

SIDLEY AUSTIN BROWN & WOOD LLP
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO
DALLAS
LOS ANGELES
NEW YORK
SAN FRANCISCO
SEATTLE

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

BEIJING
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(202) 736-8689

WRITER'S E-MAIL ADDRESS
cshenk@sidley.com

September 29, 2003

REDACTED – FOR PUBLIC INSPECTION

By Electronic Filing

Ex Parte Letter

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

Re: *Application of SBC Communications Inc. for Authorization to Provide In-Region InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin*
WC Docket No. 03-167

Dear Ms. Dortch:

At the Commission Staff's request, I submit this response on behalf of AT&T Corp. ("AT&T") to the new arguments advanced by Southwestern Communications Inc. ("SBC") in support of its excessive recurring collocation power charges in Ohio.¹

The comments in this proceeding demonstrate that SBC's recurring collocation power charges are substantially inflated above TELRIC levels.² SBC requires its collocation customers to pay for power that is neither delivered, nor consumed, a patent violation of the Commission's

¹ Pages 6-7 of this letter contain some information that is confidential. That information is redacted. Pursuant to the Commission's rules governing the handling of such information, one copy of this letter containing the confidential information has been filed with the confidential information included. Inquiries regarding the confidential material should be addressed to Peter Andros, Sidley Austin Brown & Wood, 1501 K St., N.W., Washington, D.C. 20005, (202) 736-8218.

² AT&T at 49-51 & Nooriani Decl. ¶¶ 4-14; Nuvox at 3-14.

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch
September 29, 2003
Page 2

TELRIC rules, which require rates to reflect “the incremental costs that incumbents *actually* expect to incur in making network elements available to new entrants.”³

None of SBC’s purported substantive justifications for its inflated recurring collocation power charges can withstand scrutiny. SBC first argues that, regardless of the power actually delivered to the CLEC, SBC is justified in charging CLECs for delivering all power that could theoretically be delivered (*i.e.*, all fused power) because SBC must be prepared to deliver that much power.⁴ But the record indicates that other rate elements – not the recurring collocation charge – recover the costs of the equipment necessary to generate and store sufficient power to ensure an uninterrupted power supply.⁵ Even SBC’s expert witness admits that such costs, which include the costs of rectifiers, batteries, and back-up generation, are not reflected in the documentation describing the cost model used to develop SBC’s recurring collocation power charges.⁶ Even more telling, however, is that SBC, in attempting to use AT&T’s cost studies to compute recurring collocation costs in Ohio, explicitly *adds* these additional costs to the costs

³ *Local Competition Order* ¶ 685 (emphasis added); *see also* 47 C.F.R. § 51.505(b). Collocators have no choice but to buy electricity from SBC to power the equipment they use to access SBC’s facilities. The maximum amount of power that can be delivered depends upon how much power is “fused” to that space. Competitive carriers typically obtain both a primary and backup lead with equal power delivery capabilities from the incumbent to ensure uninterrupted power. To ensure sufficient backup power in case of a power outage, CLECs do not generally draw more power from these fuses than can be independently provided by either of the two fuses alone. Notwithstanding that CLECs never draw the maximum power fused (indeed, they generally draw less than half of that amount), SBC’s charges assume that all power fused to the collocator’s space is being used at all times.

⁴ Alexander Decl. ¶¶ 9-10.

⁵ *See, e.g.*, Nuvox at 9-10 (“quoting SBC documents confirming that “the Power Consumption charge was not designed to recover the costs associated with [SBC’s] . . . central office power infrastructure” and that “a non-recurring ‘Power Deliver’ rate element recovers those costs”).

⁶ Alexander Decl. ¶ 23. SBC claims that it also cannot find the costs of rectifiers, batteries or back-up generation in its non-recurring cost studies. Even if true, that is irrelevant. The issue here is whether there is any evidence to support the claim that the *recurring* collocation power charges reflect such costs. As SBC concedes, there is no such evidence. SBC also speculates that maybe other minor costs, *e.g.*, air conditioning and heating, are reflected in the recurring rate. Again, however, SBC is unable to provide any support for that assertion. Finally, even if SBC could substantiate its claim that it inadvertently forgot to include such costs in its recurring collocation cost studies, it is entirely inappropriate for SBC to engage in self-help, as it has done, by doubling its recurring collocation power charges.

Marlene H. Dortch
September 29, 2003
Page 3

produced by SBC's Ohio cost study.⁷ If such costs already were reflected in SBC's recurring collocation costs, there would have been no need to make that adjustment.

SBC next attacks a strawman. SBC recites the commenters' complaint that SBC improperly "bill[s] CLECs for the power capacity associated with each of the two [primary and backup] leads," even though the CLECs draw less power cumulatively from the primary and back-up leads than the capacity on either one of the leads so as to ensure sufficient backup capacity.⁸ SBC then falsely asserts that this "claim is apparently based on the . . . assumption that both leads will not be used to provide power to the CLEC's collocation arrangement," which SBC notes is not always the case.⁹ But, whether CLECs draw power from both fused leads at the same time is irrelevant. The issue is whether CLECs draw the *full amount* of power available from both leads at the same time, which is the only way SBC could justify its practices. The undisputed record evidence unequivocally shows that CLECs do not in fact draw the full power that is available from both leads.¹⁰

Unable to defend its recurring collocation charges on substantive grounds, SBC argues that those charges are nevertheless TELRIC-compliant because, according to SBC, they compare favorably to those in other states. But SBC compares its Ohio "per *fused amp*" charges to the "per *load amp*" charges of other carriers, an invalid apples-to-oranges comparison.¹¹ As noted, SBC's Ohio per fused amp charge applies to every amp that could theoretically be supplied to a carrier, including backup (or "redundant" power). By contrast, the per load amp charges in other states do *not* apply to redundant power. Moreover, it is industry practice to fuse each lead (both the primary lead and the redundant lead for more amps than required (or ordered) by collocation customers. For example, where a carrier requires (and orders) 20 amps of power on the primary lead, it is industry practice to fuse that lead, as well as the backup lead, at 1.25 to 1.5 times that amount (*i.e.*, 25 to 30 amps). And, unlike SBC's Ohio per fused amp charges, the per load amp charges generally do not apply to this additional fused power. To properly compare such charges, therefore, it is necessary to adjust for the fact that, unlike SBC's Ohio per fused amp charges, the per load amp charges in the other states (1) do not apply to redundant power leads and (2) do not apply to the additional fused power that standard engineering principles require to be added to each power lead.

A simple real-life example illustrates the fallacy of SBC's rate comparisons. SBC's recurring collocation power charge in Ohio is \$6.07 per *fused amp*.¹² SBC compares that charge

⁷ See SBC Sep. 22 Ex Parte, Exhibit 1, at 2 (adding "DC Plant per amp Capital Investment Recovery," which reflects the costs of the power plant equipment, to SBC's "AC Usage per amp (Basic DC Power Costs)," which is the recurring costs generated by SBC's Ohio cost study).

⁸ Alexander Decl. ¶ 14.

⁹ *Id.*

¹⁰ Nuvox at 5; AT&T Nooriani Decl. ¶ 6.

¹¹ Alexander Decl. ¶ 23; SBC Sep. 9 Ex Parte at 1-2.

¹² See, e.g., Alexander Decl. ¶ 23.

Marlene H. Dortch
September 29, 2003
Page 4

to the recurring power charge in Texas, which, according to SBC is \$9.90 per *load* amp. Based on this apples-to-oranges comparison SBC informs the Commission that its Ohio charge is lower than that in Texas.¹³ That is dead wrong. A carrier that orders a 20 amp primary lead in Texas likely will obtain a primary lead that is fused for at least 30 amps.¹⁴ The carrier also will obtain a redundant power lead that likewise is fused at 30 amps. In Ohio, SBC's \$6.07 per fused amp charge will be applied to all 60 amps of that power (30 amps for the primary lead plus 30 amps for the redundant lead), for a total charge of \$364.20. By contrast, a carrier that orders the same amount of power in Texas pays only for the number of amps actually consumed.¹⁵ Therefore, in the unlikely scenario where a carrier runs its equipment – which can draw at most 20 amps of power – at 100% capacity, that carrier would incur a cost of \$9.90 per amp for 20 amps, totaling \$198. Therefore, contrary to SBC's assertions, SBC's Ohio recurring collocation power charge is *not* lower than in Texas, but is at least 84 percent *higher* than in Texas.

SBC's attempt to compare its Ohio recurring collocation power charges to its California, Michigan and Wisconsin recurring collocation power charges suffer from the same malady. The recurring power charge in each of those states is a per load amp charge that does not apply to redundant power, *i.e.*, they are not per fused amp charges.¹⁶ Therefore, as demonstrated above,

¹³ Alexander Decl. ¶ 23.

¹⁴ As noted, it is standard engineering practice to fuse leads for 1.25 to 1.5 times the number of load amps ordered by a customer. For smaller power feeds, such as a 20 amp feed, it is standard engineering practice to apply the larger 1.5 ratio (1.5 x 20 amps = 30).

¹⁵ See Arbitration Award, Texas PUC Docket Nos. 27559, 27730, 27738, 27739, 27782, at 7 (Sept. 15, 2003) (“*TX Arb. Award*”) (attached to Nuvox Sept. 23 Ex Parte as Attachment 1). SBC claims that AT&T is wrong in stating that “SBC Southwest does not charge for back-up power in Texas.” Alexander Decl. ¶ 28. As explained in a recent Texas Arbitration Award, however, SBC's recurring collocation power charges apply only to power actually consumed, not to backup power. *Id.* at 9-11. Indeed, the Arbitration Award requires SBC to meter power consumed by CLECs in Texas in order to ensure that CLECs are charged only for the power consumed. *Id.* at 7-11.

¹⁶ See *TX Arb. Award* at 9-11; *Ameritech-Wisconsin Tariff*, Part 23, Section 4, Subsection 36.3.H.1; Settlement Stipulation, *Investigation Into Ameritech Wisconsin's Unbundled Network Elements*, 6720TI-161, ¶ 7 (Oct. 2, 2002) (“the Parties stipulate that the term ‘amps’ is to be construed as amps actually ordered or requested by a CLEC”); *Ameritech-Michigan Tariff*, Part 23, Section 4, Subsection 21; *Pac-Bell Tariff*, Schedule CAL. PUC No. 175-T, First Revised Sheet 727. Although SBC has attempted to apply its Michigan recurring collocation power rate to all fused power ordered by AT&T (and even additional un-fused power), SBC's tariffs clearly forbid such conduct and require SBC to apply its rates on a per load amp basis. Accordingly, AT&T is challenging SBC's collocation billing practices in Michigan. But even if the collocation rates in Michigan could properly be compared to those in Ohio (which they cannot), SBC's claim that the Michigan collocation power rates are TELRIC-compliant simply because the Commission approved SBC's Michigan Section 271 application is specious. In the federal

Marlene H. Dortch
September 29, 2003
Page 5

the Ohio recurring collocation charge will apply to 2 to 2.5 times more amps than do the recurring collocation charges in these other states. Thus, a proper comparison confirms that SBC's Ohio recurring collocation power charge is higher than in each of those other states.¹⁷

SBC's comparison to Verizon's Ohio recurring power collocation rate is similarly flawed. SBC's comparison of its Ohio charges with Verizon's Ohio charges are based on the same apples-to-oranges comparison used by SBC in the above-discussed comparisons. SBC again compares its per fused amp charge in Ohio (which applies to redundant power and additional fused power) to Verizon's per load amp in Ohio (which does not apply to redundant power or additional fused power).¹⁸ As SBC concedes, Verizon permits CLECs to order 2.5 times the number of load amps requested, but does not charge CLECs for those additional fused amps.¹⁹ Therefore, a carrier that orders 20 load amps from Verizon in Ohio could be fused for 50 amps (2.5 times the number of load amps). That carrier would pay Verizon-Ohio for only 20 amps, but would pay SBC for 50 amps. Thus, SBC's direct comparison of Verizon's Ohio recurring power per amp rate to SBC's Ohio recurring power per fused amp rate is not valid.

SBC further attempts to justify its Ohio per fused amp charges and rate structure by asserting that the Commission approved, in its *Georgia/Louisiana 271 Order*, a per fused amp charge of \$8.06. Again, however, the Commission did not approve that rate structure or the rate itself. Rather the Commission recognized that, according to BellSouth, its per fused amp charge actually applied only to two-thirds of the fused amps, in order to account for the fact that the number of fused amps exceeded the number of amps consumed by the carrier.²⁰ That adjustment effectively reduced the per fused amp charge in Georgia to \$5.40, well below SBC's Ohio rate. Moreover, the Commission recognized that the Georgia state commission was, at that time, re-examining the collocation power charges, and therefore explicitly left any further examination of

Michigan 271 proceeding, parties were barred from raising collocation power issues because they had not yet raised the issue in state proceedings. The Commission, therefore, never addressed the level of SBC's collocation power charges in Michigan.

¹⁷ For the reasons stated above, to compare SBC's Ohio recurring collocation power charges to the rates in these other states, it is necessary to first multiply SBC's Ohio charge (\$6.07) by 2 to 2.5 times, which is \$12.14 to \$15.17. Then, using the recurring collocation power charges identified by SBC for these other states, it is clear that SBC's Ohio charge exceeds those in California (\$10.95), Michigan (\$10.24), and Wisconsin (\$12.07). This analysis further confirms that SBC's claim that AT&T stipulated to higher recurring collocation power rates in Wisconsin is false. In reality, AT&T stipulated to rates that are lower than those in Ohio. Moreover, all of these comparisons still understate the amount that SBC's Ohio charges exceed those in these other states, because the collocation charges reported by SBC for these other states include costs that, as explained above, are not reflected in SBC's Ohio charge, e.g., HVAC systems. Alexander Decl. n.18.

¹⁸ Alexander Decl. ¶ 33; Verizon Sep. 9 Ex Parte at 2.

¹⁹ Alexander Decl. ¶¶ 32-33 (summarizing and quoting Verizon's tariff).

²⁰ *Georgia/Louisiana 271 Order* ¶ 214.

Marlene H. Dortch
September 29, 2003
Page 6

those rates to the state commission.²¹ Notably, the Georgia state commission now requires BellSouth to meter power consumed by collocation customers in Georgia, and to charge customers only for the amount of power actually consumed.²²

Finally, SBC's most recent (Sept. 22) ex parte letter appears to compare SBC's Ohio collocation rates to that which would be produced by AT&T's collocation cost study. These additional comparisons are invalid for the same reasons that SBC's other recurring collocation power charge comparisons are invalid – SBC again compares apples-to-oranges. According to SBC, after importing certain costs from Michigan into Ohio, AT&T's cost study produces a recurring collocation power charge of *** for Ohio, compared to SBC's actual recurring collocation power charge of ***.²³ Again, however, SBC fails to account for the fact that the recurring collocation power charge produced by AT&T's cost study is a per load amp charge, not a per fused amp charge.²⁴ In other words, the *** charge computed by SBC applies only to the power actually consumed by the collocation customer, it does not apply to all fused power, which is the manner in which SBC Ohio applies its collocation power charge.

Once again, a simple example illustrates the fundamental flaw with SBC's comparison. As explained in the Texas example above, a carrier that orders a 20 amp primary lead likely will obtain a primary lead that is fused for 30 amps. The carrier also will obtain a redundant power lead that also is fused at 30 amps. SBC's *** per fused amp charge will be applied to all 60 amps of that power (30 amps for the primary lead plus 30 amps for the redundant lead), for a total charge of ***. AT&T's cost study, however, computes per load amps that apply only to the power consumed.²⁵ Therefore, in the unlikely scenario where a carrier runs its equipment – which can draw at most 20 amps of power – at 100% capacity, the *** rate that SBC asserts is produced by AT&T's cost study would apply to 20 amps of power,

²¹ *Id.* ¶¶ 214-215.

²² *See Review of Cost Studies, Methodologies, Pricing Policies, and Cost Based Rates for Interconnection and Unbundling of BellSouth Telecommunications, Inc.'s Services*, Docket No. 14631, 2003 Ga. PUC LEXIS 17, * 103 (March 13, 2003). SBC further claims that the Commission approved per amp recurring collocation power charges in Massachusetts, ranging from \$17.78 per load amp to \$31.82. SBC concludes therefore that the Commission should approve SBC's similarly high Ohio charges. But, as SBC admits, the Commission did not approve Verizon's Massachusetts collocation charges. Rather for various reasons, the Commission left the issue for the Massachusetts state commission to address. Massachusetts 271 Order ¶ 203.

²³ SBC's September 22 ex parte letter quotes an Ohio recurring collocation power charge of ***, rather than the \$6.07 charge used in its prior sworn testimony and ex partes. Because this example focuses on SBC's September 22 ex parte analysis, this example assumes the same recurring collocation power charge (***) used in that ex parte.

²⁴ *See TX Arb. Award* at 7-11.

²⁵ *See id.*

Marlene H. Dortch
September 29, 2003
Page 7

totaling ***. Thus, contrary to SBC's assertions, SBC's Ohio recurring collocation charge is at least *** *higher* than that produced by AT&T's cost study.

In all events, the Ohio rates that SBC claims would result from using AT&T's cost study cannot be credited. AT&T's cost study requires numerous state-specific inputs. Here, SBC appears to have mixed and matched Michigan state-specific data with Ohio state-specific data to compute an Ohio recurring collocation charge, *e.g.*, SBC simply imports the D.C. power charge from Michigan into its calculations of Ohio's charges.²⁶ To compound this problem, the costs that SBC imports from Michigan to Ohio are per load amp costs, not per fuse amp costs, which means that SBC's purported Ohio cost estimate using AT&T's cost study improperly mixes and matches per fuse amp and per load amp cost elements. For all of these reasons, SBC's purported cost estimates using AT&T's cost study cannot legitimately be relied upon.

In sum, the record confirms that SBC's recurring collocation power charges are far above TELRIC levels. SBC's application should therefore be denied.

Very truly yours,

/s/ Christopher T. Shenk

Christopher T. Shenk

cc: Pam Arluk
Jennifer McKee
Janice Myles
Susan Pie

²⁶ SBC Sep. 22 Ex Parte, Exhibit 1, at 1 n.4.

VERIFICATION PAGE

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

/s/ Steven E. Turner
Steven E. Turner

September 29, 2003

VERIFICATION PAGE

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

/s/ Danial M. Noorani
Danial M. Noorani

September 29, 2003