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By Electronic Filing

Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: EX PARTE – WC Docket No. 03-16: Application
by SBC Communications, Inc. for Authorization to
Provide In-Region InterLATA Services in Michigan

Dear Ms. Dortch:

MCI¹ submits this *ex parte* letter in response to an SBC *ex parte* letter from Geoffrey Klineberg and a letter from SBC President William Daley that were both provided to the Commission last Friday, April 11, but not provided to CLECs until Saturday and Monday, respectively. SBC's late-filed letters present no new evidence on billing or data integrity, and fail to provide the last minute justification that SBC seeks. We offer a handful of points in response:

First, SBC still does not present any direct evidence of billing accuracy. It relies only on evidence of timeliness of order posting, including BearingPoint's review of timeliness. (BearingPoint did not test whether the correct number of circuits were being billed.) But SBC's April 3 *ex parte* shows that the inaccurate billing that resulted from the migration to CABS was not all based on problems with timeliness of posting. SBC also discussed there the fact that orders posted inaccurately to CABS and that service orders posted out-of-sequence. SBC presents no evidence that these problems have been fixed.

Second, SBC does not deny the evidence of continued inaccuracy that is apparent from the credits that it provided to MCI. As MCI explained, the credits that began in December 2002 (well after the supposed fix) – for circuits billed erroneously *for the first time* in December 2002 – were about as high as the credits for circuits billed erroneously for the first time in January 2002 (before the fix). In other words, even as SBC's

¹ WorldCom has changed its corporate name to MCI, effective April 14, 2003.

performance with respect to timeliness ostensibly improved, this made no difference in the number of circuits that SBC began erroneously billing MCI each month. Notably, this conclusion is based entirely on the credits SBC provided. Thus, SBC has all the evidence it would need to dispute MCI's claim if it were incorrect, but SBC does not do so.

SBC's *only* response is that "WorldCom's claims only address pre-reconciliation activity." Thus, SBC does not deny that it continued to make significant new billing errors each month all the way through the time of the reconciliation. It simply claims those problems were fixed by the reconciliation, but there is no reason to think that is so.

(i) Since the reconciliation occurred in late January and credits appeared for the first time on MCI's bill in mid-February, MCI has no easy way to check whether SBC has now stopped doing what it was doing all the way through the reconciliation. SBC has not provided data to suggest that anything has changed between the conclusion of the reconciliation in late January and now.

(ii) SBC's own primary claim of improved accuracy is not based on the reconciliation. SBC says that it improved order posting rates throughout 2002 with the most dramatic improvement "based on corrective actions through the summer of 2002." (Klineberg Letter, Att. ¶ 3.) That is why it relies on BearingPoint testing to show that "by August 2002, new service order activity submitted by CLECs would properly post to CABS" (*id.*), and why it relies on internal audits that occurred during the course of the reconciliation. But the credits on the bills that SBC provided to MCI directly show no improvement in billing accuracy during all of 2002 and into January 2003, while the reconciliation was taking place.

In other words, SBC wants to have it both ways. On the one hand, it claims that billing accuracy has basically been fixed for many months with the reconciliation only providing credits and debits for some old inaccuracies. But when faced with direct evidence from its own credits and debits that new inaccuracies arose throughout 2002 and into 2003 at a relatively constant rate, SBC says that the *reconciliation* fixed all of the problems. But there is simply no evidence of this. The fact that SBC's reconciliation shows that new billing problems continued to arise up until the very last days evaluated in the reconciliation strongly suggests that such billing problems continue even now.

Further, SBC provides very little response to MCI's evidence that the credits and debits were themselves inaccurate. MCI showed from the credits and debits that the reconciliation appears not to have credited CLECs for any circuits that were erroneously billed prior to February 2003 if those circuits were not still being billed to the CLECs in February 2003. SBC apparently concedes that this is possible (Klineberg Letter, Att. n.3).²

Worse, MCI's small audit of 38 circuits (19 circuits that were credited and 19 that were debited) show almost *half* of the credits and debits were incorrect. Thus, it is very likely that the credits and debits for past problems are not close to correct. SBC simply

² SBC states that WorldCom's hypothetical examples are possible. The only hypothetical examples WorldCom provided were examples of circuits that were erroneously billed for many months but that stopped being billed prior to 2003. While there are likely many such circuits, SBC's only response is that the reconciliation was not intended to address all billing problems (Att. n.3).

says that “[u]nfortunately, WorldCom has failed to discuss these results with SBC.” MCI would certainly have preferred to discuss the results with SBC prior to including them in a filing. But because SBC filed for section 271 authorization before announcing the massive billing problems to CLECs, and did not provide credits and debits until the February 2003 bill, MCI was forced to include its audit results as quickly as possible, even as it is seeking to discuss them with SBC.

Third, contrary to SBC’s claim, rejecting this application would not hold it to a higher standard than past applications. For example, the billing problems here are far greater than those that existed in Pennsylvania at the time of the section 271 application there:

(i) SBC itself has announced \$13.5 million in credits and debits in Michigan, whereas no problems that extensive were ever found in Pennsylvania. Unlike in Pennsylvania, the underlying problem in Michigan is not whether the electronic bills exactly match the paper bills, but the fact that none of the bills in any format are correct.

(ii) In Pennsylvania, CLECs acknowledged a significant improvement in billing performance over time. Pennsylvania Order ¶¶ 19, 27. In Michigan, there is no evidence of an improvement in billing accuracy. To the contrary, as MCI has explained, the evidence is that billing accuracy has not improved.

(iii) In Pennsylvania, Verizon announced the initial billing problems to CLECs early enough that they were able to monitor improvements carefully. In Michigan, SBC did not disclose the extent of the billing problems to CLECs until after it filed its application here.

(iv) In Pennsylvania, manual intervention was needed to ensure that 0.89% of charges matched the paper bills. Pennsylvania Order ¶ 32 n.119. Here, even according to SBC, 6% of service orders must still be manually handled before they post to billing. More fundamentally, the manual work in Pennsylvania was used to check billing accuracy before bills went out the door. In Michigan, there is no similar check to catch any problems caused by systems problems that still exist.

(v) In Pennsylvania, Verizon hired a third-party tester that was aware of past billing problems and examined whether those specific problems had been corrected – including a check of accuracy that involved a comparison of paper bills and CABS bills. Pennsylvania Order ¶¶ 21, 31-32. In Michigan, SBC did not make BearingPoint aware of its extensive billing problems, and BearingPoint did not evaluate whether SBC was billing it for the correct number of circuits.

(vi) In Pennsylvania, the remaining billing errors largely resulted from contract issues and other disagreements, not systems issues. Pennsylvania Order ¶ 28. In Michigan, the issue is clearly a systems issue – whether SBC is now able to ensure that CLECs are billed for the correct circuits. Thus, the problems in Michigan are more extensive than those that existed in Pennsylvania, and it is far less likely that the problems have been fixed.

Fourth, SBC relies heavily on the recommendation of the Michigan PSC and the extensive record before it. While MCI has great respect for the Michigan PSC, SBC prevented the PSC from analyzing a complete record. SBC did not announce the massive

billing problem apparent from its reconciliation until after it filed its application here. Thus, the PSC has had no more time to evaluate that problem than has this Commission – or than the Department of Justice, whose evaluation is entitled to substantial weight and found the problem was significant. Because the issue became apparent so late, the PSC has not evaluated SBC’s April 3 *ex parte* detailing the history of the billing problem (and showing how many issues contributed to the problem). Nor has it evaluated CLECs’ responses to the April 3 *ex parte* – responses that demonstrate that the billing problem continues.

Moreover, the Michigan PSC may have great faith in its ability to ensure that SBC corrects the billing problems after the fact. But in its Pennsylvania Order, this Commission detailed the critical ways in which inaccurate wholesale bills can impede a CLEC’s ability to compete. Pennsylvania Order ¶ 23. Although CLECs’ may be able to obtain market share despite these problems while SBC cannot offer a bundled product, SBC will have a great advantage if permitted to enter long distance while CLEC bills remain extremely inaccurate. That should not be allowed.

Fifth, the Commission should also reject this application based on the data integrity issue. SBC insists that it would be an astonishing departure from precedent for the Commission to deny the application because it had presented only an Ernst & Young test. Daley Letter at 2. Of course, that is not what CLECs are asking the Commission to do. CLECs are asking the Commission to reject the application because the more thorough BearingPoint test undermines the results of the Ernst & Young test. In its March 2003 report, BearingPoint continued to find that more than half the metrics criteria had not yet been satisfied. The Commission has never accepted an application with anything like that rate of failure.

Finally, the Commission should reject this application because of the line splitting issues that WorldCom has previously emphasized. The *ex parte* that AT&T filed today provides further evidence of the difficulties of line splitting in Michigan – a critical problem as MCI begins its efforts to roll out line splitting.

MCI believes that for all these reasons, among others, the FCC should reject this application. Pursuant to the Commission’s rules, I am filing an electronic copy of this letter and request that it be placed in the record of this proceeding.

Sincerely,

Keith L. Seat

cc: Christopher Libertelli, Matthew Brill, Dan Gonzalez, Jessica Rosenworcel, Lisa Zaina, Jeffrey Carlisle, Michelle Carey, John Stanley, Gina Spade, Susan Pié, Qualex International, Mike Hirrel (DOJ), Layla Seirafi-Najar (DOJ), Dorothy Wideman (Michigan PSC), Ann Scheidewind (Michigan PSC)