

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

In the Matter of)	
)	
Local Telephone Competition and Broadband Reporting)	WC Docket No. 04-141
)	
Local Competition and Broadband Reporting)	CC Docket No. 99-301
)	

COMMENTS OF SBC COMMUNICATIONS INC.

SBC generally supports the Commission’s ongoing efforts to gather local competition and broadband data through its Form 477 reporting program. With certain improvements in the program, such data, and the reports generated from that data,¹ can be integral to Commission and public efforts to “understand the extent of local telephone competition and broadband deployment, which is important to the nation’s economic, educational, and social well-being.”² In order for that to be the case, however, the Commission must strengthen its reporting requirements. Although, as the Commission has found, the reports, “have demonstrated steady progress in the development of local telephone service as well as nationwide broadband deployment,”³ the reports today paint an incomplete and inaccurate picture of local competition and thus risk *misguiding*, rather than informing the Commission’s policy judgments. It is critical, therefore, that the Commission improve the manner in which local competition data are reported.

¹ See, e.g., Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Local Telephone Competition: Status as of December 31, 2003*, (June 2004)(“June 2004 Competition Report”).

² Local Telephone Competition and Broadband Reporting, *Notice of Proposed Rulemaking and Order on Reconsideration*, WC Docket No. 04-141, FCC 04-481 ¶ 1 (April 16, 2004)(“NPRM”).

³ *NRPM* ¶ 4.

Subject to this caveat, SBC agrees with the Commission that it should continue the Form 477 reporting program beyond its current scheduled sunset in 2005.⁴ Progress in broadband deployment and the development of local competition are sure to remain the focus of Commission and industry concerns beyond 2005. SBC believes, however, that the Commission's proposal to extend the Form 477 program through 2010 goes too far. Six years is an eternity in markets, such as telecommunications, that are characterized by rapid – even revolutionary – technological change. Under the circumstances, the FCC should not commit itself to any particular regulatory requirement – even a reporting requirement – for more than three years. If at the end of three years, reporting requirements remain appropriate, the FCC can renew them at that time.

As noted, in order for the Form 477 to paint an accurate picture of local competition, improvements must be made in the manner in which local competition data is reported to the Commission. In recommending such improvements, SBC is mindful of and supports the Commission's efforts to balance the goals of improved data collection and “minimizing burdens on marketplace competitors and innovators.”⁵

As an initial matter, SBC recommends that the Commission “adopt a lower threshold for reporting local telephone competition data”⁶ than the current threshold of 10,000 voice-grade equivalent lines or wireless channels that provide telephone service to end users in a state. SBC recommends that the Commission lower its threshold to 3,000 lines in a state. SBC believes that this lower threshold would capture a significant number of lines of smaller carriers that are omitted under the current threshold.⁷

⁴ *Id.* ¶¶ 6, 8.

⁵ *Id.* ¶ 1.

⁶ *Id.* ¶ 11.

⁷ VoIP also represents another potentially significant—and growing—service that may contribute to underestimating the evolving competitive landscape. As SBC has reported, “[a] large and rapidly growing number of consumers are already purchasing VoIP services, and most of these consumers are buying the service as a replacement for their primary line.” Peter W. Huber and Evan T. Leo, *Competition in the Provision of Voice Over IP and Other IP-Enabled Services* at 2 (WC docket No. 04-

The Commission also should take steps to improve the accuracy of the number of CLEC lines that are reported on Form 477s. The Commission's *Local Telephone Competition* reports include CLEC line-count figures that are based on data supplied by the CLECs to the Commission on Form 477s. Those counts appear to be highly inaccurate, however. SBC and the other BOCs are in a position to check CLEC UNE-P and resale-line totals directly, and it appears that CLECs' resale and UNE-P counts are at least "in the ballpark."⁸ But additional records (e.g., listings in E911 databases) indicate beyond serious doubt that CLECs are under-reporting their facilities-based lines. CLECs are in fact serving at least two to three times as many lines over their own facilities than what they appear to be reporting to the Commission.⁹

According to the Commission's December 2003 report, CLECs reported serving a total of 26.9 million voice-grade equivalent lines as of June 2003.¹⁰ But more than 24.5 million voice grade equivalent lines were reported by just two CLECs—Time Warner Telecom and KMC Telecom as of that same date.¹¹ WorldCom itself had reported serving 76.4 million "voice grade equivalents" at the end of 2001,¹² and AT&T served "more than 40 million DS0 equivalents" as

36; May 28, 2004). And UNE-P carriers such as AT&T have indicated their intentions to migrate from UNE-P to VoIP. See, e.g., John Polumbo, President and CEO AT&T Consumer, *AT&T Consumer Overview: Bending the Trends* at 11 (Feb. 25, 2004). Similarly, Z-Tel has told investors it is "moving to VoIP from UNE-P." Z-Tel Presentation for the Needham & Co. Sixth Annual Growth conference (Jan. 2004), http://media.corporate-ir.net/media_files/NSD/ZTEL/presenations/0104.pdf. In a nutshell, no portrait of the competitive landscape would be complete without the inclusion of VoIP, and the Commission should consider whether and how to collect VoIP subscribership information, without compromising any determination as to the proper statutory and regulatory classification of VoIP.

⁸ According to the *June 2004 Competition Report*, ILECs report providing 19.4 million UNE-based lines (Table 4), while CLECs report serving 17.9 million UNE-based lines (Table 3).

⁹ See *UNE Fact Report 2002* at A-1 (Ex. A to *Comments of SBC Communications Inc.* CC Docket No. 01-338)(April 5, 2002).

¹⁰ Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Local Telephone Competition: Status as of June 30, 2003* at Table 3 (Dec. 2003).

¹¹ See Time Warner Telecom Press Release, *Time Warner Telecom Announces Second Quarter 2003 Results* (July 28, 2003) (17,798,000 "DS-O Equivalents" as of 2Q03); KMC Press Release, *KMC Telecom Successfully Completes Financial Restructuring* (July 29, 2003) ("More than 6.7 million DS0 (phone line) equivalents in service.").

¹² WorldCom, Form 10-K (SEC filed Mar. 13, 2002).

of second quarter 2002.¹³ Assuming that WorldCom and AT&T gained no more voice grade equivalents during 2002 and 2003, the estimates of those four CLECs alone indicate that CLECs failed to report more than 100 million of their voice grade equivalent lines to the Commission.¹⁴

It appears that one of the most significant sources of this under-reporting is the failure of CLECs to report lines they serve using ILEC special access circuits (the Commission does not include those numbers in its *Local Telephone Competition* reports, or release them to the public).¹⁵ Although the magnitude of this omission is not known, it is clearly significant. AT&T alone reported in 2002 that it served 27.3 million special access voice-grade equivalent lines.¹⁶

The Commission has justified the omission of CLEC-purchased special access lines on the fact that it places “little weight on the availability of special access in its impairment analysis.”¹⁷ However, as the CLECs themselves make clear when reporting on the state of their business to investors, special access lines provide a direct measure of CLEC success in providing facilities-based competition to local customers. The provision of special access and private lines account for more than half of all CLEC revenues.¹⁸ More fundamentally, the D.C. Circuit

¹³ *Q2 2002 AT&T Earnings Conference Call - Final*, Fair Disclosure Wire, Transcript 072302au.729 (July 23, 2002).

¹⁴ It should come as no surprise that CLECs will do what they can to under-report the number of competitive lines in order to serve their own regulatory agendas. SBC has witnessed first hand—in the state proceedings conducted pursuant to the Commission’s *Triennial Review Order*—the lengths to which some CLECs will go to keep regulators from seeing the full scope of the competitive landscape. For instance, one CLEC refused to disclose the number of high-capacity loop facilities it had deployed in Texas on the theory that a “loop” under the Commission’s unbundling definition must terminate on a LEC distribution frame, which no CLEC facility does. In essence, that CLEC claimed that there is no such thing as a CLEC-deployed loop, which would have completely nullified the intent of the Commission’s impairment triggers for high capacity loops.

¹⁵ See *TRO* ¶ 300.

¹⁶ See *UNE Rebuttal Report 2002* (Oct. 2002)(attachment to Letter from Dee May, Assistant Vice President Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-338, Oct. 23, 2002).

¹⁷ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket No. 01-338, FCC 03-36 ¶ 300 n. 872 (“TRO”).

¹⁸ See *UNE Fact Report 2002* at I-13 – I-14 & V-20.

specifically repudiated the Commission's failure to take account of special access lines. In no uncertain terms, the court directed that

. . . the Commission's impairment analysis must consider the availability of tariffed ILEC special access services when determining whether would-be entrants are impaired[.] . . . What the Commission may not do is compare unbundling only to self-provisioning or third-party provisioning, arbitrarily excluding alternatives offered by the ILECs.¹⁹

Accordingly, the Commission should ensure that CLECs report special access lines, and the Commission should include such lines in its *Local Telephone Competition* reports.

An additional source of error may be that CLECs are either overlooking or misinterpreting the requirement that they convert high-capacity lines into voice-grade-equivalent lines. CLECs certainly know what the term "voice-grade equivalent line" means. They have used the term themselves in reports to the investment community, including their reports filed with the Securities Exchange Commission. And in those reports, the CLECs make a clear distinction between lines and "voice-grade equivalents" when they report on the state of their business to investors. As the Commission itself has noted, however, "the reports of at least some CLECs are not consistent" with its directions, and, as a result, "there may be some need for further clarification and adjustment of the reporting system."²⁰

The Commission should remind CLECs of the requirement to accurately report voice-grade equivalents, and it should direct CLECs to include in their Form 477 reports at least as many voice grade equivalent lines that they report to the investment community. More generally, the Commission must put more "teeth" in its requirement that CLECs accurately

¹⁹ *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 557 (D.C. Cir. 2004).

²⁰ Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Local Telephone Competition: Status as of December 31, 2001* at 1-2 n.3 (Feb. 2002).

report the number of lines they serve. Unless it does so, its *Local Competition Reports* will continue to paint an incomplete and inaccurate picture of the competitive landscape.

With respect to broadband reporting, SBC generally agrees with the changes to Form 477 proposed by the Commission for broadband reporting. In particular, rather than continually re-adjusting the information transfer rate (*i.e.*, speed) threshold for internet access to be classified as “broadband,” SBC agrees with the Commission’s approach of establishing a single threshold speed for reporting total connections (*i.e.*, number of lines or channels above 200kbps), along with additional tiers of higher speeds.²¹ The numbers of tiers proposed by the Commission, however, as well as the break points between tiers, do not appear to reflect broadband offerings in the marketplace. SBC would recommend instead the following tiers as more in line with the realities of the marketplace:

- 200kbps – 1mbps
- 1 mbps – 3 mbps
- 3mbps – 10 mbps
- > 10 mbps

SBC also agrees that the Commission should require “filers to specify the number of high-speed connections, by technology, in particular Zip Codes,”²² rather than simply reporting the presence

²¹ See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, *Comments of SBC Communications Inc.* at 5-8 (May 10, 2004).

²² *NPRM* ¶ 9.

of one or more such connections per Zip Code. SBC believes that reporting the actual number of connections per Zip Code, along with the other modifications the Commission has proposed, will provide a more accurate and complete picture of broadband deployment.

Respectfully Submitted,
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