demonstrated in the Collocation Rulemaking, SBC and the other ILECs continue to resist providing those interconnection arrangements that it must lawfully provide.<sup>18</sup>

Although the ILECs attempt to stagnate the technology conversion taking place in the United States, the equipment manufacturers<sup>19</sup> continue to announce their success and innovative initiatives in leading the optical revolution and improving the telecommunications infrastructure. ILECs such as SBC, well aware that this optical infrastructure needs fiber to work, continue to thwart the ability of other competitors to offer it.

By denying these lawful interconnection arrangements, customers are denied the advanced technology they are entitled to and the Act requires. SBC cannot be granted any additional 271 authority until they fully open their network as the Act requires.

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<sup>17</sup> S. Conf. Rep. No. 104-230, 104<sup>th</sup> Cong., 2d Sess. at 1 (1996).

<sup>18</sup> See comments of @Link Networks, Inc., ATG, Allegiance, AT&T Comptel, Covad, CTSI, Inc., Fiber Technologies, Focal, GSA, Lightbonding, Mpower, PF.Net, RCN, RythymNet, Sprint, Telergy and Worldcom.

<sup>19</sup> See Collocation Rulemaking comments of Alcatel, Ciena, Cisco, JDS Uniphase, Lucent, and Nortel.

**IV. GIVEN SBC'S COMMENTS IN THE COMMISSION'S COLLOCATION RULEMAKING, IT IS CLEAR SBC IS NOT READY TO COMPETE FAIRLY AND SHOULD NOT BE GRANTED THE REQUESTED AUTHORITY**

In October, carriers were invited to file comments in the Commission's Collocation rulemaking.<sup>20</sup> These filed comments clearly demonstrate to the Commission that SBC still doesn't get it and should not be granted 271 authority in Kansas and Oklahoma until it not only says it gets it but demonstrates it as well.

**A. SBC encourages the status quo for competitive carriers**

While discussing the necessity of cross-connects, SBC states that CLECs can lease facilities from an incumbent LEC out of the incumbent's Access Service Tariffs. SBC goes on to say that telecommunications carriers have been utilizing each of these methods *for decades*.<sup>21</sup> It is MFNS' understanding that SBC can not satisfy MFNS' desire to avoid multiple fiber pulls because it does not offer dark fiber in the configuration described in its comments.

The Act was not enacted so that carriers could continue to do things as they have done for decades. One of the principal goals of the Act was "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of *new* telecommunications technologies."<sup>22</sup> In other words, to release the technological potential that only competition can bring to consumers. By SBC advocating maintaining the technology and processes that have existed "for decades", SBC demonstrates that

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<sup>20</sup> Reply comments were filed on November 14, 2000.

<sup>21</sup> Collocation Rulemaking, SBC Comments at 23-24 (emphasis added).

competition is still a foreign concept to it. A company that does not understand or embrace competition is not entitled to the rights and privileges of section 271.

SBC's position that "cross-connections between collocating carriers . . . have absolutely nothing to do with, connecting collocating carriers to the incumbent LEC's network" is unfounded.<sup>23</sup> SBC would have the Commission ignore the reality that the transport carrier is in fact enabling other carriers to purchase indirect interconnection and access to unbundled elements in the ILEC network – a situation that may not otherwise have been economically feasible *but for* the existence of the transport carrier. SBC would also have the Commission ignore the fact that it must find that SBC's "requested authorization is consistent with the public interest, convenience, and necessity."<sup>24</sup> Such anticompetitive behavior is not consistent with the public interest, convenience, and necessity.

By contrast, the former GTE has negotiated interconnection arrangements that *specifically recognize* that a carrier is interconnected with CLECs that are directly interconnected with the ILEC through ILEC UNEs is *indirectly* interconnection with the ILEC network. In addition, ILECs such as Sprint, which must balance its ILEC and CLEC interests, taking into account a set of rules that would "facilitate CLEC entry on economically viable terms and in a fashion that minimizes the ability of other ILECs to increase artificially the costs of entry and delay the entry process,"<sup>25</sup> it came out, *unquestionably*, in favor of allowing LECs to collocate their own cross-connect facilities in

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<sup>22</sup> Telecommunications Act of 1996, Pub. L. No. 104-04, purpose statement, 110 Stat. 56, 56 (1996) (emphasis added).

<sup>23</sup> *Id.*

<sup>24</sup> 47 U.S.C. § 271(d)(3)(C).

<sup>25</sup> Collocation Rulemaking, Sprint Comments, page 2.

ILEC central offices in order to interconnect directly with other CLECs.<sup>26</sup> With forward-looking ILECs such as these it is hard to understand how SBC's positions are consistent with the public interest, convenience, and necessity. The public interest, convenience, and necessity are not served by SBC being authorized to provide interLATA services in Kansas and Oklahoma.

**B. SBC Cannot Complain in One Proceeding that Collocated Equipment Takes Up Too Much Room and in Another Proceeding Require It**

In the Collocation Rulemaking, SBC complains "multi-functional equipment falling under a broad definition of 'necessary' utilizes more power, is considerably heavier (this requiring greater floor loading parameters), and uses more HVAC than equipment that is truly necessary for interconnection or access."<sup>27</sup> In the case of MFNS' current collocation orders that are being held by SBC and not worked, SBC states that MFNS is not collocating enough equipment because a FDF does not utilize any power and has a small footprint. The Commission should again note that the "official explanation for reject the applications was that SBC was not required to collocate equipment that is not necessary. *See* note 11, *supra*.

A FDF is equipment necessary for the direct interconnection of MFNS' network and SBC's UNEs. No piece of equipment can be more necessary.<sup>28</sup> Despite this, MFNS seeks to collocate its FDF within SBC Central Offices and locate its electronic equipment to light the fiber in another location taking into consideration how best to serve the

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<sup>26</sup> *Id.* at 13.

<sup>27</sup> SBC Comments, page 12, note 10.

<sup>28</sup> The only interconnection alternative for connection SBC's dark fiber loop and MFNS' fiber is a splice which is not permitted. *See also* Collocation Rulemaking, Comments of Alcatel, p. 26.

customer. Among other reasons, MFNS seeks to do so for the same reason SBC does not want collocation of multi-function equipment: it saves space and money.

SBC states that electronics to light the fiber, in addition to the FDF, must be collocated within the central office together. Riordan Aff. ¶ 11. What SBC always fails to mention is, given a very literal reading of section 251 and the term necessary, the electronics equipment is not necessary to interconnect with its UNEs and should not be allowed to be collocated. However, all parties seem to agree that electronics can be collocated and SBC requires it. Only SBC argues that electronics *must* be collocated. The electronics are only required to light the fiber and provide the telecommunications service. The only necessary piece of equipment for the required interconnection is the FDF that SBC refuses to permit to be collocated by itself. Until SBC stops making up rules that have *no* legal basis this and future 271 applications filed by SBC must be denied.

## V. CONCLUSION

MFNS is the first to admit that, because of SBC's constantly changing positions on issues, it is difficult to build a record in order to judge SBC's compliance with the competitive checklist. For that very reason, however, MFNS strongly urges the Commission to reject SBC's application until SBC sets policies that do not change with the wind depending on who is at a particular meeting, are in compliance with the Act and Commission Rules and are followed by SBC.

Respectfully submitted,

/s/ Karen Nations  
Karen Nations  
METROMEDIA FIBER NETWORK SERVICES, INC.  
One Meadowlands Plaza  
East Rutherford, NJ 07073  
Telephone: (201) 531-8021  
Facsimile: (201) 531-2803

Dated: November 15, 2000

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of Metromedia Fiber Network Services, Inc. were served via overnight delivery on this 15<sup>th</sup> day of November, 2000 of the following:

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/s/ Karen Nations  
Karen Nations

Dated: November 15, 2000

EXHIBIT A

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
 )  
Joint Application by SBC Communications, Inc., ) CC Docket No. 00-217  
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 Kansas and Oklahoma )  
 )

County of WESTCHESTER )  
 ) ss.  
State of NEW YORK )

**AFFIDAVIT OF  
ROBERT RIORDAN**

I, **ROBERT RIORDAN**, being first duly sworn upon oath do hereby depose and state as follows:

1. My name is Robert Riordan. I am employed by Metromedia Fiber Network Services, Inc. ("MFNS") as Director of LEC Relations. My business address is 360 Hamilton Avenue, White Plains, NY 10601, and my telephone number is (914) 421-6732. I possess firsthand knowledge of the matters involving the negotiation and implementation of interconnection with SBC, and am submitting this Affidavit on behalf of MFNS in support its comments urging the Commission to reject SBC's 271 applications in Kansas and Oklahoma.

2. As Director of LEC Relations, I am responsible for negotiating interconnection agreements with all ILECs. I represented MFNS in the negotiations between MFNS and SBC and the former Ameritech concerning interconnection. I

currently represent MFNS in negotiations with SBC for an interconnection agreement for the remaining 11 states in the SBC region.

3. My telecommunications background spans 31 years. Prior to joining MFNS in 1998, I served as an independent consultant to new Internet service providers (“ISPs”) and competitive local exchange carriers (“CLECs”) in the areas of business plan development, network interconnection and regulatory. My clients included Splitrock Services, US ONE Communications, Yurie Systems, Inc., and MFNS. I retired from NYNEX in 1995, after negotiating the first interconnection agreements in the country with TCG, MFS Telecommunications, and Cablevision Lightpath as Director of Interconnection. My telecommunications career began at NYNEX in 1969. At NYNEX my experience included network engineering, divestiture planning, new product development as well as various assignments in the Carrier, CLEC and Interconnect Markets. I graduated from Fordham University in 1964 with B.S. in Psychology.

4. MFNS is a competitive provider of dedicated optical fiber transport and high-bandwidth connectivity for communications intensive customers throughout the nation.

5. MFNS is a certified telecommunications carrier in 41 states and the District of Columbia including Kansas and Oklahoma. MFNS or its affiliates currently provide high-bandwidth fiber optic transport and connectivity in New York, Philadelphia, Washington, D.C., Chicago, Dallas, San Francisco, and Boston. Within the next several years MFNS plans to complete expansion into 50 U.S. markets. MFNS intends to start providing service in Kansas within the fourth quarter of this year.

6. As a provider of dedicated fiber transport and other telecommunications services, MFNS is in a unique position to facilitate telecommunications competition by providing state-of-the-art technology and virtually unlimited bandwidth to telecommunications service providers and corporate/government customers.

7. MFNS negotiated an interconnection agreement with the former Ameritech in Illinois. The agreement was approved by the Illinois Commerce Commission on July 28, 1999.

8. MFNS opted into the Southwestern Bell Texas 271 Agreement (T2A). That agreement became effective on December 21, 1999.

9. MFNS has attempted to negotiate an interconnection agreement for the remaining 11 states in the SBC region. Those negotiations are at an impasse because of SBC's refusal to process MFNS' collocation orders in Illinois and Texas.

10. MFNS has submitted collocation applications to SBC in Illinois and Texas. With its collocation MFNS intends to lease dark fiber loops and connect our end user customers to MFNS' backbone network. MFNS plans to collocate a Fiber Distribution Frame ("FDF") in order to complete this interconnection.

11. SBC has denied all of these collocation applications. The stated reason was that a FDF is not enough equipment for collocation because the FDF does not draw power and that electronics to "light" the fiber must also be collocated in the Central Office.

12. To date, MFNS has 16 outstanding collocation orders. MFNS has not been permitted to collocate in any SBC central office.

13. This issue surfaced after the FCC granted SBC 271 authority in Texas so MFNS did not have an opportunity to notify the Commission during that proceeding of this unique position SBC has for recently taken.

14. SBC's refusal to process collocation orders in Texas and Illinois continue to be a matter of serious concern for MFNS as it represents use of SBC's monopoly power to restrict MFNS' entry into the SBC region.

15. SBC staff has made it clear that this prohibition of collocating only a FDF is a region wide policy and that all similar applications filed in Kansas and Oklahoma will be rejected for the same reason.

16. I have no reason to believe that collocation orders for collocating only a FDF to interconnect with dark fiber loops in Kansas and Oklahoma will be accepted and processed.

17. SBC has failed to open its network to competition by refusing to allow this basic interconnection. MFNS urges the Commission to reject SBC's application for 271 approval in Kansas and Oklahoma until it allows all lawful collocations including a FDF in Kansas and Oklahoma.

FURTHER AFFIANT SAYETH NOT.

/s/ R. Riordan  
Robert Riordan

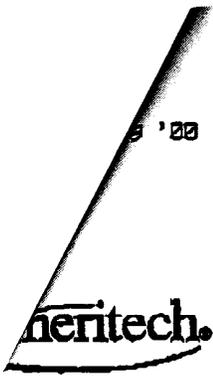
SUBSCRIBED AND SWORN TO BEFORE ME this 14<sup>th</sup> day of November 2000.

/s/ Yvette Kitrosser  
NOTARY PUBLIC

My Commission Expires:

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EXHIBIT B



Information Industry Services  
Floor 5  
350 North Orleans Street  
Chicago, IL 60654

May 19, 2000

VIA FAX TO (312) 263-5471 AND UPS OVERNIGHT MAIL

John Fleming  
Metromedia Fiber Networks, Inc.  
Suite 1600  
333 W. Wacker Dr.  
Chicago, IL 60606

Re: Physical Collocation Applications

Dear Mr. Fleming,

Ameritech has completed a evaluation of Metromedia Fiber Networks, Inc.'s (MFN) physical collocation applications for the Chicago-Franklin (CHCGILFR), Chicago-Dearborn (CHCGILID), Chicago-Humboldt (CHCGILHB), Chicago-Irving (CHCGILIR), Chicago-Newcastle (CHCGILNE), Chicago-Superior (CHCGILSU), LaGrange (LGRGILLG) and Schaumburg (SCBFILCO) Central Offices.

Ameritech is denying these physical collocation requests at the above mentioned Central Offices for which MFN has submitted collocation applications. The reason is as follows:

- Per FCC Advanced Services Order, CC Docket No. 99-48, the FCC requires LECs to allow collocation equipment that is considered to be "used and useful for interconnection or access to unbundled network elements." In addition, the FCC specifically declined in the Advanced Services Order to require collocation of equipment that is not necessary for either access to UNEs or for interconnection.

If you have any questions or need further assistance, please do not hesitate *to* call me on (312) 867-4166.

Sincerely,

Kenneth B. Van Proyen  
Manager- Collocation Services  
Ameritech