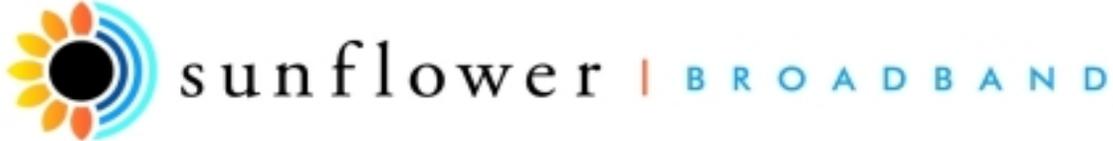


Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:)
)
)
Clarification of the Commission's Rules) WC Docket No. 01-338
and Policies Regarding Unbundled)
Access to Incumbent Local Exchange)
Carriers' Inside Wire Subloop)

COMMENTS OF



**The World Company, d/b/a
Sunflower Broadband**

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December 6, 2004

INTRODUCTION AND SUMMARY

The World Company, d/b/a Sunflower Broadband (“Sunflower Broadband”) submits these Comments in support of Cox Oklahoma Telcom, L.L.C.’s (“Cox”) Petition for Declaratory Ruling (“Petition”).

Cox’s requested relief is essential because the anticompetitive effect of inconsistent state rulings on access to network elements is exacerbated by SBC’s anticompetitive practices beyond the State of Oklahoma. In Kansas, Sunflower Broadband has encountered similar attempts by SBC to frustrate competition. For example, SBC has:

- Demanded payment for wiring on the customer’s side of the demarcation point as a condition of moving the demarcation points in an MTE to the minimum point of entry (“MPOE”);
- Located the MPOE in an unreasonable and discriminatory manner; and
- Failed to negotiate with an MTE’s owner in accordance with the Commission’s good faith requirements, and failed to complete negotiations within 45 days to relocate the demarcation point to the MPOE.

This conduct conflicts with the Commission’s regulations and impedes facilities-based competition. Sunflower Broadband describes its experiences with SBC Kansas to illustrate the need for declaratory relief in this matter.

Sunflower Broadband. Sunflower Broadband is a third-generation family-owned communications company providing cable, broadband, Internet access and switched telephone services in and around Lawrence, Kansas.

Following the enactment of the Telecommunications Act of 1996, Sunflower Broadband invested millions of dollars to rebuild its network to offer broadband service and switched telephone service. The company provides its telephone services over its

cable facilities through a distribution agreement with WorldNet, L.L.C. Like Cox, Sunflower Broadband provides facilities-based switched telephone services in SBC territory. Like Cox, Sunflower Broadband faces the challenges of doing business with incumbent SBC. SBC's anticompetitive practices related to competitive access to subloops and inside wiring unfairly hinder both Cox and Sunflower's ability to compete.

COMMENTS

Sunflower Broadband supports Cox's Petition. Cox's requested relief will help ensure that incumbent LECs conform to the Commission's regulations and orders on competitive access in all states. To illustrate the importance of uniform regulations for competitive access to subloops and inside wiring, Sunflower Broadband describes how SBC Kansas' anticompetitive practices in Kansas violate the Commission's regulations and policies in favor of competitive access to subloops and inside wiring.

I. COX IS ENTITLED TO DECLARATORY RELIEF

Cox's Petition provides ample statutory support and Commission precedent to warrant the grant of the requested regulatory relief. Specifically, Sunflower Broadband supports Cox's position that (1) competitive LECs have a right to direct physical access to incumbent LECs' inside wire subloops in MTEs; (2) this right allows competitive LECs to obtain direct access to inside wire subloops at incumbent LECs' terminal blocks in MTEs; and (3) this right exists regardless of any state law or regulation that would otherwise limit it.

Behind Cox's Petition are SBC's continued efforts to block competitive access to subloops and inside wiring in Oklahoma. But SBC's efforts are not limited to the State of Oklahoma, which is why the requested relief – which would preclude inconsistent

state rulings on network elements - is all the more critical. To shed light on SBC's anticompetitive practices outside of Oklahoma, Sunflower Broadband provides in these Comments details of SBCs' anticompetitive practices related to inside wiring in Kansas.

II. SBC KANSAS' ANTICOMPETITIVE INSIDE WIRING PRACTICES

SBC Kansas' anticompetitive inside wiring practices contravene the Commission's regulations and policy in favor of facilitating competitive access to inside wiring. Sunflower Broadband has firsthand experience of the roadblocks to competition that SBC Kansas has erected in Lawrence, Kansas.

SBC Kansas' practices in Kansas include the following:

- (1) requiring payment for wiring on the customer's side of the demarcation point in violation of the Commission's *1997 Demarcation Point Order*;¹
- (2) determining the location of the MPOE in an unreasonable and discriminatory manner in violation of 47 CFR § 68.105(b); and
- (3) failing to negotiate with an MTE's owner in accordance with the Commission's good faith requirements, and failing to complete negotiations within 45 days to relocate the demarcation point to the MPOE, in violation of 47 CFR § 68.105(d)(3).

We discuss these violations in greater detail below. We begin by summarizing the Commission's policy to facilitate competitive access to inside wiring.

A. The Commission's policy to facilitate competitive access to inside wiring.

The Commission has recognized that "continued incumbent control over much of the wiring in some MTEs has hindered the development of facilities-based competitive LECs as viable competitors..."² Since 1996, the Commission has consistently applied

¹ *In the Matter of Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, Order on Reconsideration, CC Docket No. 88-57, Second Report and Order and Second Further Notice of Proposed Rulemaking, 12 FCC Rcd. 11,897 (1997) ("1997 Demarcation Point Order").*

its demarcation point rules and orders to facilitate competitive access to inside wiring for the purpose of providing competitive local telecommunications services.³

Despite the Commission's clearly articulated policy, rules and orders, SBC Kansas continues to impede competitive facilities-based LECs' access to inside wiring at MTEs.

B. SBC Kansas' anticompetitive practices at the Sunrise Place Apartments.

The Sunrise Place Apartments in Lawrence, Kansas ("Sunrise") were wired by SBC's predecessor in 1981. Each of the six six-unit buildings at Sunrise has an MC-10 terminal on its outside wall. The twisted pair from each unit terminates at screw posts on a cross-connect panel in the MC-10 terminal, and a feeder cable connects from a screw post on the cross-connect panel to SBC's central office. The MC-10 terminal meets the definition of an MPOE because it is "the closest practicable point to where the wiring enters a multi-unit building or buildings."⁴

According to SBC, the demarcation point for the apartments is located at the first jack inside each apartment unit,⁵ the same problem faced by Cox in Oklahoma. By locating the demarcation point at the individual jacks, SBC Kansas makes competitive access to the inside wiring nearly impossible because a facilities-based competitive

² *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, First Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 22,983 (2000) ("Competitive Networks Order") at ¶ 43.

³ *Id.* at ¶ 49.

⁴ 47 CFR § 68.105(b).

⁵ Letter from Eric D. Strong, Manager Engineer, SBC Southwestern Bell ("Strong"), to Susan Tubbs, General Manager, Sunrise Place Apartments ("Tubbs") (January 29, 2003) (attached at Exhibit 1).

LEC must install its own wiring all the way to the individual units. The Commission has recognized that “requiring competitive LECs to convince landlords and customers to permit construction of redundant inside wiring would substantially impede market entry and competition.”⁶

To facilitate access by Sunflower Broadband, Sunrise gave SBC Kansas written notice that Sunrise wanted SBC Kansas to relocate the demarcation point within each apartment to the MPOE on the premises. Sunrise also notified SBC Kansas that it intended to contract with Sunflower Broadband to install and maintain the common demarcation point and facilities on Sunrise’s side of the MPOE.⁷ Because Sunrise gave notice on April 29, 2003, SBC Kansas had until June 13, 2003 to complete negotiations.⁸

On May 8, 2003, Sunrise, Sunflower Broadband, and SBC Kansas met to negotiate the terms of the relocation. Sunrise and Sunflower Broadband understood that the MC-10s were the MPOE for each building, and requested that SBC Kansas relocate the demarcation point for each apartment unit to the MC-10s. SBC Kansas refused, stating that it did not consider the MC-10s to be MPOEs. SBC Kansas instead offered two relocation options, each of which effectively denied Sunflower Broadband reasonable access to the inside wiring at the Sunrise Place Apartments:

- Option 1. SBC Kansas would create an MPOE at the property line by placing a terminal at the property line and moving the individual

⁶ *In the Matter of 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*, 18 FCC Rcd. 16,978 (2003) at ¶ 345.

⁷ Letter from Tubbs to Strong (April 29, 2003) (attached at Exhibit 2).

⁸ 47 CFR § 68.105(d)(3).

demarcation points to this new MPOE. SBC Kansas would require Sunrise to purchase the wiring that would then lie on its side of the demarcation point

- Option 2. SBC Kansas would install a cross-connect terminal at each building, and would run the wiring from each unit in the building to that common block, to permit Sunflower, a facilities-based provider, to cross-connect to sub-loop UNEs. In other words, SBC Kansas would require Sunflower to lease SBC Kansas' subloops in order to access the inside wiring in the units.

SBC Kansas estimated the first proposal would cost Sunflower Broadband between \$75,000 and \$150,000, or between \$2,083 and \$4,167 per apartment unit. In the second proposal, SBC Kansas would install cross-connect terminals at the non-regulated rates of \$145 for the first hour, and \$130 for each additional hour.⁹ SBC stated that it would also charge Sunrise for the terminals and wiring, on top of SBC Kansas' tariffed rates for each subloop – a \$295 NRC for each cross-connect, and a recurring fee of \$4.33 per month.

Neither of SBC Kansas' options was remotely feasible. Sunrise and Sunflower Broadband attempted further negotiations. Because the Commission's *Competitive Networks Order* permits an MTE owner to contract out installation and maintenance of a demarcation point at the MPOE,¹⁰ Sunrise and Sunflower Broadband proposed that Sunflower Broadband would purchase and install a single point of interconnection ("SPOI") at each building. The SPOI would act as the MPOE and demarcation point. SBC Kansas would then move its wiring from the MC-10 to this SPOI, for which Sunrise and Sunflower would pay SBC Kansas its tariffed labor rates.

⁹ Letter from Strong to Tubbs (June 4, 2003) (attached at Exhibit 3) at 2.

¹⁰ See *Competitive Networks Order* at ¶ 57.

SBC Kansas' representative told Sunrise and Sunflower Broadband that he would need to verify whether SBC Kansas actually owned the inside wiring, and would need to get approval for the Sunrise/Sunflower Broadband SPOI option.

Sunrise did not hear from SBC Kansas until June 4, 2003, when it received a letter reiterating SBC Kansas' original two options. The letter stated that if Sunrise selected the first option, SBC Kansas would require Sunrise to purchase the wiring between the MPOE and the end user's premises at replacement cost, plus taxes, shared and common costs, and the cost of labor associated with SBC Kansas' installation and reconfiguration of the demarcation points. SBC Kansas did not acknowledge the Sunrise/Sunflower Broadband proposal that Sunflower Broadband install and maintain the demarcation points.

Sunrise was unable to finance the first option, and SBC Kansas' second option was financially infeasible for Sunflower Broadband. Sunrise and Sunflower Broadband were therefore forced to abandon their plan to provide competitive telecommunications services to the apartment complex.

C. SBC Kansas' practices at the Sunrise Place Apartments violate the Commission's rules and orders.

SBC Kansas' practices at the Sunrise Place Apartments violate the Commission's demarcation point rules and orders. We explain below.

(1) SBC Kansas violated the Commission's 1997 Demarcation Point Order by requiring payment for the inside wiring.

In its *1997 Demarcation Point Order*, the Commission made clear that moving the demarcation point does not transfer ownership of an incumbent LEC's inside wiring, and that the incumbent LEC cannot charge a building owner for this wiring:

Carriers may not use claims of ownership as a basis for imposing restrictions on the customer's or building owner's removal, rearrangement, replacement or maintenance of such wiring. Because there are already procedures under which carriers recover the costs of inside wiring that was originally installed or maintained under tariff, carriers are not entitled to additional compensation for such wiring. Accordingly, carriers may not require that such wiring be purchased and may not impose a charge for the use of such wiring.¹¹

In violation of this Order, SBC Kansas demanded that Sunrise purchase its wiring at a cost of \$75,000 - \$150,000 as a condition of moving the demarcation point, stating:

In Kansas, where there is not an "allowed usage" requirement in the Kansas General Exchange Tariff, the property owner must purchase the existing wiring (which runs from each individual end user's premises inside the MTE to the newly established single demarcation point) from SBC Kansas at a price which will be based on the structural value (which is replacement cost) of the cable, plus taxes and shared and common costs, and the cost of the labor associated with SBC Kansas' installation reconfiguration of the demarks."¹²

In other words, SBC Kansas was requiring Sunrise to pay the replacement cost (among other costs) for wiring installed in 1981, for which SBC Kansas has already recovered its costs, and that is already fully depreciated. SBC Kansas' demand is an unambiguous violation of the Commission's Order.

(2) SBC Kansas violated the Commission's rules by locating the MPOE in a discriminatory manner.

The Commission's inside wiring rules and accompanying Orders are intended to "foster competition in the inside wiring installation and maintenance markets, to promote new entry into those markets,...and to foster the development of an unregulated,

¹¹ *Id.* at ¶ 32 (emphasis added, footnotes omitted).

¹² Exhibit 3 at p. 1 (emphasis added).

competitive telecommunications marketplace.”¹³ Accordingly, 47 CFR § 68.105(b) provides that the MPOE shall be either:

[T]he closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings. The reasonable and nondiscriminatory standard operating practices of the provider of wireline telecommunications services shall determine which shall apply.

(emphasis added). The MC-10 on each building at the Sunrise Place Apartments is the closest practicable point to where the wiring enters the multiunit buildings, and therefore falls under the definition of an MPOE. Using the MC-10s as the MPOEs for each building would allow competitive LECs like Sunflower to economically and efficiently provision services. SBC Kansas, however, informed Sunrise and Sunflower Broadband that the MC-10s were not MPOEs. Instead, SBC Kansas told Sunrise and Sunflower Broadband that Sunrise would need to pay to have SBC Kansas install an MPOE at the property line. SBC Kansas ignored the existing MPOEs - which would have provided economic and efficient competitive access to the inside wiring - and instead demanded that Sunrise pay to have a superfluous MPOE constructed on the property line and pay replacement cost (among other costs) for the fully depreciated wiring running to the MPOE.

(3) SBC Kansas violated the Commission’s rules by failing to negotiate in good faith with Sunrise, and by failing to complete negotiations within 45 days to relocate the demarcation point to the MPOE.

47 CFR 68.105(d)(3) requires incumbent LECs to conclude negotiations with an MTE owner to relocate demarcation points in good faith and within 45 days of the owner’s initial request. The Commission promulgated this rule to prevent incumbent

¹³ 1997 *Demarcation Point Order* at ¶ 6 (citations omitted).

LECs from “unduly delay[ing] or hinder[ing] competitive LEC access.”¹⁴ In this case, SBC Kansas failed to negotiate in good faith or to complete negotiations within 45 days.

As detailed above, the relocation options that SBC Kansas presented to Sunrise violate the Commission’s inside wiring rules. SBC Kansas’ negotiations were therefore in bad faith. Further, SBC Kansas never responded to Sunrise/Sunflower Broadband’s SPOI proposal, much less within 45 days. It merely repeated its original, impermissible options, without conducting any negotiation whatsoever. Sunflower Broadband therefore had no real choice but to abandon its project to provide competitive, facilities-based local telecommunications services to the residents of Sunrise Place Apartments.

III. CONCLUSION

Sunflower Broadband supports Cox’s Petition, which is amply supported by statute and the Commission’s *Triennial UNE Order*¹⁵ and *Virginia Arbitration Order*.¹⁶ Precluding inconsistent state rulings on access to network elements is critical given SBC’s widespread anticompetitive practices related to subloops and inside wiring. As described above, SBC Kansas’ practices violate Commission policy, rules and orders, and frustrate one of the core goals of the 1996 Telecommunications Act – to facilitate entry by facilities-based competitors into the local exchange market.

¹⁴ *Competitive Networks Order* at ¶ 55.

¹⁵ *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*, 18 FCC Rcd. 16,978 (2003).

¹⁶ *Petition of WorldCom, et al., Memorandum Opinion and Order*, 17 FCC Rcd. 27,039 (2002).

Respectfully submitted,

**The World Company, d/b/a Sunflower
Broadband**



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Exhibit 1



Right-Of-Way
Ntwk. Svcs.-Midwest

SBC Southwestern Bell
Telephone Company
500 E. 8th St., Room 690
Kansas City, MO 64106

816.275.1640 Phone

Sunrise Place Apartments
Ms. Susan Tubbs
837 Michigan
Lawrence, KS 66044

January 29, 2003

Ms. Tubbs,

SBC/Southwestern Bell Telephone has determined the location of the telephone Demarcation point as being the first jack inside the apartment unit. The Demarcation point for the Sunrise Place Apartments would be the kitchen telephone outlet. All connections to the unit will be made at the Demarcation point to provide service to the rest of the unit. The year built of the complex helps determine where the Demarcation point will be made. Any future properties please contact SBC for a field meeting.

Thanks,

A handwritten signature in cursive script that reads "Eric D. Stong".

Eric D. Stong
Manager Engineer-Design (ROW)
500 E. 8th RM 690
Kansas City, MO 64106
816-275-3910

Exhibit 2

April 29, 2003

Mr. Eric D. Stong
SBC
Manager Engineer-Design (ROW)
500 E. 8th, Room 690
Kansas City, Missouri 64106

Dear Mr. Stong:

On January 29, 2003, in response to my letter you indicated that SBC's position is that the demarcation points in the Sunrise Place Apartments, located at 837 Michigan, Lawrence, Kansas, are located at the first jack inside each apartment unit. This letter serves as our official notification and demand that under FCC Order 00-366 and Section 68.3 of the FCC's Regulations, the telephony demarcation point within each apartment unit be relocated to the Minimum Point of Entry (MPOE) on the premises.

Further, the FCC Order allows Sunrise Place Apartments, having chosen to locate the demarcation point at the MPOE, to choose contractors to be responsible for the installation and maintenance of the facilities on the owner's side of the MPOE. It is our intent to contract with Sunflower Broadband to install, as necessary, and maintain the common demarcation point and the facilities on our side of the MPOE, including existing facilities between the MPOE and the individual apartment units, as well as the MPOE itself. Therefore, we expect that negotiations regarding this relocation of the demarcation point as we demand herein will include SBC, Sunrise Apartments, and Sunflower Broadband.

Please contact me as soon as possible to schedule a time when all parties mentioned above can discuss the technical arrangements to facilitate the move. Per the FCC Order, all negotiations and the relocation itself should be completed within 45 days of this letter, or by June 13, 2003.

Sincerely,

Susan Tubbs
General Manager

Exhibit 3



Right-Of-Way
Ntwk. Svcs. -Midwest

SBC Southwestern Bell
Telephone Company
500 E. 8th St., Room 690
Kansas City, MO 64106

816.275.1640 Phone

June 4, 2003

Sunrise Apartments
Susan Tubbs
837 Michigan
Lawrence, KS 66044

Dear Ms. Tubbs,

Thank you for meeting on May 8th, 2003 about the possible rearrangement of the multiple demarcation points to a single demarcation arrangement at the Minimum Point of Entry ("MPOE") at Sunrise Apartments ("Sunrise"), located at 9th & Michigan, in Lawrence, Kansas. This letter will answer the questions that were generated from discussion with you and Sunflower Broadband ("Sunflower") and letters forwarded to SBC Kansas on April 30th, 2003. As outlined below, there are alternatives available to allow Competitive Local Exchange Carriers ("CLECs") to gain access to end users located in multi-tenant environments ("MTE"), such as Sunrise.

Option #1 – Reconfiguration of Property to Single Demarcation

Existing multi-unit apartment premises that have multiple demarcation points, such as Sunrise, may be reconfigured so that the multiple demarcation points are relocated to a single demarcation point. However, such work cannot be undertaken unilaterally by SBC Kansas without the property owner's consent, except in the case of major modifications, renovations or rearrangements.

Therefore, at your request, SBC Kansas will reconfigure the existing multiple demarcation arrangement to a single demarcation arrangement, by relocating the multiple demarcs (currently located in each individual apartment unit) to the newly created single demarcation point. In Kansas, where there is not an "allowed usage" requirement in the Kansas General Exchange Tariff, the property owner must purchase the existing wiring (which runs from each individual end user's premises inside the MTE to the newly established single demarcation point) from SBC Kansas at a price which will be based on the structural value (which is replacement cost) of the cable, plus taxes and shared and common costs, and the cost of labor associated with SBC Kansas' installation reconfiguration of the demarcs. Therefore, Sunrise would be responsible for these charges and all subsequent maintenance, repair and upkeep of the wiring that would run from the single demarcation point to each individual end user's premises. SBC Kansas



Right-Of-Way
Ntwk. Svcs.-Midwest

SBC Southwestern Bell
Telephone Company
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816.275.1640 Phone

would no longer be responsible for the maintenance, repair and upkeep of the wiring that would run from this single demarcation point to each such end user premise.

If this option is selected, SBC Kansas will engage in good faith negotiations with you, as the property owner, to establish the reconfiguration of this property from a multiple demarcation configuration to a single demarcation arrangement consistent with applicable FCC rules.

Option #2 – Multiple Appearance Exception: Access via Outside Block

Due to the age of Sunrise Apartments, SBC Kansas has multiple appearances within the individual apartments. Therefore, since this is an exceptional situation, at this individual location, SBC Kansas could provide CLECs access to end users in the Sunrise Apartments via an outside block. In such case, at each apartment building on this MTE premise, SBC Kansas would move all of the existing multiple appearance wiring, which runs from jacks within the perimeter of the unit (i.e. all wiring except that which is associated with the first jack in the kitchen, which is designated as the NID and demarcation point), to a common block which would be situated outside of each building on the MTE premise. Such work would be performed by SBC Kansas and charged at the applicable non-regulated rates, which is \$145 for the first hour and \$130 for each additional hour. These charges are applied on a per day basis. Access would then be available to all CLECs that desire to gain access to the individual units at this location via the outside block.

Please feel free to contact me with any question.

Best regards,

Eric D. Stong
Manager-Engineering Design (ROW)
500 E. 8th, Room 690
Kansas City, MO 64106
816-275-3910