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December 17, 2002

Ex Parte Presentation

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in California*, WC Docket No. 02-306

Dear Ms. Dortch:

On behalf of SBC Communications Inc. (“SBC”), I am writing to respond to the latest ex parte letter submitted by AT&T earlier today relating to local number portability (“LNP”). See Letter of Richard E. Young on behalf of AT&T to Marlene H. Dortch, FCC (Dec. 17, 2002) (“December 17 LNP Ex Parte”). It is undisputed that, at the time of the filing of this Application, Pacific’s LNP processes – including its processes for responding to “stop port” requests – complied with industry standards, which are promulgated by the North American Numbering Council (“NANC”). See E. Smith Aff. ¶¶ 12-14 (App. A, Tab 21); E. Smith Reply Aff. ¶ 2 (Reply App., Tab 15). Such compliance with industry standards, by definition, establishes checklist compliance. Checklist Item 11 expressly requires “full compliance with [FCC] regulations” regarding number portability. 47 U.S.C. § 271(c)(2)(B)(xi); see, e.g., BellSouth Second Louisiana Order ¶ 274 (“[t]o meet . . . item (xi) of the competitive checklist, [a Bell company] must be in compliance with the number portability regulations the Commission has promulgated”). The FCC’s regulations, in turn, require “compl[iance] with the recommendations of the North American Numbering Council (NANC).” 47 C.F.R. § 52.26(a).¹

¹ FCC regulations also cover a few additional, miscellaneous LNP requirements. See 47 C.F.R. § 52.26(b). No party has challenged Pacific’s compliance with these additional requirements.

The CPUC's refusal to confirm compliance with Checklist Item 11 at the time of its decision should not affect the FCC's determination, for two reasons: First, the CPUC's view cannot trump the statute and this Commission's regulations, which require only a showing of compliance with industry standards; nowhere has this Commission ever even suggested that a mechanized NPAC check is required by its regulations and therefore necessary to establish compliance with Checklist Item 11. Second, the CPUC's view is entitled to "careful[]" "consider[ation]" only to the extent it is "supported by a detailed and extensive record." Ameritech Michigan Order ¶ 30. The CPUC's conclusion on this issue was based exclusively on limited data – regarding only one of the approximately 90 CLECs doing business in California – that, by the time Pacific filed its Application, were more than 14 months old.²

The data Pacific relies upon in this Application, by contrast, are current and extensive. Among other things, these data show that for nine consecutive months leading up to the Application (January-September 2002), Pacific met the 99% benchmark for the two performance measures that capture troubles associated with outages on conversion of LNP (PMs 15 and 17). See E. Smith Reply Aff. ¶ 5 & nn.2-3; see also Johnson Aff. ¶ 177 (App. A, Tab 12). The record also demonstrates that, in the three months prior to the implementation of the NPAC check, Pacific processed 99% of AT&T's "stop port" requests without complaint by AT&T. See E. Smith Reply Aff. ¶ 7.

Although AT&T has never disputed that latter number, its December 17 LNP Ex Parte contends – for the first time before this Commission – that Pacific's reported data for PMs 15 and 17 for the June-August 2002 time frame are unreliable. That is so, according to AT&T, because those PMs failed to capture 45 of the 46 LNP "outages" that AT&T claims to have experienced during that time frame. But as SBC has explained previously, PMs 15 and 17 do not track "outages"; they track CLEC trouble reports.³ Yet AT&T does not identify a single trouble report associated with any of these 45 claimed outages that it contends should have been captured by PMs 15 or 17. As SBC has previously noted, AT&T has not requested that Pacific reconcile data for PMs 15 or 17. Providing such data on a business-to-business basis, as opposed to late in a section 271 proceeding, is the more appropriate process to follow.⁴ In light of these failures of proof, AT&T's allegations regarding Pacific's LNP performance data should not be credited.

² See CPUC Final Decision at 196, 198-200; AT&T's DeYoung/Grant/Prothro Joint Declaration ¶ 31 (Cal. PUC filed Aug. 2001), attached to Letter of Richard E. Young on behalf of AT&T to Marlene H. Dortch, FCC (Dec. 9, 2002).

³ See Letter of Colin S. Stretch on behalf of SBC to Marlene H. Dortch, FCC, Attach. at 1-2 (Dec. 12, 2002).

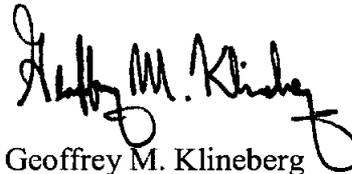
⁴ AT&T has suggested that it was unable to request or conduct a data reconciliation because the data were not available. See Letter of Richard E. Young on behalf of AT&T to Marlene H. Dortch, FCC, at 2 (Dec. 13, 2002). But this certainly cannot excuse AT&T's failure to reconcile data from June through August 2002, which were available on the date this Application was filed. AT&T's contentions in this regard are thus no more reliable than in the multiple proceedings in which AT&T has challenged a Bell operating company's satisfaction of this checklist item. See Letter of Mark E. Haddad on behalf of AT&T to Marlene H. Dortch, FCC, at 5-7 (Nov. 26, 2002) (collecting section 271 orders in which this Commission rejected AT&T's complaints).

Finally, during the three-month period prior to the filing of this Application, Pacific ported out more than 171,700 telephone numbers to 28 different CLECs. Alone among these CLECs, AT&T now asserts that it may have experienced a total of 78 LNP-related outages during the period between June and August 2002. Even assuming that this number is accurate (and SBC does not concede that it is), this total number of outages alleged by AT&T represents only 0.045% of the total telephone numbers ported out during this same period. Under these circumstances, it is difficult to accept AT&T's characterization of this as "a significant number." See December 17 LNP Ex Parte at 1.

In accordance with the Commission's Public Notice, DA 02-2333 (Sept. 20, 2002), SBC is filing this letter electronically through the Commission's Electronic Comment Filing System.

Thank you for your kind assistance in this matter.

Sincerely,



Geoffrey M. Klineberg

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