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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 200554

Re: Application by SBC Communications for Authorization to Provide In-Region, InterLATA Services in the States of Arkansas and Missouri, CC Docket No. 01-194

Dear Chairman Powell:

By letter dated May 21, 2001, CompTel wrote to the Commission requesting that severe sanctions be levied against SBC Communications Inc. ("SBC") for its repeated false statements and lack of candor to the Commission.[1/] Three months later, no action has been taken. Instead, SBC has filed yet another Section 271 application, for Missouri and Arkansas, replete with self-certification. SBC has apparently interpreted the Commission's silence to date as license to, once again, say whatever is needed to gain Section 271 approval, and to self-certify compliance rather than submit to rigorous, independent third-party testing. Because our members, and other competitive carriers, are apparently the only parties that have, so far, suffered negative consequences as the result of SBC's prior misrepresentations, in the interests of fair competition, we must renew CompTel's exhortation that the Commission continue to adhere to its previously-recognized duty to swiftly and severely punish Bell Operating Companies ("BOCs") who "cease[] to meet a condition of [their] approval."[2/] The Commission should not even consider

1/ *See* Letter from H. Russell Frisby, Jr., President, CompTel, to David Solomon, Chief, Enforcement Bureau, FCC (May 21, 2001) ("May 21 Letter").

2/ *Joint Application by SBC Communications Inc. for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, ¶ 283 (Jan. 22, 2001), *appeal pending*, No. 01-1076 (D.C. Cir. filed Feb. 16, 2001) ("*KS/OK Order*"). This promise of strict enforcement has become boilerplate in the Commission's section 271 decisions, and is repeatedly emphasized in public statements by Commission representatives.

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additional Section 271 applications from SBC – including the recently filed Missouri/Arkansas application -- until it has completed its investigation and ordered appropriate sanctions for SBC's misconduct.

In the May 21 Letter, CompTel recounted multiple examples of false statements SBC has made to regulators in order to secure favorable rulings, culminating in SBC's sworn misrepresentations to the Commission concerning loop qualification information, as part of SBC's Section 271 application for Kansas and Oklahoma. As you know, the Commission recognized that SBC's loop qualification practices and compliance with the *UNE Remand Order* were unquestionably material to Section 271 approval. Although one of CompTel's members, IP Communications, submitted direct evidence of SBC's noncompliance with these requirements, the Commission dismissed IP's evidence, preferring instead to rely on SBC's self-certification of compliance in its reply filings. *See* May 21 Letter at 5-7 (citing SBC testimony and relevant portions of *KS/OK Order*).

CompTel requested strong sanctions because of the severity of SBC's misconduct, and because it was only the latest in a long pattern of SBC misleading regulators. We requested, for example, that pending the results of a full investigation into when SBC knew, or should have known, its testimony was false, the Commission should revoke SBC's long distance authority in Kansas and Oklahoma, and refuse to accept self-certification from SBC or its auditors for any future Section 271 applications.[3/]

Although more than three months have passed since CompTel's request for Commission enforcement – and more than eight months since SBC submitted the false testimony – the Commission has, to the public's knowledge, not yet acted to address our concerns. As further delay ensues, the Commission risks the perception that all of its previous talk of swift and severe enforcement has become nothing more than empty rhetoric. By even entertaining the new Section 271 application before acting to punish SBC's prior misrepresentations, the FCC would be sending a strong signal to SBC that it can continue to self certify and oppose rigorous third-party testing, and need not even check the accuracy of its submissions. Any costs to SBC of belated fines would be far outweighed by the benefit of premature Section 271 approval. Accordingly, the FCC should without delay reject SBC's current filing and make clear that until the investigation into SBC's false statements concludes, there will be no approvals of its Section 271 applications.

In the case of the loop qualification testimony, SBC happened to have been caught red handed, due to the vigilance of some of our members. But in an industry in which Petitions for Discontinuation of Service, and bankruptcy filings by CLECs, have become weekly occurrences, it is unfair and unrealistic for the Commission to assume that the remaining CLECs have the resources to catch each instance of SBC's false statements. The harm from SBC's misconduct

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3/ May 21 Letter at 8-9.

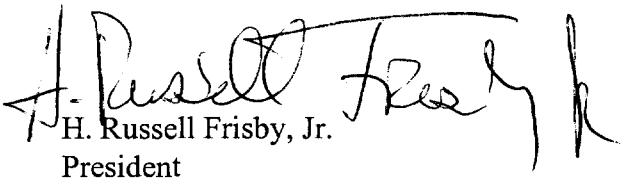
cannot be remedied by simply requiring SBC to "fix" deficiencies, one at a time, when SBC happens to have been caught.

Our members do not have the resources to conduct the thorough verification that only an independent third party and the Commission can accomplish. Moreover, the burden is on SBC to prove that it has fully implemented the competitive checklist, but this requirement has been turned on its head; the Commission now assigns presumptive weight to SBC's self-certification (including attestations by SBC's hand-picked auditor), despite having been repeatedly tricked and misled by false statements by SBC, and despite the fact that SBC's auditor did not catch the prior misrepresentations. Indeed, if the loop qualification fiasco shows nothing else, it shows that even where a CLEC *does* expend its limited resources to document false statements by a BOC, the Commission will still credit untested, self-serving, and patently false responses from the BOC – typically in reply filings or *ex parte* letters late into the 90-day review process. Our members are now understandably reluctant to waste any effort disproving BOC assertions of checklist compliance. Thus, in order to restore public confidence in the integrity of the Commission's 271 review process, the Commission must reject out-of-hand this current SBC application pending resolution of SBC's outstanding, and un-redressed, subversions of Commission rules.

In short, it is undisputed here that SBC was not in compliance with the checklist following the Kansas/Oklahoma decision, and that SBC obtained Section 271 approval by submitting false testimony on a material issue. The only open issue is just how early SBC knew its testimony was false, so that the Commission can determine whether SBC committed outright fraud. All indications are that SBC was aware of the falsity of its testimony long before it so advised the Commission. Self-certification by BOCs seeking Section 271 authority should never be permitted, but at the very least the Commission should not entertain any further Section 271 filings from SBC that are backed by self-certification or statements by SBC's auditors – including the recently filed Missouri and Arkansas application – unless and until the Commission has concluded its investigation of Kansas/Oklahoma misrepresentations and issued appropriate sanctions. Among other sanctions, the Commission should preclude SBC, in future applications, from relying on self-certification on any material matter, and should require SBC to offer independent third-party verification of each and every assertion relevant to checklist compliance.

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

Sincerely,



H. Russell Frisby, Jr.
President

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Commissioner Tristani
D. Attwood
D. Solomon