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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

May 21, 2001

Via Hand Delivery

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

Re: SBC's Section 271 Application for Missouri, CC Docket No. 01-88

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, the Competitive Telecommunications Association ("CompTel") hereby gives notice that today it sent the attached letter, via hand delivery, to Enforcement Bureau Chief David Solomon.

Sincerely,

Jonathan D. Lee
Vice President,
Regulatory Affairs

No. of Copies rec'd 0+1
List A B C D E

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May 21, 2001

Via Hand Delivery

David Solomon
Chief, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Sanctions Against SBC Communications, Inc. for Violating Section 271 and Submitting False Testimony to the FCC

Dear Mr. Solomon:

I am writing on behalf of the Competitive Telecommunications Association ("CompTel") to request that the Commission investigate the submission by SBC Communications, Inc. ("SBC") of false or misleading information in support of its Section 271 applications for Kansas and Oklahoma regarding SBC's provision of loop qualification data to competitive local exchange carriers ("CLECs"). It is undisputed that the Commission explicitly relied upon SBC's misrepresentations in finding that SBC complied with the competitive checklist and was entitled to Section 271 authorization.[1] *Joint Application by SBC Communications Inc. et al. for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, ¶129 & n.355 (Jan. 22, 2001), *appeal pending*, No. 01-1076(D.C. Cir. filed Feb. 16, 2001) [hereinafter cited as *KS/OK Order*]. SBC's action is particularly troubling because this is not the first time it has occurred. SBC previously has been sanctioned both by this Commission and by the Texas Public Utilities Commission for its lack of candor to regulatory agencies and CLECs in local competition proceedings. *SBC Communications Inc.*, FCC 99-153 (Jun. 28, 1999); *Petition of Accelerated Connections, Inc.*, Texas PUC Docket Nos. 20272 & 20226, at 2 (Oct. 13, 1999). Because several CompTel member companies participated in this proceeding, and were harmed by SBC's egregious conduct, it is my

[1] Indeed, this Commission expressly acknowledged that these representations were pivotal to its finding that SBC had satisfied the checklist item requiring the provision of unbundled network elements. The Commission stated that SBC's "systems would automatically return loop make-up information on a copper loop running to the end user, if one exists or if a spare loop can be assigned, rather than make-up information on the fiber loop. . . . We find that this satisfies the requirements of the *UNE Remand Order* and this checklist item."

As more fully set forth below, the facts relating to SBC's deception are not disputed. SBC certified to the Commission that it had fully satisfied all parts of Section 271's competitive checklist as of October 26, 2000. In reliance upon SBC's certification, the Commission permitted SBC to begin providing in-region interLATA services in Kansas and Oklahoma as of March 7, 2001. SBC now admits it did not satisfy the competitive checklist until at least April 13, 2001. Thus, even assuming this most recent certification is accurate, SBC should not have been permitted to offer interLATA services in those states until at least July 12, 2001.

An investigation should be undertaken to determine: (a) is SBC now in compliance with the checklist requirements regarding provision of loop qualification data to CLECs and, if so, when did SBC come into compliance? (b) what steps were taken by SBC to verify its certifications to the Commission that SBC provided accurate loop qualification data to CLECs? (c) who at SBC knew (or should have known) that the certifications were inaccurate and when? (d) what, if any, steps has SBC taken to correct the environment that allows false or misleading certifications to be repeatedly submitted to the Commission?

As an appropriate initial sanction, and to ensure that the investigation proceeds with the full and timely cooperation of SBC, CompTel asks the Commission to suspend SBC's interLATA authority in Kansas and Oklahoma for 127 days (the number of days SBC was granted early entry) or until the investigation is completed, whichever is later. Upon completion of the investigation, the Commission should consider what further sanctions are necessary in light of the facts disclosed.

Introduction

The CLECs' advocacy in the Section 271 proceeding was clear and compelling -- this Commission should not, under any circumstance, rely on a Bell Operating Company's ("BOC's") self-certification of compliance with statutory or regulatory requirements when reviewing a Section 271 application. The CLECs felt strongly (and as it turns out correctly) that BOC self-certification would, in the end, mean BOC self-service during the 271 process. Unfortunately, this Commission elected to reject the CLECs' position and is now confronted with the very situation CompTel has feared would likely occur—SBC has misrepresented itself, not once, but in three separate affidavits to this Commission in the Kansas and Oklahoma proceedings.

There can be no doubt that a severe sanction is warranted, including revocation or suspension of SBC's long distance authority in Kansas and Oklahoma, for the following reasons: (i) SBC testified falsely in three different affidavits, on matters known to be highly material to its Section 271 application; (ii) prior to submitting the false testimony, SBC was on notice that competitors had challenged the veracity of SBC's claims, yet it adhered to and formalized its false statements in sworn affidavits; (iii) SBC was rewarded for its false statements because the Commission explicitly relied on the representations in rejecting competitors' claims, and in granting Section 271 approval; (iv) this is not the

first time that SBC has submitted false testimony to the Commission; (v) SBC was required under a prior consent decree to educate its witnesses on the subject of candor to the Commission; (vi) SBC was not in compliance with the conditions for its Section 271 approval, following the approval; and (vii) a strong message must be sent to SBC because in the expedited Section 271 review process, the Commission, the Department of Justice, and the public must be able to count on the accuracy of SBC's sworn statements in support of its applications.[2] SBC continues to make a mockery of the Commission's effort to open local markets. Its conduct in connection with the SNET merger approval before this Commission and the DSL arbitration before the Public Utilities Commission of Texas (discussed below), and in the Kansas/Oklahoma proceedings, demonstrates that in order to secure favorable rulings, SBC is more than willing to falsify information, or at a minimum make whatever statements are needed, and correct the facts later only if caught by a third party. SBC has apparently determined that the Commission's fines are a small price to pay for gaining regulatory approval and shutting down prospects for local competition. Making false statements to secure favorable Commission rulings, whether those statements are deliberate or reckless, will continue to be a good "business case" for SBC unless the Commission suspends or revokes its Section 271 authority.[3]

Before turning to the specifics of the violations, CompTel urges the Commission to use this unfortunate incident as a wake-up call on the dangers of relying on self-serving statements of Bell Operating Companies ("BOCs") that are not backed by commercial experience or third-party testing. This incident vividly illustrates why the Commission should adhere to its earlier precedent requiring Section 271 applicants to show through commercial experience or independent third-party testing that their Operations Support Systems ("OSS") work as advertised. Competitive carriers have repeatedly emphasized the inadequacy of a process in which regulators rely on a BOC's word as to checklist compliance, or on qualified, caveat-filled assertions by a BOC's long-time financial auditor as to the performance of its client's OSS.[4] No one in the industry will be in the least bit surprised that the SBC-sponsored Ernst & Young audit submitted as part of SBC's Kansas-Oklahoma Section 271 application failed to uncover

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[2] As a direct result of the inaccurate information SBC filed in the FCC's Kansas/Oklahoma 271 proceedings, the Arkansas Public Service Commission has directed SBC to file a detailed explanation and accounting regarding those inaccuracies; to identify any inaccurate information filed in the Arkansas 271 proceeding; and to provide any documentation relating to this matter in the state's 271 proceeding.

[3] In addition to revocation authority under 47 U.S.C. § 271(d)(6), the Commission has ample authority to fine SBC for these violations, including its forfeiture authority under Title V of the Communications Act, and its authority to punish false statements (see, e.g., 47 C.F.R. §§ 1.17 & 1.80 & accompanying Guidelines for Setting Forfeitures). As discussed above, however, monetary fines are clearly insufficient to change SBC's conduct.

[4] See, e.g., Comments of WorldCom, Inc., on the Application by SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, at 3-7 (Nov. 15, 2000); Reply Comments of WorldCom, Inc., on the Application by SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, at x ("This Commission has always demanded proof that a BOC's OSS is ready, not just an assertion to that effect by the applicant"); id. at 37 & n.24 (noting the absence of commercial experience with SBC's DSL provisioning, the "complete lack of testing of line sharing in Texas or in the states currently under consideration," and the Oklahoma Commission's finding that SBC could not rely on the Texas proceeding to support compliance with line sharing requirements).

SBC's false statements as to the capabilities and performance of its OSS. Indeed, Ernst & Young did not even observe, let alone test, SBC's loop qualification processes.

The Commission has repeatedly expressed its frustration at having to resolve disputed issues of fact during the brief time it has to review a Section 271 application. We share this concern. Had these issues been tested by a third party, prior to SBC's application, there would have been no need for the Commission to have relied solely on SBC's affidavits on a critical issue involving advanced services – statements that have now proven to have been false when made.

Unfortunately, SBC's self-certification has not been limited to loop qualification capabilities. The Commission has relied on the veracity of SBC's unverified assertions in virtually every area that affects whether SBC has opened its local markets to competition. For example, as the CLECs pointedly argued in the Kansas/Oklahoma proceeding, SBC's assertions as to the degree of facilities-based residential competition in Kansas – critical to the Track A determination – proved to be demonstrably untrue. SBC initially claimed that a number of CLECs, including WorldCom, were providing facilities-based service to residential customers in Kansas.[5] SBC retracted this claim when the CLECs demonstrated that SBC's statements were untrue.

CompTel was thus quite dismayed to learn that after discovering the inaccuracy of SBC's opening comments, the Commission then credited SBC's post-reply, ex parte assertions that two other CLECs accounted for substantial facilities-based residential service in Kansas. SBC's evidence was submitted after reply comments were filed, in a secret filing that violated the Commission's ex parte rules. This evidence was far from uncontested. Although one of the CLECs, Birch, purported to attest to the accuracy of the new data, the other did not. These circumstances cried out for independent verification of SBC's self-certification, but that did not happen, on the critical issue of whether there was even de minimus facilities-based residential competition in Kansas.

Similarly, the Commission routinely declines to make independent determinations on whether the BOCs' unbundled element prices comply with TELRIC, even where there is no evidence that a state commission properly analyzed the BOCs' cost studies and despite the urging of the Attorney General, whose suggestions are statutorily entitled to "substantial weight.". It is thus apparent that the validity of the Section 271 process and the Commission's market-opening efforts remain heavily dependent on the integrity of untested assertions by the BOCs. Even if one assumes that some degree of reliance must be placed on the integrity of the BOCs' testimony, that merely demonstrates that severe sanctions must be imposed where, as here, the Commission has been duped by a BOC's repeated false statements.

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[5] WorldCom and other CLECs repeatedly cautioned against reliance on SBC's dubious Track A data. See, e.g., Letter from Keith L. Seat, WorldCom, Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 00-217, at 16 (Jan. 3, 2001) ("[E]specially in light of the demonstrated defects in SWBT's claims for competition based on the E911 database . . . the Commission should independently investigate the state of residential, facilities-based competition in Kansas.")

As the CLECs have continually stated, and the Attorney General has echoed, it is inappropriate for the Commission to rely on a BOC's self-serving affidavits to reject a CLEC's competitive concerns when those concerns can be subject to independent verification. Now that the CLECs' fears have been realized, it is essential that SBC be penalized to the maximum extent permissible by law for misleading the Commission and the public with false testimony. The details of SBC's conduct are outlined below, although a Commission investigation is needed to uncover the full extent of SBC's misconduct.

SBC's False Testimony

In response to SBC's Section 271 application for Kansas and Oklahoma, a number of CLECs raised concerns about access to loop qualification or loop make-up information from SBC. See, e.g., Comments of IP Communications, CC Docket No. 00-217 (filed Nov. 15, 2000); Letter from Edwardo Rodriguez, Jr., Director, Federal Regulatory, SBC Communications, Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 00-217, at 1 (April 13, 2001) ("SBC April 13 Letter") (acknowledging that a number of CLECs raised such concerns). CompTel member IP Communications Corporation ("IP" or "IP Communications") asserted that, among other violations, SBC was unlawfully filtering the loop make-up data it provides to CLECs, resulting in discrimination and harm to IP and its potential customers. IP Nov. 15 Comments at 10-18.

On November 30, 2000 IP Communications advised the Commission that it had recently discovered additional ways in which SBC was filtering loop make-up information in violation of the Commission's *UNE Remand Order*. Letter from Howard J. Siegel, Vice President of Regulatory Policy, IP Communications Corp., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 00-217 (Nov. 30, 2000). In its initial comments, and again in the November 30 letter, IP Communications specifically asserted that the affidavits SBC submitted in support of its Section 271 application were inaccurate as to SBC's loop qualification capabilities and practices. IP Nov. 30 Letter at 1-2. IP Communications asserted, among other things, that where SBC has deployed "Project Pronto," it selectively returns to CLECs only Project Pronto information rather than the critical copper loop information CLECs must have to serve their customers. IP alleged that SBC's latest practice "has had an exponentially more harmful" effect on CLECs, and that the practice was discriminatory and "substantially harm[ed] IP's business today." IP Nov. 30 Letter at 2. Removing any possible doubt that this issue was highly material to the success of SBC's application, IP concluded, "In no uncertain terms can SWBT be in compliance with Section 271 checklist items ii or iv, nor the public interest standard so long as this filtering continues." IP Nov. 30 Letter at 3.

In response to IP's arguments that SBC's initial affidavits supporting its Section 271 application were inaccurate, SBC submitted, on reply, three additional affidavits asserting that IP had misstated the facts, and specifically asserting that SBC does return copper loop information, contrary to IP's assertions. See Reply Affidavit of Carol A. Chapman, CC Docket No. 00-217 (Dec. 11, 2000); Reply Affidavit of Mark J. Welch,

CC Docket No. 00-217 (Dec. 11, 2000); Reply Affidavit of Angela M. Cullen, CC Docket No. 00-217 (Dec. 11, 2000). For example, in SBC's sworn affidavit, Ms. Chapman states in no uncertain terms:

> IP implies in its comments that when SWBT provides loop qualification information to a CLEC, SWBT somehow 'filters' the information or picks the 'best' loop based upon arbitrary guidelines. <u>That is not the case</u>. . . . During the loop qualification process, LFACS automatically provides information on a non-loaded copper loop. . . .

Chapman Affidavit ¶ 5 (emphasis added). The remainder of the Chapman Affidavit contains similar statements rebutting IP's claims, as do the affidavits of SBC witnesses Cullen and Welch.

<u>The Commission's Section 271 Decision</u>

The FCC left no doubt as to the importance of the loop qualification issue to SBC's Section 271 approval for Kansas and Oklahoma. "SWBT may not 'filter or digest' the underlying [loop qualification] information and may not provide only information that is useful in the provision of a particular type of xDSL that SWBT offers." *In re: Joint Application by SBC Communications Inc. et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, ¶ 121, CC Docket No. 00-217 (rel. Jan. 22, 2001) ("*KS/OK Order*"). In applying this standard, and in the absence of a third-party test, the Commission was forced to resolve conflicting allegations of fact as to the capabilities of SBC's OSS and the competitive impact of SBC's alleged practices. The Commission chose to accept SBC's version of the facts: "LFACS will automatically return information on an available, non-loaded copper loop as if it were provisioning the requested service to the specific address." *KS/OK Order* ¶ 123 & n.334 (citing and relying on SBC witnesses Chapman and Welch Reply Affidavits). Thus, the Commission specifically relied upon the portion of SBC's sworn testimony rebutting IP's allegations.

Indeed, the Commission separately discussed at length IP's specific allegations as to SBC's failure "to return information on copper loops when end users are served by fiber (e.g., where SWBT has deployed fiber to remote terminals under its 'Project Pronto')." *KS/OK Order* ¶ 129 & n.354 (citing IP's Nov. 30 letter). It is critical to note the Commission's holding on the importance of this issue to its decision:

> <u>We agree that this practice, if true, would appear to violate the *UNE Remand Order*. In its reply comments, however, SWBT satisfactorily answers IP's assertion.</u> SWBT explains that, in such an instance, its systems would automatically return loop make-up information on a copper loop running to the end user, if one exists or if a spare loop can be assigned, rather than make-up information on the fiber loop. . . . We find that this satisfies the requirements of the *UNE Remand Order* and this checklist item.

KS/OK Order ¶ 129 & n.355 (citing SBC Welch and Chapman reply affidavits) (emphasis added).

SBC's Belated Admission of Submitting False Material Testimony

The SBC testimony the Commission relied upon in order to find checklist compliance was false, as SBC only now concedes. In its April 13 ex parte letter, SBC acknowledges that the three reply affidavits it submitted to rebut IP's allegations were false, and that the Commission relied on this false testimony. See SBC April 13 Letter at 1-2 (acknowledging that the affidavits were "inaccurate" and that the FCC responded to IP's concerns "based on th[e] information" in SBC's reply affidavits). Thus, while the Commission expressly relied on SBC's affidavits in concluding that SBC's systems "would automatically return loop make-up information on a copper loop running to the end user," *KS/OK Order* ¶ 129, it turns out just the opposite was true. SBC's systems would "not always return actual loop makeup information on an available non-loaded copper loop ..." SBC April 13 Letter at 3 (emphasis added).

Sanctions

The Commission emphasized in the *Kansas/Oklahoma Order* that exercise of its post-approval enforcement authority "is critical to the statutory design that local markets are – and remain – open to competition, and evidences Congress's recognition that a BOC's incentives to cooperate with its local service competitors may diminish in a given state once the BOC obtains Section 271 approval in that state. . . . We will exercise this authority in the event SWBT ceases to meet a condition of its approval." *KS/OK Order* ¶ 283 (emphasis added); see also "Powell Calls On Congress For Powerful FCC Enforcement Powers," *Washington Telecom Newswire* (March 29, 2001) (Chairman Powell statement that "If you cheat, I'm going to hurt you, and hurt you hard"). SBC has unquestionably ceased to meet a condition of its approval, and has unquestionably "cheated" in sworn statements on which the Commission placed great weight. These violations warrant severe sanctions.

In an attempt to somehow minimize the effect of having submitted materially false testimony in multiple affidavits, SBC told the Commission that it learned of the possibility that its description was inaccurate on March 6, 2001, some six weeks after it received Section 271 approval, and the day before the effective date of the approval. On May 15, however, SBC told the Arkansas Public Service Commission that it became aware of the error even earlier still—in February 2001.[6] Thus, it is all the more disturbing that SBC waited until April 13, 2001, one month after it was authorized to provide long distance service, to advise the public that the Commission's approval was based on SBC's false testimony. It appears that SBC delayed public notice until it

[6] Southwestern Bell Telephone Company's Response to the Commission's Order of May 7, 2001, *In the Matter of Application of Southwestern Bell Telephone Company for Authorization To Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996 And For Approval of the Arkansas Interconnection Agreement*, Docket No. 00-211-U, filed May 15, 2001, p. 10.

implemented what it claims is a "fix" to the checklist violation. See April 13 Letter at 5 (stating that an "enhancement" was implemented on April 3, 2001). It quite obviously did not take SBC until April 13 to verify the problem, as it supposedly fully implemented a "fix" ten days earlier. Most likely, the "enhancement" was planned long before the implementation date of April 3, 2001, and the enhancement, by definition, had to have been designed to cure a known problem. The Commission should fully investigate why SBC delayed until April 13, 2001 to publicly acknowledge its false testimony and checklist violation.

Moreover, CompTel believes that SBC's statement that it discovered the "possibl[e]" inaccuracy on March 6, after Section 271 approval, is also false, and warrants a full investigation by the Commission. Since the fall of 2000, and continuing through the time of the grant of Section 271 approval, IP and other CLECs specifically and repeatedly explained to SBC that its descriptions of its loop qualification practices were erroneous, including in meetings sponsored by the FCC (and attended by CompTel) and, in addition, meetings held by the Texas PUC. Thus, CompTel does not believe that the statement that SBC discovered the possible inaccuracy as late as March 6 will withstand scrutiny. Indeed, obviously neither does SBC as they have recently changed their "discovery" date to February 2001, in the aforementioned pleading before the Arkansas Public Service Commission. I suggest that the Commission review SBC's internal documents and interview the relevant witnesses to uncover the real facts. In short, we believe that the notion that SBC immediately and voluntarily came forward upon learning of the falsity of its testimony is itself false. Sanctions should be particularly severe if the Commission determines that SBC's delayed admission of guilt was itself misleading.

CompTel, therefore, urges the Commission to adhere to its statements that it will be vigilant in post-271 enforcement efforts. The Commission should suspend SBC's long distance authority for at least 120 days. Suspension is justified based on SBC's undisputed failure to comply with the competitive checklist following Section 271 approval, and based on its submission of materially false sworn testimony notwithstanding multiple attempts by CLECs to explain to regulators and SBC that its statements were inaccurate. Had SBC followed the Commission's rules, it could not have even submitted its application until April 13, 2001, the date it now claims its OSS satisfied the competitive checklist. Assuming SBC in fact satisfied the checklist, as well as Track A, the earliest it would have obtained approval would have been July 13, 2001, 90 days after its application. By submitting an application that did not meet the checklist, and that relied on false testimony, SBC improperly gained more than 120 days of Section 271 authority (the difference between July 13, 2001, and March 7, 2001, when its approval took effect).

During the period of suspension, the Commission should launch a full investigation into the timing and extent of SBC's knowledge that its testimony was false. If, as CompTel believes, SBC knowingly allowed misleading evidence to be submitted as to checklist compliance, or failed to timely advise the Commission when it "discovered" the inaccuracies, the Commission should impose the maximum monetary sanctions

allowed by law, revoke SBC's long distance authority in Kansas and Oklahoma, and refuse to accept any self-certification from SBC or its auditors for any other Section 271 applications. Moreover, in light of its past conduct in the SNET and Texas DSL proceedings, discussed below, SBC should not be entitled to any presumption of truthfulness in other pending and future proceedings

Finally, having already been misled into accepting SBC's sworn testimony, the Commission cannot rationally accept SBC's unsworn, self-serving letter assertions that the impact of its violations was minimal, or that the supposed newly implemented enhancements are effective in providing competitors with reasonable and nondiscriminatory access to SBC's network. During the suspension period, the Commission should require third-party verification or substantial commercial evidence that SBC is currently complying with all of its checklist obligations.[7]

As noted above, in considering the scope of sanctions and investigation, the Commission should also take into account that this is not the first time SBC has been investigated for submitting false information to the Commission. See *In re SBC Communications Inc.*, FCC 99-153 (rel. June 28, 1999) ("SBC/SNET Consent Decree"). In the SBC/SNET Consent Decree, the Commission found that statements allegedly made by SBC to the FCC were not accurate, and an SBC legal review team acknowledged violations of the Telecommunications Act, as well as "compliance problems and mistakes." Id. ¶¶ 5, 10. SBC agreed to establish a Section 271 and Section 272 compliance program, including "an extensive Section 271 and 272 training program for SBC employees generally and training on the obligations of SBC employees when they are meeting with the FCC." Id. ¶ 12. In short, this is not the first time SBC has had difficulty with candor to the FCC, and the Section 271 training SBC committed to obviously was utterly ineffective in preventing three different SBC witnesses from submitting false testimony to the Commission.

Moreover, on the heels of misleading this Commission in the SNET proceeding, SBC has engaged in serious misconduct, for which it was sanctioned, before the Public Utilities Commission of Texas ("Texas PUC" or "PUC"). The Texas PUC sanctioned SBC for rampant discovery abuse in failing to produce crucial documents and knowledgeable witnesses as part of the Covad/Rhythms DSL arbitration in Texas. There, as here, SBC made a spurious claim that "it made an honest mistake," but the Texas PUC found otherwise. The PUC chastised and sanctioned SBC for making "[m]ere general inquiries" and "lack of diligence in pursuing what should have been a thorough and

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[7] On April 20, 2001, SBC submitted an ex parte filing in the Missouri Section 271 docket, No. 01-88, that includes an Ernst & Young attestation report as to loop qualification. Even assuming, arguendo, that this report demonstrates that SBC's loop qualification OSS eventually worked as advertised by April 13, 2001, that illustrates by contrast the complete absence of evidence supporting SBC's assertions in its Kansas/Oklahoma application, and indeed confirms that SBC's OSS was not working as claimed prior to April 13, 2001. Ernst & Young notes that in its "testing" in April 2001, more than 10% of a sample of transactions failed, and "[a]s a result the Telephone Companies made changes in the programming." Ernst & Young Report at 10. Thus, as late as April 2001, it is undisputed that SBC's loop qualification system did not work as claimed in SBC's Kansas/Oklahoma application.

complete search to locate responsive information."[8] The PUC, like this Commission in the SNET proceeding, ordered SBC to undergo remedial training.

It is apparent that regulators' prior attempts to reform SBC have failed. At the time it made its false statements in the Kansas/Oklahoma proceeding, SBC was under strict orders to ensure the accuracy of its statements to regulators and competitors. Moreover, CompTel members had explicitly advised SBC, as far back as October 2000, that it was misstating its OSS capabilities for returning loop qualification information. It is therefore astonishing that SBC can stand before this Commission and again claim an "honest mistake" in failing to check the accuracy of its sworn submissions. It is time to put a stop to SBC's recidivism.

Finally, it is important to note that while some competitors are more directly impacted by the specific loop qualification problem than others, all CLECs, as well as consumers, have a vital interest in ensuring that BOCs gain Section 271 approval only after their local markets are fully and irreversibly opened to competition. If a BOC can absorb the expense of mild sanctions, it will make the economic decision to gain 271 entry based on exaggerated or false representations, rather than incurring the expense of establishing systems that actually support competition. It is unfortunate that due to the anticompetitive tactics of SBC and other BOCs, few data carriers remain in the market, and those that do cannot afford the resources to challenge SBC when it gains a competitive advantage through misconduct. It is therefore all the more important for the Commission to protect prospects for local competition and the integrity of the Section 271 process through its enforcement authority.

I appreciate the Commission's consideration of this very serious matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

H. Russell Frisby, Jr.
President

cc: Dorothy Attwood
Brad Berry
Glenn Reynolds
Michelle Carey

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[8] Order On Appeal of Order No. 20, Petition of Accelerated Connections, Inc., Texas PUC Docket Nos. 20272 & 20226, at 2 (Oct. 13, 1999); see also Order No. 20, Order Ruling on ACI's and Covad's Motions and Amended Motions on Sanctions, Texas PUC Docket Nos. 20272 & 20226 (July 27, 1999).