

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Petition of SBC for Forbearance From the)	
Prohibition of Sharing Operating, Installation)	CC Docket No. 96-149
and Maintenance Functions)	CC Docket No. 98-141
)	

MCI OPPOSITION

WorldCom, Inc. d/b/a MCI (MCI) hereby submits its opposition to SBC’s “Petition for Forbearance and Modification” (Petition) in the above-captioned proceeding.

I. The Commission May Not Forbear from Applying the OI&M Prohibition

The Commission should deny SBC’s petition because, as the Commission has previously found, the Commission may not forbear from applying the provisions of section 272 to any interLATA services for which a Bell Operating Company must obtain authorization under section 271(d) of the Act.¹ Pursuant to section 10(d) of the Act, the Commission may not forbear from applying the requirements of section 271 “until it determines that those requirements have been fully implemented.”² Because one of the “requirements” of section 271 is that BOCs may obtain interLATA authorization only if “the requested authorization will be carried out in accordance with the requirements of

¹ Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, Memorandum Opinion and Order, 13 FCC Rcd 2627, 2641 ¶ 23 (1998) (E911 Forbearance Order).

² 47 U.S.C. § 160(d).

section 272,”³ the Commission has found that section 10(d), read in conjunction with section 271(d)(3), “precludes [the Commission’s] forbearance for a designated period from section 272 requirements with regard to any service for which a BOC must obtain prior authorization pursuant to section 271(d)(3).”⁴

Consistent with section 10(d), all previous orders in which the Commission has decided to forbear from applying section 272 have involved interLATA services for which authorization pursuant to section 271(d)(3) was not required, i.e., interLATA service offerings authorized by section 271(b)(3) or section 271(f).⁵ Because SBC, by contrast, is asking the Commission to forbear from applying a provision of section 272 to all SBC-offered interLATA services, including those for which SBC must obtain authorization pursuant to section 271(d)(3), the Commission must deny SBC’s petition as inconsistent with section 10(d) of the Act.

There is no merit to SBC’s suggestion that the requested forbearance is permissible because “Congress did not include section 272 in its enumerated exceptions to forbearance in section 10(d).”⁶ That argument fails to recognize that the section 10(d) limitation on forbearance applies to those services subject to section 271(d)(3)(B). By omitting section 272 from the section 10(d) exceptions to forbearance, Congress has established a framework under which the Commission may forbear from applying from

³ 47 U.S.C. § 272(d)(3)(B).

⁴ E911 Forbearance Order at ¶ 23. The order’s reference to a “designated period” confirms that the Commission may not forbear from the requirements of section 272 simply because a BOC has obtained interLATA authority. Section 10(d) precludes the Commission from forbearing from section 271(d)(6) of the Act, which makes clear that the “conditions required for . . . approval” of interLATA authorizations, including the section 271(d)(3)(B) requirement that the BOC provide interLATA services in accordance with section 272, continue to apply after interLATA authority has been granted.

⁵ See, e.g., E911 Forbearance Order; Petition of U S West Communications, Inc., for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of U S West Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Memorandum Opinion and Order, 14 FCC Rcd 16252 (1999) (NDA Forbearance Order).

section 272 for those interLATA services authorized immediately pursuant to section 271(b)(3) or section 271(f), but cannot forbear from applying section 272 to those interLATA services that the BOC can provide only upon demonstrating compliance with section 272.

There is also no merit to SBC's suggestion that the Commission may forbear from applying the OI&M restrictions "because they are regulations and not statutory requirements."⁷ As an initial matter, SBC provides no authority for its contention that regulations promulgated under provisions of the statute do not constitute "requirements" for the purposes of section 10(d). And even if a distinction between the statute and regulations promulgated under the statute could be drawn for the purposes of section 10(d), the Non-Accounting Safeguards Order makes perfectly clear that the ban on sharing of OI&M functions is a statutory requirement of section 272 (and therefore a statutory requirement of section 271(d)(3)(B)). As the Commission explained, the ban on OI&M sharing was based on a straightforward reading of section 272(b)(1)'s "operate independently" requirement.⁸ In particular, the sharing of OI&M services "would create the opportunity for such substantial integration of operating functions as to preclude independent operation, in violation of section 272(b)(1)."⁹ If the BOC and its interLATA affiliate were to use the same personnel and systems for the operation, installation, and maintenance of circuits, switches, and transmission equipment, the

⁶ SBC petition at 24.

⁷ SBC Petition at 24.

⁸ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC docket No. 96-149, released December 24, 1996, at ¶¶ 158, 163 ("[W]e read section 272(b)(1) to bar a section 272 affiliate from contracting with a BOC or another entity affiliated with the BOC to obtain operating, installation, and maintenance functions associated with the section 272 affiliate.")

⁹ Non-Accounting Safeguards Order at ¶ 163.

BOC and its affiliate could not reasonably be found to operate independently.¹⁰

If the SBC BOCs and interLATA affiliate were permitted to share OI&M functions, they would no longer be “operating independently” in any meaningful sense. Indeed, SBC’s petition emphasizes the degree to which the SBC BOCs and interLATA affiliate’s operations would be integrated, rather than independent. According to SBC, if the requested relief were granted, one team would design networks for customers, install networks, test networks, monitor service quality, handle dispatch for installation and maintenance, receive trouble reports, and isolate the source of troubles, and one network operations center would perform surveillance and monitoring of customer networks.¹¹

Because the OI&M prohibition is compelled by section 272(b)(1)’s “operate independently” language, the Commission must reject SBC’s request to eliminate that prohibition.

II. Even if the Commission Could Forbear, SBC Has Not Made the Showing Required by Section 10 of the Act

Pursuant to Section 10(a) of the Act, the Commission may not grant a petition for forbearance unless the petitioner demonstrates that (1) enforcement of the provision in question is not necessary to ensure that rates are just, reasonable, and not unreasonably discriminatory; (2) enforcement of the provision is not necessary to protect consumers; and (3) forbearance is not in the public interest. Even if the grant of SBC’s petition were not precluded by section 10(d), the Commission would have to deny

¹⁰ Non-Accounting Safeguards Order at ¶ 158.

¹¹ SBC Petition at 20-21.

SBC's petition because SBC has not made the showing required by section 10(a).

A. The OI&M Prohibition Remains Necessary to Ensure that SBC's Rates and Practices are Just, Reasonable, and Not Unreasonably Discriminatory

SBC contends that the OI&M prohibition is no longer necessary to prevent cost shifting and discrimination. But all of the arguments advanced by SBC in its petition have already been rejected by the Commission in the Non-Accounting Safeguards Order and, only three years ago, in the Third Order on Reconsideration.¹² SBC is unable to point to any changed circumstances that would cause the Commission to reach a different conclusion today.¹³

The Commission has already rejected SBC's argument that the ban on OI&M sharing is not necessary to prevent cost misallocation (and the resulting unjust and unreasonable rates). In the Non-Accounting Safeguards Order, the Commission found that allowing the same individuals to perform OI&M services for both the BOC and its affiliate would create substantial opportunities for improper cost allocation.¹⁴

Similarly, there is no basis for the Commission to reconsider the Non-Accounting Safeguards Order's finding that the OI&M prohibition is necessary to prevent the BOC from discriminating against unaffiliated long distance carriers. First, the Commission should give no weight to SBC's novel argument that "operations functions are provided internally by most of SBC's . . . competitors."¹⁵ SBC misses the

¹² Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, Third Order on Reconsideration, CC Docket No. 96-149, released October 1, 1999, at ¶ 20 (Third Order on Reconsideration).

¹³ See Third Order on Reconsideration at ¶ 20 (" . . . Bellsouth offers no new rationale for us to reconsider this prior determination.")

¹⁴ Non-Accounting Safeguards Order at ¶ 163.

¹⁵ SBC Petition at 12.

point. The purpose of the OI&M prohibition is to prevent discrimination in the provision of bottleneck exchange access services; whether or not interLATA competitors perform their own OI&M functions on the competitive, interLATA portion of the network is completely irrelevant to an evaluation of whether SBC's control over OI&M for bottleneck exchange access facilities would allow it to use shared OI&M functions to discriminate against its rivals.

Second, the Commission has already rejected, in the Non-Accounting Safeguards Order, SBC's argument that automated systems inherently preclude discrimination. The Commission has found that "the BOCs' use of . . . automated order processing systems is important for meeting [the Act's nondiscrimination requirements], but does not guarantee that requests placed via these systems are actually completed within the requisite period of time."¹⁶

Moreover, there is nothing in SBC's petition that indicates a commitment to use the same systems, or provide nondiscriminatory access to those systems, for both affiliated and unaffiliated carriers. And even if SBC uses the same systems for both affiliated and unaffiliated carriers, those systems are only one component in the overall provisioning and repair process. Indeed, the entire premise of SBC's petition is that, in the absence of the OI&M sharing restriction, unaffiliated carriers would not obtain installation and repair services in the same manner as SBC's interLATA affiliate. Only the SBC interLATA affiliate's services would be provisioned by the same "team" that installs access services. Similarly, only the SBC interLATA affiliate would have a network operations center that is shared with the BOC's network operations center.

¹⁶ Non-Accounting Safeguards Order at ¶ 243.

Consequently, in contrast to SBC's competitors, SBC could provision or repair a long distance circuit without the need to coordinate or negotiate access circuit orders or repair requests with the SBC BOCs' access provisioning organizations. As the Commission found, that degree of sharing of OI&M services "would *inevitably* afford the affiliate access to the BOC's facilities that is superior to that granted to the affiliate's competitors."¹⁷

B. The OI&M Prohibition is Necessary for the Protection of Consumers

Given that the OI&M prohibition is still necessary to ensure that SBC's access services are provided on a just, reasonable, and nondiscriminatory basis, it is clear that continued enforcement of the OI&M prohibition is necessary for the protection of consumers. Absent the OI&M restriction, consumers would be harmed by SBC's ability to discriminate against its rivals in the long distance market and by higher local and exchange access rates resulting from cost misallocations.

There is no merit to SBC's contention that the ban on OI&M sharing hurts consumers. While SBC may face modest additional costs or operational complexity as a result of the ban on OI&M sharing, the costs or operational complexity are no greater than those faced by competing interLATA carriers. With the exception of circuits that terminate in the limited number of buildings to which MCI has built its own local fiber, MCI must, like SBC's section 272 affiliate, coordinate its installation, repair, and maintenance activities with the SBC BOCs.

¹⁷ Non-Accounting Safeguards Order at ¶ 163.

C. The OI&M Prohibition Remains in the Public Interest

SBC contends that forbearance would be in the public interest because customers would benefit from SBC's ability to provide installation, network monitoring, and repair functions on an integrated basis, and that the ban confers "virtually no public benefit." But Congress, in enacting section 272(b)(1), has already determined that whatever benefit might result from permitting the BOCs to provide services on an integrated basis is outweighed by the risks that such integration poses to competition in the long distance market.

Even if SBC could achieve modest cost savings or operational efficiencies by integrating its OI&M functions, those benefits pale in comparison with the consumer benefits accruing from the OI&M prohibition. First, the OI&M sharing prohibition benefits consumers by limiting SBC's ability to misallocate hundreds of millions of dollars in long distance-related OI&M costs to local and exchange access rates. Second, the OI&M restriction benefits consumers by preventing SBC from discriminating against its competitors in the long distance market, where there is over \$100 billion in revenue at stake.¹⁸

III. Conclusion

For the reasons stated herein, the Commission should deny SBC's petition for forbearance.

Respectfully submitted,

¹⁸ Industry Analysis Division, "Statistics of the Long Distance Telecommunications Industry," January, 2001, at 3.

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