BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

Further Notice of Proposed Rulemaking	)	
In the matter of f the Computer III Remand	)	
Proceedings: Bell Operating Company	)	
Provision of Enhanced Services; 1998	)	CC Docket Nos. 95-20; 98-10
Biennial Regulatory Review – Review of	)	DA 01-620
Computer III and ONA Safeguards	)	(Published in Federal Register
and Requirements	)	March 15, 2001)
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INITIAL COMMENTS OF
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President
Brand X Internet LLC

April 16, 2001

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Pursuant to the Public Notice issued March 7, 2001 (DA 01-620) requesting further comment to update and refresh the record on Computer III requirements, Brand X Internet LLC submits comments critical of SBC and of the complete failure of the Compute III requirements to promote competition.

1. Introduction

SBC and its California affiliate Pac Bell have used control of the "last mile" of telephone lines to destroy competition in the internet business, through unfair technical policies, illegal bundling of services, and by favoring its in house ISP with two tiered pricing and other non-dollar subsidies, including advertising, promotion by installers, shared finances, shared staff and shared facilities. SBC has also refused to negotiate interconnection with Brand X Internet in good faith on high speed services, as required under the Telecommunications Act. No amount of regulation will solve SBC's inherent conflict of interest. The only solution is for SBC to completely divest itself of its ISP business, and focus on what it does best, which is to provide local access and lines for service.,

2. Who is Brand X Internet LLC?

Brand X Internet LLC is a local Internet Service Provider and CLEC located in Santa Monica, California. We opened our network in 1994. Our customers include the Archdiocese of Los Angeles, the Bassett Unified School District, the Directors Guild of America, the City of Santa Monica, the United Auto Workers, Fujitsu, Fox Motion Pictures, and many other individuals and businesses.

The focus of our service is high quality high speed services. In the past two years that has meant primarily DSL. Currently 45% of our revenue is from DSL, all of this in Verizon territory. Yet we are unable to offer any product at all in SBC territory due to predatory pricing and unfair policies. SBC charges is more for lines at wholesale than consumers can buy these same lines at retail. The unfair business practices that SBC has used to drive competitors out of business will make it impossible for anyone to do business in their area.

It is one thing for people to wax philosophical about theories and what-if situations. But there has been a recent spate of bankruptcies and near bankruptcies, from North Point, Rythms, PSI, Zyan, to many smaller and lesser known local businesses that have made it clear that our fears of unfair competition are something that need to be dealt with right away.

As the president of a small local ISP, it's one of my duties to compare prices and evaluate business opportunities. I've been involved with SBC and we even went to the point of ordering SBC services for our customers. However, before the line was fully installed, SBC changed their price schedule, and we found the laws of arithmetic would prevent us from ever breaking even. In the best case we would lose $34 per customer per month and there was no way to make it up on quantity..

For this reason, we were forced to drop DSL service in SBC areas. This is a terrible decision to have to make. Yet in half our home market, we are out of business. Every ISP that I'm aware of that has been involved in DSL in SBC areas has either gone broke or is close to it. We have minimized damage by closing down operations in SBC areas. I doubt this was the intention of FCC regulation.

3. How does an ISP provide DSL Access through a telephone company?

In order to understand the current pricing and policy problems, it is first necessary to understand what is involved in setting up a DSL system.

DSL lines connect a customer with a central office. The dsl line is basically a phone line. The data is sent on high frequencies (above 50 kilohertz) at the same time as voice is sent in low frequencies (under 20 kilohertz). Thus DSL allows the phone company to resell an asset they have already sold once. The phone company can charge you $25 or whatever for the voice line and then charge you $35 or so for the DSL line, and they are in fact the same wire. This is a great business plan, because the phone company more than doubles their revenue from an asset that is already paid for, and the customer benefits from a really great high speed data service.

The equipment is simple. At the customer end of the line is a "Modem." At the Central Office is a "Dslam", which is basically a bank of modems conveniently mounted in a single chassis, with some management software.

Data from the customer goes from the computer to the modem, across the line to the dslam, and from there it is relayed over to the ISP, either through Frame Relay or ATM. At the ISP this data traffic is connected to a "Router" that manages the connections at our end. From there the traffic goes into our network to the Web or Mail servers, or off to the Internet.

As an established ISP we already own a network and have our own computers and servers. In order to provide DSL service we have to be able to buy DSL lines to hook up our customers. If there is to be competition then we need to be on a level playing field.

It is worth noting that SBC did not develop any of the technology used for DSL. The equipment is manufactured by Alcatel of France, Nokia of Finland, and a variety of other (mostly foreign) manufacturers.

DSL itself has been in use for at least a decade, but was used as an underlying transport for T1 lines and other high speed services.

4. SBC is using unfair DSL line pricing to wipe out competitive ISP's

The wholesale price that ISP's are forced to pay SBC for lines is higher than the retail price customers pay for the line plus ISP services. This means the basic rules of arithmetic block us from offering service in SBC areas.

Here are the numbers:

SBC has been selling basic DSL services for $39.95 per month, retail, to consumers. This includes the Internet Service. ISP’s must pay $39.00 wholesale for this same line. The assumption here is that the ISP is supposed to survive on 95 cents.

But that’s not the worse of it. When analyzing the prices the an ISP pays it is important to remember that the ISP pays not only for the line, but also is forced to pay a line charge to have the customer circuits terminated at the ISP.

For example, for a small ISP the lowest cost entry point situation requires a T1 line service to be purchased by the ISP from Pac Bell. Because of the technical restrictions imposed by SBC, a T1 line can only carry 32 customers (this limitation is totally artificial - on Verizon a T1 line is allowed to carry 100 or more customers). So, the cost of the T1, which is roughly $1,000 per month, has to be split between 32 customers, or about $35 each. This is on top of the line charge, which is $39.00. This means the ISP is charging $39.95 and paying Pac Bell $39+$35 per customer, thus losing about $34.05 per customer per month. This assumes we work for free and ignores the overhead costs of being in business as an ISP.

Anyone who has seriously attempted to make SBC DSL work as a business, has either gone bankrupt or is close to it. You can't take a $35 per customer loss and make it up on market share.

Reality check: how does SBC's in house service make this work? They simply aren't paying the same price. This brings us to our next point.

5. SBC's in house affiliate isn't paying the same prices other ISP's.

If Pac Bell Internet were a separate company paying the same prices that we have to pay for lines, the would be out of business in no time. They get around this by having two tiered pricing.

The price list I am most familiar with was forwarded to me by Bill Blasé, president of Pac Bell, SBC’s California operation, in early 2000. This followed a visit to his office where we had asked about DSL line pricing.

The price lists DSL line pricing of $25 per line for quantities over 180,000 lines.

Coincidentally, Pac Bell had about 160,000 customers at the time this price list was published.

No other ISP qualified for similar pricing.

6. There is no justification for quantity discounts

There is no doubt that it costs money to set up a DSL network. Those costs are quantifiable: it costs around $200 for a DSL modem, a DSLAM costs perhaps $100 per port, while the lines that carry the data themselves are free (paid for by voice line charges). Installation and setup have labor expenses. Sales staff and order taking all have to be paid for. It all costs money, and there needs to be a profit too. We don’t have any objection to SBC making a profit.

What is interesting here is that none of these costs vary depending on the choice of ISP. There are economies of scale on the network as a whole, but these economies are independent of who the customers buy their ISP service from. They depend only on the overall size of the network. Your installation cost, your installation expense, all of this is going to be exactly the same whether a customer hooks their line to us or to the phone company. There is absolutely no reason for any kind of quantity discount that discriminates against ISP's that don't have the muscle power of Pac Bell Internet.

7. SBC is using revenues from monopoly services to underwrite and basically give away the services which are not a monopoly.

SBC has been claiming that the line charge is $39 and the Line+Internet is $39.95. This means the Internet Service represents only 95 cents of the value added by SBC. This is a fiction that fools nobody. SBC charges over $20 for dialup access. SBC is not more efficient than other providers. It is only when SBC is allowed to load up costs on their monopoly services, and pass the savings over to the ISP side, that it can maintain fictional 95 cent ISP services.

8. The separation of SBC and it's Internet wing is totally fictional.

SBC and it's Internet wing share mangement, real estate, staff, advertising, customer lists, and telco resources. The only real separation is in the ordering system, which essentially serves only to make ordering impossible for ISP's. I have been in SBC's Los Angeles headquarters and I have seen signs touting the ISP service and sales goals for the coming year. I have been to SBC's offices in San Francisco and have personally spoken with Bill Blase, the president of Pac Bell. He was quite up front about the issue. The reason SBC has created a data affiliate is to circumvent the requirements of the telecommunications act. However, the policies of the data affiliate are in no way separate. The employees of the shells work together with the sensible goal of taking 100% market share and using all tools at hand to accomplish this goal, including, use of control of lines and unfair contracts to block ISPs from participating in ISP services in their own home territories.

9. SBC has ignored Computer III

It is our understanding that either SBC should have a completely physically separate Internet and Data entity, or SBC should publish and implement a plan showing how safeguards will be established. We have seen no such plan, and we have looked. If a plan exists, it isn't working. SBC has taken a convenient 'best of Computer II and Computer III' approach, by having an in house ISP, calling it a separate company, and then acting as if both companies were one and the same. For heck's sake, the names of the companies are the same, they use the same sales people, the charges go on the same bill, and the pricing and policies show that the finances are in no way separate. Pac Bell internet is completely subsidized by revenues from the monopoly line charges. It is insulting to our intelligence for SBC to try to pretend that the Advanced Services and Internet affiliates are separate businesses. At the end of the day, it all goes on the same balance sheet and end of the year report.

10. The facts show: SBC has near 100% market share for DSL in markets where it has control of the "last mile".

SBC has managed to put a good face on the numbers, which sort of avoid the fact that nobody offers DSL service in Pac Bell areas. I think it was Mark Twain who once said: "There are three kinds of lies: lies, damn lies, and statistics." The numbers that SBC puts forward basically are lies. There is no competition in SBC areas.

While a few companies have tried to make a go of it by offering DSL in SBC territories, the bottom line is that SBC has 100% market share where it controls the last mile.

This contracts strongly with SBC's share of market in areas where it does not have control of the last mile. In those areas market share is near zero. For example, SBC offers Dialup, web hosting, T1 and other services in Verizon territory in Los Angeles, but market share is near zero. In SBC territories where control of lines allows SBC to put competitors at a disadvantage, DSL market share is essentially 100%.

11. Conclusion: An active policy is required to create competition where none exists today

At Brand X Internet LLC we strongly believe in the competitive system as the best mechanism for harnessing the energy of industry for the public good.

Think for a moment: how do we keep other industries honest?

For example, how do you know your grocery store is charging fair prices for vegetables?

It’s not a problem because of the competitive system. If one grocery store gets too far out of line, you can always go to a competitor. Competition is the best way to make sure companies are serving the public interest.

But competition is problematic here because SBC controls the lines, and has established a clear pattern and practice of using that control to put all competitors at a disadvantage. It’s a classic case of the fox guarding the chicken coop. SBC has a clear conflict of interest, and if there are no controls, SBC will abuse the situation.

SBC has not in any meaningful way implemented any of the competitive requirements of the Telecommunications Act. SBC has taken no steps to comply with Computer II or Computer III.

It is our opinion that SBC will NEVER be able to comply with any of the competitive requirements of the Telecommunications Act. The only way to keep them honest is to ask them to divest the Data and Internet affiliates.

If SBC is not forced to divest, then the following are needed to assure competition:

1. All quantity discounts must be eliminated. The little guys should have a chance to get started and should not pay higher prices than SBC's data or internet affiliates. There is no reason to evaluate these on a case by case basis. SBC has abused the idea of quantity discounts and they should simply be banned.
2. SBC's Internet Service must have a different name, which does not sound like SBC or Pac Bell.
3. SBC's Internet Service must have a separate payroll, and all personnel who in any way work on Internet services, must be on that payroll.
4. SBC's Internet Service must have separate budgets for all business expenses, including advertising, rent, purchase of equipment.
5. Any service or advantage which SBC offers to its Data Affiliate must be offered in equal quantity to competitors, including, coop advertising, listing in phone books, use of facilities and staff, financial subsidies, loans, etc.
6. SBC's internet service should not be allowed to run at a loss. SBC should not be allowed to subsidize it with monopoly line revenues.

7. Meaningful penalties must be established. Right now the fear of penalties is far away and theoretical, and SBC considers them an acceptable cost of doing business.

8. If SBC's internet affiliate controls more than 50% of the Internet traffic, there should be a presumption of unfair competition, and SBC should be required to divest itself of its internet holdings if it is unable to remedy the situation and create a competitive environment.

We thank you for your time considering this important issue. The decisions we make now are ones the entire country will have to live with for decades.

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