

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

In the Matter of)
)
Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company, And)
Southwestern Bell Communications Services,) CC Docket No. 00-65
Inc, d/b/a Southwestern Bell Long Distance)
for Provision of In-Region, InterLATA)
Services in Texas)

**EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE**

SBC filed its initial application with the Commission, requesting authority to provide long distance services in Texas, on January 10, 2000 (hereinafter “Texas I”).¹ While recognizing that there had been substantial progress in the development of local competition in Texas, the Department recommended denial of that application in its Evaluation filed February 14, 2000 and in an ex parte submission filed March 20, 2000. The Department concluded that SBC had not shown that it was providing nondiscriminatory treatment to competitors offering services based on unbundled digital subscriber line (DSL)-capable loops.² The Department also advised that

¹ Brief in Support of Application by SBC Communications Inc. et al., *In re: Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-4 (Jan. 10, 2000).

² Evaluation of the United States Department of Justice, *In re: Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-*

SBC's performance regarding "hot cuts" for unbundled analog loops failed to reach the "minimally acceptable" level articulated in the Commission's Bell Atlantic order.³ The Department further found that the record in the Texas I application left considerable doubt about whether SBC could provide interconnection trunks in a timely manner, and whether carriers would be able to compete effectively using the UNE-platform. The Department recommended that the Commission defer judgment on the interconnection and UNE-platform issues until a subsequent re-application.⁴

In early April, shortly before the Commission's 90-day deadline in the Texas I application, SBC filed an ex parte submission, along with eight supplemental affidavits, in which SBC requested that the Commission restart the clock in the Texas I proceeding, or, in the alternative, treat the supplemental filing as a withdrawal of SBC's original application and the resubmission of the entire record in Texas I as a new application.⁵ In response, the Commission docketed the current application for Texas (hereinafter "Texas II") the next day, incorporating the Texas I record and advising the parties not to reiterate previously filed comments.⁶

Region, InterLATA Services in Texas, CC Docket No. 00-4, at 2, 10-12 (Feb. 14, 2000) ("DOJ Texas I Evaluation"); Ex Parte Submission from Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of Justice, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4, at 2 (Mar. 20, 2000) ("DOJ Texas I Ex Parte").

³ DOJ Texas I Evaluation at 2-3, 27; DOJ Texas I Ex Parte at 8-9. Memorandum Opinion and Order, *In re: Application by New York Telephone Company (d/b/a/ Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York*, 15 FCC Rcd 3953 ¶ 309 (1999) (setting forth the measures and standards that demonstrated minimally acceptable hot cut performance by Bell Atlantic in New York).

⁴ DOJ Texas I Evaluation at 3; DOJ Texas I Ex Parte at 1-2 n.2.

⁵ Ex Parte Submission from SBC Communications Inc. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4, at 2 (Apr. 5, 2000).

⁶ Public Notice, *Comments Requested on the Application by SBC Communications Inc. for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA*

When SBC filed its Texas II application on April 5, 2000, the record in Texas II, including the supplemental affidavits, was not substantially different from the record available in Texas I at the time the Department filed its March 20, 2000 ex parte submission. Consequently, the Department's evaluation of SBC's Texas II application as filed would have been the same as our evaluation of its Texas I application.

SBC, however, augmented the record in support of its Texas II application 16 days into the Department's 35-day review period, when it filed, *inter alia*, performance data for March 2000 stating that "[t]he new data for March 2000, together with SBC's April 5 Supplemental Filing, should address [the concerns identified by Chairman Kennard]."⁷ We expect that SBC will again augment the record with its April performance data sometime around May 20, 2000. In the event that the Commission decides to rely on these post-application submissions in making its determination on this application, we believe it would be helpful for the Department's recommendation to be based on an analysis of all these data.⁸ Therefore, the Department expects to provide its additional analysis of SBC's Texas II application after SBC submits its April performance data to the Commission.

Regarding SBC's performance as a wholesale provider of interconnection trunks, we cited

Service in the State of Texas, DA 00-750, at 1 (rel. Apr. 6, 2000).

⁷ Ex Parte Submission from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65, at 1 (Apr. 21, 2000) ("March Performance Data"). SBC further augmented the record relating to hot cut data on April 25, 2000. Ex Parte Submission from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 (Apr. 25, 2000).

⁸ The Commission has previously indicated "that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon." Memorandum Opinion and Order, *In re: Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, 12 FCC Rcd 20543 ¶¶ 49-50 (1997).

credible allegations in our February 14, 2000 Evaluation that SBC had not provided interconnection trunks in the times and quantities required to support both the planned entry and expansion of full-facilities providers and to alleviate call blocking on their lines. SBC's reported performance data showed reasonably acceptable performance, albeit performance that did not entirely meet the Texas Public Utility Commission's ("Texas PUC") performance benchmarks. Due to problems with SBC's performance measurement and reporting in this area, however, it appeared that the competitors' allegations, if true, would not have been reflected in SBC's performance reports because the trunking reports did not include orders that were held for facilities reasons.⁹ The Texas PUC ordered SBC to implement a new measure to capture that group of orders in December 1999. Data for this new measure were available for the first time in SBC's March performance report under Performance Measure 73.1.

It now appears that the efforts of SBC, competitive local exchange carriers and the Texas PUC have led to improvements in SBC's interconnection trunking performance and to a better understanding of trunk provisioning by the various parties to the process. PM 73.1 reports very few orders held for lack of facilities for March 2000,¹⁰ and full facilities providers in Texas have not raised any new allegations of inadequate or overlong trunk provisioning.

In addition, the Texas PUC's staff, maintaining admirable oversight of this issue, held a trunking workshop in March 2000 to verify the implementation of the improvements promised by SBC in December 1999 and has monitored several industry trunk forums.¹¹ While SBC's reported

⁹ DOJ Texas I Evaluation at 44-49.

¹⁰ March Performance Data (Aggregated), Measurement 73.1-01 at 271-No. 73.1.

¹¹ See Evaluation of the Texas Public Utility Commission, *In re: Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, at 3 & n.1 (Apr. 26, 2000).

interconnection performance is still not entirely compliant with the relevant Texas PUC benchmarks, we nevertheless conclude that it has improved sufficiently to alleviate concerns that competition from full facilities-based providers would be constrained.

As stated above, the Department will provide the Commission with its additional analysis of SBC's performance in providing DSL-capable loops, hot cuts for analog loops and UNE-platform after SBC submits its April performance data to the Commission.

Respectfully submitted,

Joel I. Klein
Assistant Attorney General
Antitrust Division

Donald J. Russell
Chief

A. Douglas Melamed
Principal Deputy Assistant Attorney General
Antitrust Division

Frances Marshall
Katherine E. Brown
Luin Fitch
Attorneys
Telecommunications Task Force
Antitrust Division
U.S. Department of Justice
1401 H Street, N.W. Suite 8000
Washington, D.C. 20530
(202) 514-5621

W. Robert Majure
Assistant Chief

Matthew Magura
Economist
Economic Regulatory Section

May 12, 2000