

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application of SBC Communications Inc.)	
Pursuant to Section 271 of the)	CC Docket No. 00-04
Telecommunications Act of 1996)	
To Provide In-Region, InterLATA Services)	
In Texas)	

**REPLY COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association (“CompTel”), by its attorneys, hereby submits these Reply Comments in response to various, earlier-filed Comments and an Evaluation by the Department of Justice¹ in the above-captioned proceeding regarding the Application by SBC Communications Inc. and its subsidiaries, Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (collectively, “SWBT”) to provide in-region, interLATA services in the State of Texas.² CompTel respectfully submits that the record in this proceeding requires the Commission to deny the Application of SWBT.

¹ Evaluation of the United States Department of Justice, *In re Application of SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-04 (February 14, 2000) (“DOJ Evaluation”).

² Brief in Support of Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Texas, CC Docket No. 00-4, filed Jan.10, 2000 (“SWBT Brief”); *see also Public Notice*, DA 00-37 (rel. Jan. 10, 2000).

I. SWBT’S THREE STEP PROCESS FOR CONVERTING UNE COMBINATIONS IS UNLAWFUL AND CAUSES SIGNIFICANT CUSTOMER DISRUPTIONS

Although the Department of Justice (the “Department”) concluded that other deficiencies independently required denial of the Application,³ it noted that “the record leaves considerable doubt . . . whether carriers will be able to compete effectively [in Texas] using the UNE-platform.”⁴ CompTel agrees with the Department’s concerns; and further, CompTel believes that when the Commission fully examines this issue, the record will adequately show a pattern of discriminatory behavior by SWBT regarding the conversion of existing services to the UNE-platform.

CompTel was not alone in reporting that SWBT’s process for providing combinations of UNEs violates Rule 315(b) and unlawfully discriminates against competitors. For example, Birch Telecom, Inc. reported that its customers consistently experienced service disruptions, ranging from loss of dialtone and loss of vertical features, to double billing and failures to update LIDB information, after migrating to UNE-P.⁵ Only after filing a complaint with the Texas PUC in September did Birch learn that these problems were the result of SWBT’s decision to separate a UNE combination order into three separate orders in its SORD system.⁶ Although SWBT has

³ See DOJ Evaluation, at 2-3; *id.* at 10-23 (analyzing and concluding that SWBT has not demonstrated that it is providing non-discriminatory treatment to competitors offering xDSL services); *id.* at 27-44 (analyzing and concluding that SWBT’s hot cut performance in Texas was “worse than Bell Atlantic’s [‘minimally acceptable’] performance in New York”).

⁴ *Id.* at 3.

⁵ See Comments of CLEC Coalition, at 26, & Birch Tidwell and Kettler Aff., ¶¶ 63-91; see also Comments of AT&T, at 68 & Dalton and DeYoung Decl., ¶ 166 (reporting service disruptions with 3% of AT&T’s current orders from August to November 1999).

⁶ See Comments of CLEC Coalition, Birch Tidwell and Kettler Aff., ¶ 25.

improved its performance, Birch continues to experience some problems and expressed concern that the manual “fixes” implemented (apparently solely for Birch) are not sustainable in the long-term.⁷

Similarly, start-up provider IP Communications Corporation (“IPC”) approached SWBT to provide the network elements it needed to offer local service using the UNE-platform. After an initial series of denials by SWBT of IPC’s requests,⁸ SWBT offered only its 3-step approach, which IPC found unacceptable because “the end user clearly would be out of service for an extended period of time” as well as “a possibility that . . . the end user experience would not be equal to the end user experience when SWBT provides the same service.”⁹ As a result, IPC’s ability to provision a service equal in quality to SWBT’s own retail service is threatened.

The Department of Justice has taken particular notice of the service outage problems caused by SWBT’s delays and improper UNE-platform conversions. Following its citation of numerous CLEC complaints, the Evaluation states that “there is *evidence in the record* that suggests that these problems are significant and may become more so in the future as order volumes increase.”¹⁰ While the Department suggested the Commission should await “additional commercial experiences” with this process, it noted that such experience “would be outside the

⁷ See *id.* ¶¶ 52-53.

⁸ Declaration of Sean Minter on Behalf of IP Communications Corporation, ¶ 5 (setting forth times, places and conditions of SWBT’s improper denial of IPC’s attempts to compete).

⁹ *Id.*

¹⁰ DOJ Evaluation, at 51-52 (emphasis added).

scope of this Application.”¹¹ Because the Commission’s procedures prohibit such supplementation of a pending application, the Commission must deny this Application.

II. SWBT UNREASONABLY DELAYS PROVISIONING OF LOCAL INTERCONNECTION TRUNKS

The record demonstrates strong support for CompTel’s argument that SWBT does not provision interconnection trunks in a manner that permits effective competition in the Texas local telecommunications market. For example, e.spire Communications, Inc. (“e.spire”) states that its competitive experience in Texas has been one in which SWBT imposed “unreasonable and arbitrary restrictions” on e.spire’s ability to obtain interconnection trunks.¹² Specifically, e.spire avers that, despite its adherence to SWBT’s trunk ordering procedure and forecasting requirements, SWBT “second-guessed” e.spire’s trunking requirements and methodically delayed the provisioning of these facilities.¹³

Additionally, e.spire claims that SWBT “routinely refuses to provide the necessary reports” that e.spire requires to manage traffic flow.¹⁴ This obstacle, in conjunction with an inability to augment existing trunk groups or to “update trunk requirements based on customer needs and increased sales,” has harmed e.spire’s ability to grow its business and compete effectively in the local Texas market.¹⁵

¹¹ See DOJ Evaluation, at 52.

¹² Comments of e.spire, at 4.

¹³ e.spire Wong Aff., ¶¶ 8-11.

¹⁴ See Comments of e.spire, at 5; *see also* e.spire Wong Aff., ¶ 12.

¹⁵ See e.spire Wong Aff., ¶¶ 14-15.

The Department of Justice has also recognized SWBT's deficiencies in this area of wholesale service provisioning. In its Evaluation, the Department found that SWBT's Application and appended performance reports "do not refute the complaints made by the CLECs" regarding interconnection trunk provisioning.¹⁶ The Department also took notice of a November 1999 Texas PUC finding that "[CLEC] orders [for interconnection trunks] that were placed but were not processed due to SBC's lack of facilities were excluded from the reported data."¹⁷ "Because of these omissions," the Department concluded that "the reported data [regarding lengthy installation intervals and trunk blockage] do not provide a reliable indication of SBC's actual performance."¹⁸ CompTel agrees with the Department's conclusion. The evidence shows a pattern of inadequate performance, and SWBT's performance data do not carry its burden of showing compliance with Checklist Item 1.

III. SWBT DOES NOT PROCESS HOT CUTS IN A MANNER THAT PROVIDES A MEANINGFUL OPPORTUNITY TO COMPETE

In its Comments and accompanying member affidavits, CompTel set forth multiple examples of problems that CLECs have with SWBT's hot cut processes. In summary, CompTel's members demonstrated that: (1) the original SWBT data examined only Coordinated Cutovers and was void of meaningful data pertaining to cutovers made under the FDT process; (2) SWBT does not follow its coordinating procedures under the FDT process, significantly impairing a CLEC's ability to provide quality service to its customers; and (3) SWBT's

¹⁶ DOJ Evaluation, at 47.

¹⁷ *Id.* at 47 (emphasis in original); *see also* 47, n.132.

¹⁸ *Id.* at 47 & n.133.

unacceptably poor performance regarding cutovers has reduced the volumes of orders CLECs are capable of processing, and thus inhibits their ability to compete effectively with SWBT.¹⁹

In its careful Evaluation of SWBT's Application, the Department of Justice rated the performance of SWBT's hot cut provisioning to be "worse than Bell Atlantic's performance in New York" which, at the time, was a "*minimally acceptable*" showing of hot cut performance.²⁰ The Department cited a number of specific problems with SWBT's provisioning of hot cuts that are in line with the experiences cited by CompTel in its Comments. First, the Department found that SWBT's provisioning of Coordinated Cutovers was unacceptable because (1) provisioning was not timely,²¹ (2) service outages were unacceptably lengthy,²² and (3) SWBT's weak tracking of post-provisioning trouble reports failed to show that severe post-provisioning problems do not exist.²³

Second, the Department found that SWBT had performed no better when cutting over loops using the FDT method. In this portion of its analysis, the Department focused on AT&T's trials under SWBT's FDT method and showed that there were a "significant number" of service outages during the trials, half of which were a direct result of the "SBC technician not starting

¹⁹ See Comments of CompTel, at 13-18; *see, e.g.*, CapRock Thompson Aff.; NTS Elliot Aff.

²⁰ DOJ Evaluation, at 27 (citing *Bell Atlantic New York Order*, ¶ 309 (emphasis added)).

²¹ See *id.* at 30-31 (citing e.g. AT&T DeYoung Aff. as well as numerous incongruities in SWBT's own performance measuring and recorded data); *compare id.* at 31 n.83, with CompTel Comments, at 15.

²² See DOJ Evaluation, at 32-33.

²³ See *id.* at 33.

the cut at the at the scheduled time.”²⁴ The Department also highlighted the significant problems with premature FDT initiation experienced by NTS Communications, Inc. and CapRock Communications Corp.²⁵ Further, the Department, under its independent analysis of the SWBT data, found that harmful and unacceptable service outages may occur “from a failure to complete the hot cut by the scheduled time” as well as in situations where the FDT initiation is premature.²⁶ The Department was unable to determine whether the SWBT data pertained to premature FDT cuts, late-started FDT cuts, or both. CompTel argues that without this data—complete and properly explained by SWBT—the Commission cannot adequately evaluate the performance of SWBT hot cut procedures and must deny the Application.

Finally, and most importantly, the Department recognized the effect of these SWBT performance failures: “CLECs are constrained in their ability to enter the Texas market using UNE-loops.”²⁷ Therefore, given this effect and SWBT’s failure to adequately address its causes, the Commission has no choice but to deny SWBT’s Application.

²⁴ *Id.* at 34.

²⁵ *See id.* at 34 n.93.

²⁶ *See id.* at 35 & n.95.

²⁷ *See id.* at 30 (citing testimonial support of corporate officers from AT&T, CapRock, NEXTLINK, and NTS).

CONCLUSION

For the foregoing reasons, the SWBT Application should be DENIED.

Respectfully submitted,

COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION

Carol Ann Bischoff
Executive Vice President
and General Counsel
Terry Monroe
Vice President – State Affairs
COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION
1900 M Street, N.W.
Suite 800
Washington, D.C. 20036

By: _____
Robert J. Aamoth
Steven A. Augustino
Michael J. Francesconi

KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600

Its Attorneys

DATED: February 22, 2000