

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

In the Matter of)	
)	
Application of SBC Communications Inc.)	CC Docket No. 00-65
Pursuant to Section 271 of the)	
Telecommunications Act of 1996)	
To Provide In-Region, InterLATA Services)	
In Texas)	

**SUPPLEMENTAL COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association (“CompTel”), by its attorneys, hereby submits these supplemental comments in response to the additional information submitted on April 5, 2000 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”) in support of its request to provide in-region, interLATA services in the State of Texas.¹ Although the Commission has chosen to treat the Supplemental Filing as a new application pursuant to Section 271, the *Public Notice* asks commenters not to repeat arguments or resubmit evidence previously submitted in CC Docket No. 00-4.² Accordingly, CompTel confines its comments to new information and new developments since its comments and reply comments were filed.

¹ Letter from James D. Ellis, *et al.* to Magalie R. Salas, FCC, CC Docket No. 00-4, filed Apr. 5, 2000 (submitting additional affidavits and requesting that the FCC “restart the clock” on its application) (“SWBT Supplemental Filing”).

² See *Public Notice*, DA 00-750 (rel. Apr. 6, 2000) (treating the *SWBT Supplemental Filing* as a new application pursuant to Section 271 and incorporating the record previously filed in CC Docket No. 00-4).

The record in CC Docket 00-4 amply demonstrates that grant of in-region, interLATA authority is not appropriate at this time. In its Comments, CompTel focused on three market-opening areas where SWBT's performance falls below Section 271's requirements. First, SWBT's *process* for providing combinations of network elements unlawfully tears apart pre-existing combinations of elements and, as a result, subjects CLECs and their customers to a variety of service disruptions ranging from loss of dialtone to improper presubscription selections to the failure of vertical features. Second, SWBT fails to provision local interconnection trunks on a timely basis, often delaying CLEC entry through a claimed lack of facilities. Third, SWBT does not execute hot cuts using its "frame due time" option on a consistent or reliable basis. Moreover, CompTel emphasized in its Comments that swift and effective enforcement mechanisms are necessary to ensure that performance does not deteriorate after Section 271 authority is granted.

Implicitly conceding that it had not satisfied Section 271 with its initial application, SWBT submitted its Supplemental Filing on April 5, 2000. Rather than attempting to rectify the shortcomings demonstrated by the record, however, SWBT largely rehashes arguments and evidence it already submitted in the *ex parte* process in CC Docket 00-4. As a result, the core deficiencies discussed in CompTel's Comments remain. Notably, SWBT's Supplemental Filing does not acknowledge, let alone eliminate, the discrimination inherent in the three-order process. Moreover, SWBT describes its DSL policies in more detail, but ignores the anti-competitive architecture it is implementing through "Project Pronto". Finally, it supplies updated performance data that still shows inferior performance in FDT hot cuts. Until SWBT shows a genuine commitment to solving the remaining problems competitors experience with its performance, the application must be denied.

I. SWBT CANNOT SATISFY THE CHECKLIST UNTIL IT MODIFIES ITS UNE-P PROVISIONING TO ELIMINATE THE THREE ORDER PROCESS

Although SWBT offers UNE-P in Texas, it does so by splitting the CLEC's order into three separate orders flowing through the system. *See, e.g.*, Affidavit of Richard E. Burk, Network Intelligence, Inc. (attached to CompTel Comments in CC Docket No. 00-4, Exhibit A). Rather than migrating SWBT service to UNE-P "as is" (as the Act requires), SWBT unlawfully tears down pre-existing combinations and replaces them with service that often fails to function as it did previously. CompTel and its member companies submitted evidence documenting the errors the three-order process injects into UNE-P conversions, errors which cause customers to experience a loss of dialtone, loss of vertical features, improper routing of calls, and other degradations of service. *See, e.g.*, Burk Aff., Tidwell Aff. (attached to the Comments of the CLEC Coalition).

In its Supplemental Filing, SWBT repeats its claim that the three-order process is reliable. Ham Supplemental Aff., ¶ 31. However, CompTel members' experience belies this proposition. As shown in CompTel's *ex parte* filed March 31, 2000, Network Intelligence's experience is substantially worse than the single carrier's data SWBT touts, and is substantially below the "minimally acceptable showing" presented in the *New York Order*. *See New York Order*, ¶ 309. Sixteen (16) percent of Network Intelligence's UNE-P conversions experienced some service-affecting trouble, while nearly five (5) percent of the conversions resulted in the loss of dialtone on one or more lines. CompTel *ex parte* submission, March 31, 2000; *cf. New York Order*, ¶ 309 (indicating that 5 percent of orders experienced a service outage).³

³ Network Intelligence's data covers orders submitted from October through December 1999, the three months immediately preceding SWBT's initial application. Network
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Although SWBT repeats in its Supplemental Filing the suggestion that the Texas

PUC required the three-order process, that claim also is unsupported. Ham Supplemental Aff., ¶ 31. The *only* thing the Texas PUC required is that SWBT suppress its own billing and enable the CLEC to commence billing for the line. *See, e.g.*, Ham Reply Aff., ¶ 69 (describing Texas PUC requirement). The PUC *did not* dictate the procedure that must be used to prevent double billing, nor did it approve the three-order process. SWBT was (and is) free to choose any lawful means of provisioning UNE-P that prevents the double billing of customers.

The three-order process, however, is not a lawful means of provisioning UNE-P because it directly contravenes Rule 315(b) of the Commission's rules. Rule 315(b) states that, except upon request, an incumbent LEC "shall not separate requested network elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315(b). By first disconnecting the existing service, and then reconstructing the service from scratch, SWBT's process unlawfully separates the UNEs it used to provide service and forces CLECs to recombine those network elements. In this process, the *existing* combination of network elements is lost forever with the working of the "D" order. Although the "N" and "C" orders are intended to replicate that combination, logic and experience demonstrate that this will not always be done correctly. As a result, the process subjects CLEC customers (and *only* CLEC customers) to the risk of service disruptions resulting from errors in recombining the network elements that had been separated. This imposes

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Intelligence is compiling similar data for the period from January to March 2000, and CompTel will submit that data as soon as it is available.

precisely the type of “wasteful reconnection cost” that the Supreme Court concluded was prohibited by Rule 315(b).⁴

In the one concession in its Supplemental Filing, SWBT describes an upcoming modification to its service order processing to correct problems resulting from service address mismatches. Ham Supplemental Aff., ¶ 30-31. As explained by SWBT, this modification will eliminate the requirement that a CLEC populate the End User Service Address field in its order. As a result, the modification is supposed to eliminate the possibility that, after the disconnect order is processed, one of the new service orders is rejected due to an invalid service address.

Although CompTel welcomes this change, and hopes that it will have its intended effect, it is important to note that this modification will *not* correct *all* of the problems created by the three order process. For example, this modification will *not* correct service outages resulting from missing or incorrect information contained in SWBT’s customer service record (“CSR”). Burk Aff., ¶ 15. Nor will this modification prevent instances of improper hunting or improper PIC selections resulting from the “tear down and reconstruct” procedure. *Id.* at ¶ 26. Only the elimination of the three-order process itself will correct these deficiencies.

II. SWBT’S PROJECT PRONTO ARCHITECTURE DISCRIMINATES AGAINST CLECS

Since SWBT filed its initial application, it has disclosed to the industry a planned restructuring of its network known as “Project Pronto.” On February 15, 2000, SBC filed a letter requesting a modification, or waiver, of the conditions imposed by the Commission in its Order

⁴ *AT&T Corp. v. Iowa Util. Bd.*, 119 S. Ct. 721, 737-38 (1999) (Rule 315(b) reasonably prohibits ILECs from separating network elements “not for any productive reason, but just to impose wasteful reconnection costs on new entrants”).

approving SBC's merger with Ameritech.⁵ In that letter and in subsequent meetings with the CLEC industry, SWBT disclosed that under its Project Pronto plan, it will equip approximately 20,000 remote terminals ("RTs") with Digital Loop Carrier ("DLC") equipment. The installation of this DLC equipment will create a hybrid fiber/copper loop architecture for a significant portion of SWBT's customer base. By its own estimate, installation of these DLCs will place approximately 80 percent of customers within the current distance limitations for the provision of DSL service.

However, SWBT also disclosed that it plans to install DLC equipment of a single equipment supplier, selected by SWBT. In addition, SWBT intends to require CLECs to use only that manufacturer's line cards (or line cards manufactured to be compatible with that manufacturer's line cards) to "plug in" to the RT. As framed in its letter, SWBT asks which carrier – the ILEC or its advanced services affiliate – should own the line cards consistent with the Merger Conditions. SWBT ignores the threshold question – relevant in the 271 context – of whether the architecture it proposes fulfills its obligations under Section 251 to provide collocation and access to UNEs to requesting telecommunications carriers.

As CompTel and several other parties commenting on SWBT's letter noted, what is especially unclear about the proposed Pronto network design and architecture is how any provider will offer voice service in competition with SBC's incumbent LECs.⁶ It appears that

⁵ Letter from Paul K. Mancini, Vice President and Assistant General Counsel, SBC, to Lawrence E. Strickling, Chief of the Common Carrier Bureau, FCC (Feb. 15, 2000) ("SBC Request"); *see Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control*, Appendix C, 14 FCC Rcd 14712 (1999) ("Merger Conditions").

⁶ CompTel Reply Comments at 2-3, CC Docket No. 98-141 (filed March 10, 2000); *see, e.g.,* ALTS Comments at 6, CC Docket No. 98-141 (filed March 3, 2000), AT&T (continued...)

SWBT's architecture will only allow CLECs to purchase a data-only loop or a line-shared sub-loop shared with SBC POTS. Providers who wish to combine a line-shared loop with their own voice service or with the voice services of another CLEC must deploy their own RT or collocate their own equipment at the RT (subject to space availability), and use their own fiber transport back to the host location. This alternative significantly raises the cost of providing a competing service and precludes entry altogether in locations where the RT lacks sufficient space for collocation.

SWBT has an obligation to deploy Project Pronto in a way that satisfies its unbundling obligations of Section 251. In the *UNE Remand Order*, the Commission specifically addressed hybrid fiber/copper loops like those SWBT will be deploying:

In cases where the incumbent multiplexes its copper loops at a remote terminal to transport the traffic to the central office over fiber DLC facilities, a requesting carrier's ability to offer xDSL service to customers served over those facilities will be precluded unless the competitor can gain access to the customer's copper loop before the traffic on that loop is multiplexed.⁷

In addition, SWBT has an obligation to provide access to xDSL capable loops,⁸ to provide sub-loop unbundling where technically feasible,⁹ and to provide collocation at remote

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Comments at 11-14, CC Docket No. 98-141 (filed March 3, 2000), Prism Communications Comments at 3-8, CC Docket No. 98-141 (filed March 3, 2000).

⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, FCC 99-238, at ¶ 218, CC Docket No. 96-98 (rel. Nov. 5, 1999) (“UNE Remand Order”) *see also* 47 C.F.R. § 51.319(h)(6) (requiring ILECs to offer line sharing at RTS).

⁸ *Id.* at ¶ 190; 47 C.F.R. § 51.319(a)(1).

⁹ *Id.* at ¶ 205; 47 C.F.R. § 51.319(a)(2).

terminals subject to space availability.¹⁰ All of these obligations are incorporated in the competitive checklist of Section 271(c)(2)(B).¹¹

Under the Commission's procedures for reviewing Section 271 applications, SWBT has the burden of presenting a prima facie case of compliance with each checklist item. *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act, as amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, 20567-68 (1997). SWBT thus must make a showing how its Project Pronto architecture complies with its obligations under Section 251 and the competitive checklist.¹² Because SWBT has not done this, and because the evidence indicates that SWBT's architecture is anti-competitive, the Commission must deny the application at this time.

CONCLUSION

For the foregoing reasons, SWBT's Supplemental Filing does not cure the defects in its initial application. In order to remedy these shortcomings, SWBT, *at a minimum*, must:

- Modify its UNE-P provisioning to eliminate the three-order process;
- Modify its Project Pronto plans to implement an open and non-discriminatory DLC architecture;
- Improve the reliability of its hot cut performance, and provision interconnection trunks on a timely basis; and
- Submit to guarantees of swift and effective enforcement in the event its service deteriorates after entry in the interLATA marketplace.

¹⁰ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 at ¶ 570 (1996).

¹¹ 47 C.F.R. §§ 271(c)(2)(B)(i), (ii) and (iv).

¹² Of course, SBC must also comply with its obligations under the merger conditions. The merger conditions are quite clear for customers added after the 180 day "transfer period," the affiliate, not SWBT, must arrange for collocation and network planning. *Merger Conditions*, ¶ I.4.a. SBC has apparently violated this provision by engaging in network planning for DSL services that far exceed any reasonable construction of Paragraph I.4.a.

Until these modifications are made, the Commission is unable to make the findings required under Section 271(d)(3), and must deny the Application.

Respectfully submitted,

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