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November 29, 2005

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

**Re: Notice of Ex Parte - In the Matter of Petition of SBC
Communications, Inc. for Forbearance and Waiver Under 47
U.S.C. § 160(c) For the Application 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**

Dear Ms. Dortch:

On November 28, 2005, Michelle Thomas, Jim Lamoureux, and James C. Smith of AT&T met with Ian Dillner, Tom Navin, and Donald Stockdale, of the Wireline Competition Bureau to discuss various issues pertaining to this proceeding consistent with the attached presentation.

If you have any questions, please do not hesitate to contact me at (202) 326-8895.

Sincerely,

/s/ Jim Lamoureux
Senior Counsel
AT&T Services

Attachment

cc: Tom Navin
Ian Dillner
Donald Stockdale



Local Number Portability Cost Recovery

November 28, 2005

Local Number Portability (LNP) Cost Recovery Legal Background and Authority

- The Act requires all LECs to provide LNP. 47 U.S.C. § 251(b)(2).
- The Act also requires that the cost of establishing LNP be borne by all telecommunications carriers on a ***competitively neutral basis*** as determined by the Commission. 47 U.S.C. § 251(e)(2).

Legal Background and Authority (Cont'd)

- In its rules implementing the Act's requirements (47 CFR § 52.33), the Commission
 - allowed non-ILECs to recover their LNP implementation costs in any lawful manner, but
 - limited ILECs to recovery of their costs only through a levelized, tariffed, monthly charge on end users, for five years.
- The Commission found that such disparate regulatory treatment of cost recovery was consistent with the Act's competitive neutrality standard because, "Creating an optional end-user charge for incumbent LECs ensures that such carriers have a ***reasonable opportunity to recover their costs***[" LNP Third Report and Order ¶ 139.

Legal Overview (Cont'd)

- In the *LNP Third Report and Order* Commission also said that it would consider allowing a carrier to raise its end user charges during the 5 year period if it could “show that the end-user charge was not reasonable based on the information available at the time it was initially set.” *Id.* ¶144.
 - The only reasonable interpretation of this condition is that it gives an ILEC recourse if a charge calculated with reference to information then available later turns out not to be reasonable due to unforeseen developments beyond its control.
 - This is the only interpretation of the Commission’s statement that is consistent with the Act’s core requirement that LNP costs must be borne on a competitively neutral basis and with the Commission’s fundamental principle that carriers are entitled to a reasonable opportunity to recover their LNP costs.
 - A contrary reading of the Commission’s statement, one that would permit adjustments only to remedy an ILEC’s negligent or unreasonable computations, would be patently arbitrary and capricious and unsustainable on appeal.

SBC's LNP Cost Recovery Mechanism in Practice

- After a five month review of the SBC ILECs' tariffs and cost studies, the Commission authorized \$1.275B in cost recovery for SBC as reasonable and lawful.
- A key component in SBC's calculations translating total costs into monthly end user charges was SBC's estimated projection of access lines over the 5 year period in which the charges would be assessed (1999-2004).
- SBC experienced a significant under recovery of LNP costs because at the time it filed its tariffs it was unable to predict the unprecedented decline in access lines that occurred during the 5 year period.
 - SBC's LNP cost recovery charges thus turned out to be unreasonable because they were based on information that proved to be unreasonable in light of subsequent events.
- Consistent with the Commission's policy objective, and the Act's requirement of competitive neutrality, SBC should be afforded a reasonable opportunity to recover all of its LNP costs that the Commission previously determined were reasonable and lawful.

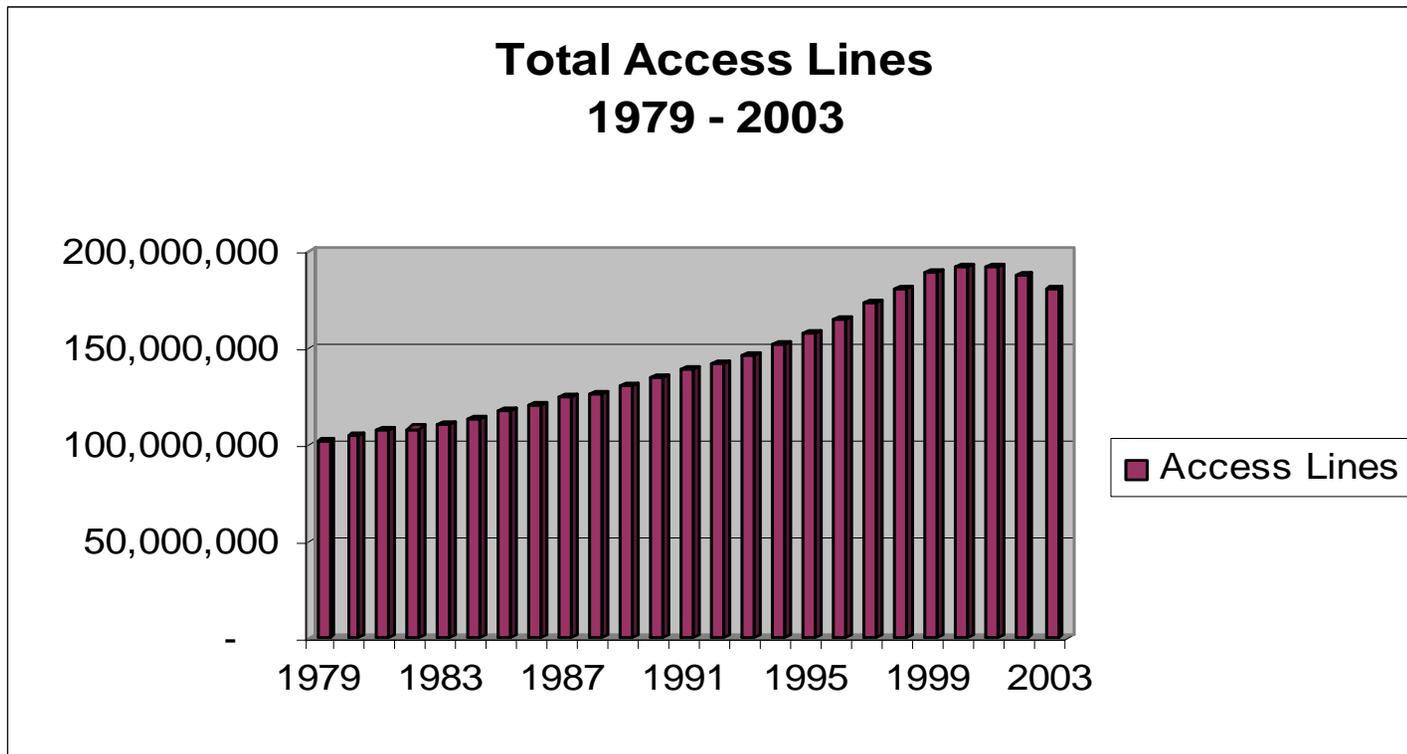


SBC's Access Line Trend

- At the time of SBC's LNP cost recovery tariff filing (February 1999), access lines had grown every year since 1933, when the U.S. was in the depths of the Great Depression.
- Access line growth had accelerated dramatically in the years immediately prior to 1999 due largely to the explosive growth of the Internet, along with a booming economy.
 - The growth of the Internet fueled a significant increase in second line sales.
 - The industry and the Commission uniformly anticipated that those trends would continue (reflected in the Commission's *ISP Remand Order*)
- During 1999, after SBC's LNP cost recovery tariffs were approved, access lines did continue to grow at a healthy clip, and they increased in 2000 as well, albeit at a slower pace.
- However, beginning in 2001, SBC's access lines began decreasing, and the decline accelerated year-over-year from 2001 through 2003. This acceleration was so rapid that for the full 5-year period, SBC's access lines decreased by 8%.
 - In stark contrast to the 24% increase that SBC had predicted and had assumed in calculating its tariffed LNP monthly charge
- This change in access line growth rates was more dramatic in the SBC region than elsewhere
 - faster increase prior to 2001 and faster decline in 2001-2003.



Access Line Trend (Cont'd)



Data Source:

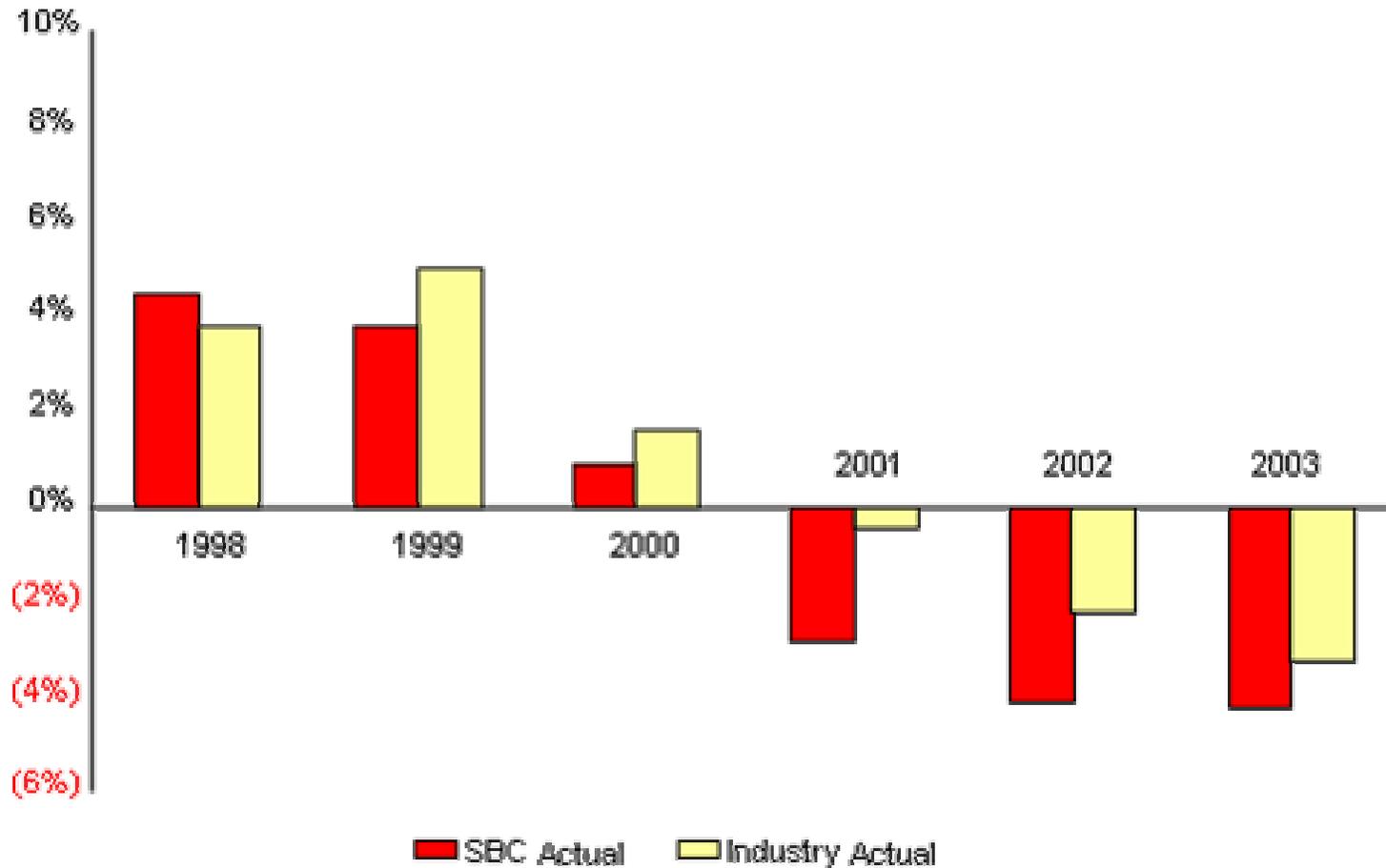
1979 through 1983 access lines - Trends in Telephone Service: FCC: IADCCB July 1998

1984 through 1998 access lines - Trends in Telephone Service; FCC: IATD, WCB May 2002

1999 through 2003 access lines - Local Telephone Competition: Status as of December 31, 2003 FCC IATD WCB
June 2004

Access Line Trend (Cont'd)

Industry and SBC Actual Access Line Growth (1998-2003)



Access Line Trend (Cont'd)

- This unprecedented and unforeseeable reduction in access lines was due to a confluence of factors
 - Projections regarding continued growth of sales of second lines for dial-up Internet access proved grossly inaccurate. (Reflected by the Commission's *Core Forbearance Order*).
 - After 8 years of robust growth, the economy went into recession.
 - Bypass substitution – from wireless carriers and cable providers as well as facilities-based CLECs – accelerated.
 - High speed Internet access displaced second lines.

SBC LNP Cost Recovery Shortfall

Company / Region	Actual LNP Revenue (\$M)	Approved LNP Revenue (\$M)	Revenue Shortfall (\$M)
SWBT	\$327	\$434	(\$107)
AIT	\$375	\$438	(\$63)
CA	\$363	\$404	(\$41)
Total	\$1,065	\$1,276	(\$211)



The Relevant Legal Standards

- Section 10 requires the Commission to forbear from applying any rules or regulations that are
 - not necessary to ensure that . . . charges, practices or classifications, or regulations . . . are just and reasonable and are not unjustly unreasonable or discriminatory,
 - not necessary for the protection of consumers, and
 - not consistent with the public interest.
- The Commission may waive its own rules or regulations if “good cause” is shown.

The Forbearance and Waiver Standards are Satisfied in This Instance

- SBC does not seek to recover any costs beyond those the Commission already determined were reasonable and lawful.
 - Denying SBC the opportunity to recover those costs would violate the Act's requirement of competitive neutrality.
- Granting the relief requested by SBC will not harm consumers.
 - The Commission originally limited recovery to 5 years so as not to subject consumers to an unduly long recovery period and excessive interest payments. *BellSouth Order* ¶ 12.
 - ▲ SBC is not proposing to prolong the recovery period beyond any small additional amount necessary to recover the shortfall.
 - ▲ SBC is not seeking recovery of interest— just the shortfall.
- Granting the relief requested by SBC is consistent with the public interest
 - Action is necessary in this instance in order to give meaning and substance to the Commission's "first stated policy goal" of affording all carriers a reasonable opportunity to recover their costs. *BellSouth Order* ¶ 12



Granting the Relief Requested by SBC is Necessary to Remain Consistent with Prior Commission Decisions

- The Commission granted Sprint's request to continue charging customers beyond the tariff period for its intermodal LNP charge.
 - Sprint had requested Commission action in order to remedy a Sprint computational error
 - Sprint's error had overstated demand, and thus underestimated the recurring LNP charge necessary to recover the full amount of its intermodal LNP costs
 - The Commission concluded that because there was no dispute that Sprint had under-recovered its costs, "the public interest weighs in favor of allowing Sprint to correct" its error. *Sprint Order* ¶ 7.
- Granting Sprint's request while denying SBC the opportunity to recover its LNP costs would be legally indefensible in that it would effectively reward negligence and punish diligence.

Granting the Relief Requested by SBC is Necessary to Remain Consistent with Prior Commission Decisions (Cont'd)

- The Commission granted BellSouth's request to add an additional LNP charge beyond the original 5 year period to account for intermodal LNP costs.
- In doing so, the Commission held that carriers' inability to predict intermodal portability costs was a "special circumstance[]" that "would make the application of the [5 year] rule inequitable and contrary to the public interest." *BellSouth Order* ¶13. The Commission found, in particular, that "insofar as the original rates did not recover these initial implementation costs, they were unreasonably low, which satisfies the criterion established in the *Cost Recovery Order*" for increasing the LNP charge. *Id.* ¶ 17.

Consistency with the *BellSouth Order* (Cont'd)

- The same is true in this instance
 - Just as “[i]mplementation issues rendered speculative the amount of costs associated with wireless LNP implementation,” *BellSouth Order* ¶ 12, the fact that a seventy year trend would be reversed and that access lines would decline dramatically was not merely speculative, but unknowable. Thus, SBC’s end user charge was unreasonable, because it was based on information that turned out to be unreasonable.
 - It is unlikely that the Commission would have allowed SBC, at the time its tariffs were filed, to justify a higher LNP charge based on the assumption that access lines would actually decrease over the 5-year period. In the *BellSouth Order*, the Commission made clear that it “does not permit recovery of speculative costs, and, to the extent that any carrier sought such recovery, it was rejected.” *Id.* ¶ 13.
- There is no rational basis to distinguish the relief afforded by the Commission to BellSouth and Sprint from the relief sought by SBC.



Procedural Developments

- SBC filed its Petitions on February 8, 2005.
 - Forbearance from 5 year limit of Rule 52.33(a)(1)
 - Waiver of 5 year limit of Rule 52.33(a)(1)
- Pleading cycle completed in April 2005.
- Only 4 comments filed in response
 - Verizon supports SBC's petitions
 - No serious challenge as to:
 - SBC's calculation of its LNP cost recovery shortfall
 - Legal arguments in support of SBC's right to recover its LNP costs

