

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

In the Matter of

Telephone Number Portability

CC Docket No. 95-116

Petition of SBC Communications
Inc. For Forbearance Under 47
U.S.C. § 160(c) From the
Application of the Five-Year
Recovery Period for Local Number
Portability Costs Under 47
C.F.R. § 52.33(a)(1)

Petition of SBC Communications
Inc. for Waiver of the Five-Year
Recovery Period for Local Number
Portability Costs Under 47 C.F.R.
§ 52.33(a)(1)

CC Docket No. 95-116

**RESPONSE OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA
TO PETITIONS OF SBC FOR FORBEARANCE AND FOR WAIVER**

The California Public Utilities Commission (California or the
CPUC) and the People of the State of California submit this

response to two petitions filed by SBC Communications (SBC) on
February 8, 2005 with the Federal Communications Commission (FCC
or Commission). SBC's Petition for Forbearance asks the FCC to
forbear from enforcing "its rule limiting SBC's ability to recover its

costs from implementing local number portability ('LNP') to a five-year period". SBC's Petition for Waiver requests, in the alternative, that the FCC grant SBC a waiver of the Commission's rule limiting SBC to a five-year recovery period for LNP costs. In both petitions, SBC asserts that it wishes to continue to assess end-user charges "for a limited time until SBC has fully recovered the total amount of LNP costs that the Commission has authorized it to collect". The CPUC cannot support either SBC petition at this time.

I. INTRODUCTION

The Commission authorized incumbent Local Exchange carriers (ILECs) to recover their costs associated with deployment of LNP.¹ The FCC authorized ILECs a five-year recovery period for LNP costs.² The CPUC does not dispute SBC's statement that the FCC's five-year limit on LNP cost recovery was "subject to change only upon proof that the charge 'was not reasonable based on the information available at the time it was initially set'".³ The CPUC cannot, however, confirm SBC's contention that its original estimate of costs and cost recovery plan was not reasonable based on the information available at the time the FCC initially approved the cost recovery plan. The CPUC also cannot

¹ See *Third Report and Order*, Telephone Number Portability, 13 FCC Red 11701, 11777, ¶ 144 (1998).

² *Id.*

³ Petition for Waiver, p. 2.

determine from SBC's petition's why SBC did not seek to adjust the surcharge during the recovery period instead of waiting until 14 months after the end of the recovery period to seek additional cost recovery.

II. ABSENCE OF SUPPORTING DATA

The CPUC staff reviewed the information contained in the SBC petitions.⁴ Specifically, CPUC staff was interested in the dollar amount identified in paragraph 11 of Mr. Connelly's Declaration, which states that SBC seeks "\$41 million for Pacific Bell". Pacific Bell was the name of the Pacific Telesis subsidiary in California prior to SBC's acquisition of Pacific Telesis, and remains fully subject to CPUC regulatory jurisdiction as the largest ILEC in California. SBC staff informed CPUC staff that the company did not submit to the FCC any supporting documentation showing how the specific figures identified in Mr. Connelly's Declaration were derived. Consequently, the sole information available to the CPUC in the petitions was the statement in paragraph 11 of Mr. Connelly's Declaration.

By telephone and then by written data request, CPUC staff requested the underlying calculations showing how SBC concluded that it still needs to recover \$41 million dollars from SBC's California

⁴ See Declaration of John G. Connelly, appended to each of the two SBC petitions.

customers.⁵ A copy of the CPUC staff data request is appended to these comments. On March 23, 2005, the day before the date of this filing, SBC provided a written response to the data request.⁶ CPUC staff reviewed the data request, and concluded that the information provided was not responsive to the data request. As a consequence, the CPUC cannot determine whether the assertions contained in SBC's petitions are correct. The CPUC cannot support the SBC petitions without being able to verify the calculations that led to the claim of a \$41 million shortfall.

III. CONCLUSION

The CPUC cannot support SBC's petitions for forbearance and for waiver, respectively. Further, the CPUC strongly urges the FCC to request from SBC data underlying SBC's contention that it has failed to recover LNP costs because of a decline in its number of access lines. The CPUC is not asserting that SBC's claims are in error or false. Rather, the CPUC cannot assess the claims because of a lack of data. The CPUC recommends that the FCC obtain the relevant data to support the claims SBC makes in its petitions.

⁵ The CPUC data request is appended to these comments.

⁶ Because SBC submitted the response to the CPUC as proprietary, a copy of that response is not appended to these comments.

Respectfully submitted,

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