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June 5, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S. W. – Room TWB-204
Washington, D. C. 20554

Re: *Ex parte*, WC Docket No. 02-112, Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas

Dear Ms. Dortch:

On Thursday, June 5, 2003, Robert Quinn and the undersigned of AT&T met with Jessica Rosenworcel, legal advisor to Commissioner Michael Copps. The purpose of the meeting was to review AT&T's petition and reply comments in the above-captioned proceeding. The attached outline summarizing our discussion was provided to Ms. Rosenworcel.

Consistent with section 1.1206 of the Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceeding.

Sincerely,

ATTACHMENT

cc: J. Rosenworcel

WC Docket No. 02-112
Extension of Section 272 Obligations of SWBT in Texas

The Two Voices of SBC

SBC TO THE FCC

"[section 272] hampers SBC's competitive offerings in the market because the information sharing restrictions prevent SBC from taking advantage of the enormous resources within its own company to develop better and more suitable product offerings for its customers."

SBC Reply Comments at 14
WC Docket No. 02-112 (filed May 12, 2003)

SBC TO WALL STREET

"Across the other states where SBC offers long-distance service, the company's overall long-distance retail-line penetration among consumers at the end of the first quarter was about 50 percent."

"Our most significant growth was in California; as of mid-April, less than four months after we launched service in the state, we had a retail-line penetration of 13 percent in our consumer market and 10 percent overall."

SBC Communications, 1Q2003 Earnings
(available at www.sbc.com, Investor Information pages)

SBC is now the largest residential long distance provider in the SWBT states and has achieved a level of success in California that it took MCI nearly a decade to achieve.

Key Points:

I. Difference with New York:

1. Threshold point: There is no basis for treating the Commission "decision" to allow the New York obligations to sunset to be "precedent." The Commission merely issued a public notice announcing that the New York section 272 obligations were being permitted to sunset by operation of law, without any explanation whatsoever.

2. The Texas PUC, the entity with the greatest "expertise" regarding local competitive conditions in Texas, has expressly requested that the Commission extend the 272 obligations in Texas. By contrast, the New York PSC did not in light of Verizon's assurance that it would retain a separate affiliate for at least the near term. The Commission having accorded "substantial weight" to the Texas PUC's views on whether SWBT's local markets were "open" to competition in deciding SWBT's section 271 application for Texas, it would be patently arbitrary agency action for the Commission now to ignore the Texas PUC's express findings.

3. Verizon in New York made clear that it had no plans to merge its separate long distance affiliate into its BOC – this commitment was reflected in the New York DPS August 5, 2002 272 Sunset Comments. SWBT has not made a similar commitment in Texas.

4 SWBT's dominance of the local market is even greater than Verizon's; such continued dominance (rather than simply market share) together with the compelling evidence of discrimination and cross-subsidization, requires the extension of the Section 272 safeguards.

(a) There has been much less deployment of bypass facilities by competitive carriers in Texas than in New York. According to the Texas PUC, only *3 percent* of lines in Texas are served by competitive carriers using their own local networks. *Scope of Competition in Telecommunications Markets of Texas* (Texas PUC Jan. 2003) at 20-22. In fact, facilities-based competition in Texas is *below* the national average. (that is because, as the Commission has recognized, self-deployment of key local network facilities is, in the vast majority of circumstances, uneconomic because of enormous entry barriers).

(b) Competitive carriers have won far more customers and market share in New York (already upwards of 25 percent) than in any other state; in Texas, by contrast, competitors have attained very limited and now declining market shares. Competitive carriers serve 25 percent of access lines in New York, compared with approximately 15 percent in Texas. In Texas competitive carrier revenues "have . . . flattened out" and between 1999 and 2002, 47 competitive carriers operating in Texas have declared bankruptcy (with seven being liquidated to date).

(c) SWBT's been even more successful than Verizon in leveraging that local market power into the interLATA long distance market; SBC's share in that market is now almost 50 percent.

II. The Record of Discrimination and Cross-Subsidization by SWBT in Favor of its Section 272 Affiliate is Compelling

(a) The record from the Section 272 Sunset Proceeding shows discrimination by SWBT in the provisioning of access to their essential network facilities, abuse of the PIC change process, discriminatory growth tariffs, and engaging in improper inter-affiliate transfers.

(b) SWBT "price squeezing" Complaint: *Complaint of AT&T Communications of Texas, L.P. Against Southwestern Bell Telephone Company and Southwestern Bell Communications, Inc., d/b/a Southwestern Bell Long Distance*, SOAH Docket No. 473-01-1558, Docket No. 23063 (Texas PUC filed Dec. 5, 2001). SBC's long distance affiliate began offering intrastate long distance services at rates that are nearly equal to SBC's intrastate *access charges* and that therefore could not possibly allow the SBC affiliate to cover all of its costs, as required by section 272(e). The Texas PUC found that it did not have jurisdiction over the complaint – decision was not on the merits.

(c) The Biennial section 272 audit, despite its deficiencies as noted by AT&T and the Texas PUC in their Comments on that audit, shows discrimination by SWBT. For example, with regard to completion of DS0 orders by the required due date, the performance data that SBC sought to keep secret show that SBC's affiliates received better performance in *each* of the last seven months audited – and the largest differences were in the last two months reported, confirming that SBC's performance was decreasing. The data also show that SBC's return of firm order confirmations on DS1 and DS3 facilities were longer for SBC's rivals than for its affiliates in *all* 18 of the instances where the measure employed showed a performance difference.

(d) The January 2003 report from the Texas PUC reviewing the effectiveness of the performance measures enacted in Texas shows that SWBT continues to provide its competitors with poor network access, even if it means paying steady fines. SWBT has met the performance benchmarks set by the Texas PUC in only 6 out of 31 months for which data are now available.

III. SBC has submitted *no evidence* on the costs of compliance with the Section 272 safeguards