

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

SBC's Petition for Forbearance'
Under 47 U.S.C. § 160(c)

CC Docket No. 03-235

**MOTION
TO ACCEPT LATE-FILED COMMENTS
(COMMENTS ATTACHED)**

The People of the State of California and the California Public Utilities Commission (California or CPUC) respectfully submits this motion to Accept Late-Filed Opening Comments in the above docket, which are comments in response to SBC's Petition for Forbearance of certain of its § 271 obligations. The CPUC's Opening Comments were due on December 2, 2003. These opening comments are late because of the press of other business.

Respectfully submitted,

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December 10, 2003

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**OPENING COMMENTS BY THE PEOPLE OF THE STATE OF
CALIFORNIA AND THE CALIFORNIA PUBLIC UTILITIES
COMMISSION IN OPPOSITION TO
SBC's PETITION REQUESTING
FORBEARANCE FROM SECTION 271**

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INTRODUCTION

The People of State California and the California Public Utilities Commission (CPUC), by its attorneys, herewith respectfully submits opening comments in opposition to the petition of SBC Communications Inc. (SBC) requesting forbearance from the application of § 271 unbundling obligations to broadband elements.

SBC's forbearance petition contradicts the Commission's recent holding in the *Triennial Review Order*, requests that the Commission take an action for which it lacks authority under §271(d)(4); and, finally, even if the Commission had authority, SBC fails to meet the statutory test for forbearance.

ARGUMENT

- 1. The Commission has held in its *Triennial Review Order* that the requirements of §271 (c) (2)(B) establish an independent obligation for BOC's to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under §251.**

The Commission's *Triennial Review Order* discusses all loop types, including loops used to deliver broadband telecommunications services, in its review of local loop unbundling obligations.¹ These facilities constitute "local loop transmission" within the meaning of §271 checklist item #4.² In its *Triennial Review Order*, the Commission addresses the issue of the overlap and interplay between §251 and §271 unbundling obligations when it states:

¹ See *Triennial Review Order* at paras. 273-284 and 285-297.

² 47 U.S.C. § 271(c)(2)(B)(iv) (§271 Checklist Item #4).

[W]e continue to believe that the requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251.³

Section 271 was written for the very purpose of establishing specific conditions of entry into the long distance that are unique to the BOCs. As such, BOC obligations under section 271 are not necessarily relieved based on any determination we make under the section 251 unbundling analysis.⁴

Thus, there is no question that a Bell Company retains an independent statutory obligation under §271 of the Act to provide competitors with unbundled access to the network elements listed in the §271 checklist.⁵ Further, these obligations include the provision of unbundled access to loops under checklist item #4:

Checklist items 4, 5, 6, and 10 separately impose access requirements regarding loop, transport, switching, and signaling, without mentioning section 251.⁶

2. The Commission Lacks the Authority to Eliminate §271 Checklist Unbundling Obligations Until those Requirements are Fully Implemented

Section 271(d)(4) expressly states that "[t]he Commission may not, by rule or otherwise, limit or extend terms used in a competitive checklist set forth in

³ See *Triennial Review Order*, para. 653.

⁴ See *Triennial Review Order*, para. 655.

⁵ See 47 U.S.C. § 271(c)(2)(B).

⁶ See *Triennial Review Order*, para. 654.

subsection (c)(2)(B)." 47 U.S.C. §271(d)(4). This specific provision controls over the more general provisions of §10 of the Act (the forbearance section of the Act). Moreover, even if §10 applied, the FCC is limited in forbearing regulation of §271 checklist requirements until it determines that those requirements are fully implemented. 47 U.S.C. §160(d). The Commission in its *Triennial Review Order* has made no such finding nor has SBC attempted to argue that §271 has been fully implemented. Therefore, SBC's petition is premature.

3. SBC Fails to Make the Requisite Showing for Forbearance

Even if SBC's petition did not suffer from the significant statutory maladies noted above, SBC's petition fails because it does not even make the most basic statutory showings required for this Commission to forbear from applying any section of the Act. Specifically, in order to gain forbearance, SBC must show, first, that enforcement of its checklist obligations "is not necessary to ensure that the charges, practices, classifications or regulations" relating to services over the facilities at issue are "just, reasonable and non-discriminatory". (47 U.S.C. §160(a)(1). Second, SBC must show that enforcement of its checklist obligations is "not necessary for the protection of consumers". *Id.* §160(a)(2). Third, SBC must show that forbearance from its checklist obligations would be in the public interest, including a determination of whether such forbearance will promote "competitive market conditions" and "enhance competition among providers of telecommunications services." *Id.* §160 (a) and (b).

SBC's petition for forbearance does not satisfy any of these requirements. Instead, SBC simply argues that this Commission should eliminate any incumbent LEC's obligation to provide wholesale access to broadband. This argument must fail, because, as noted above, in §10 (d), Congress set forth a far more rigorous test before the Commission had the authority to forbear regulation of §271 of the Act.

CONCLUSION

As discussed above, the relief requested in SBC's forbearance petition contradicts the express language in the Commission's *Triennial Review Order*, invokes statutory authority the Commission does not have, and fails to make the required showing to obtain forbearance – including the much stricter showing required for §271 forbearance, that §271 has been “fully implemented.” Based on the above, the Commission should deny SBC's petition for forbearance.

Respectfully submitted,

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