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February 15, 2000

Mr. Lawrence E. Strickling
Chief
Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20544

Re: CC Docket No. 98-141—Ownership of Plugs/Cards and OCDs

Dear Mr. Strickling:

This letter brings to your attention two critical and time sensitive issues related to the SBC/Ameritech Merger Conditions that were recently discussed with FCC Staff. SBC is seeking expedited resolution of these issues. SBC, its incumbent LECs and Advanced Services affiliates are working diligently to implement the advanced services provisions of the Merger Conditions and the Commission's UNE Remand and Line Sharing Orders. This has proven to be a complex and involved undertaking that has raised issues not directly addressed during last year's merger negotiations. Nonetheless, we are moving forward as quickly as possible with the ongoing objective to comply with the Merger Conditions and the requirements of Telecommunications Act of 1996.

However, during the course of implementing those Conditions and related Commission orders, we have encountered two critical issues concerning the ownership of certain equipment: combination plugs/cards and an Optical Concentration Device. We believe that we have developed nondiscriminatory solutions for these two issues that are permissible under the most reasonable reading of the current Merger Conditions. If the Commission disagrees, however, SBC would request a modification of the Merger Conditions (or an indefinite extension pursuant to Paragraph 72) on an expedited basis. SBC needs clarification of these two issues from the Common Carrier Bureau and/or Commission in an expedited manner to enable SBC to comply with the UNE Remand and Line Sharing Orders and to move forward with "Project Pronto," SBC's ambitious initiative to speed the deployment of advanced services. SBC intends to implement the ownership scenarios described herein unless informed by the Commission that the scenarios are contrary to the Merger Conditions.

I. Ownership of Combination Plugs/Cards in Remote Terminals

Implementation of the UNE Remand and Line Sharing Orders have required a thorough and complex analysis of how Project Pronto assets should be allocated between the incumbent LECs and Advanced Services affiliates. This analysis has been performed in light of the Merger Conditions and other related legal/regulatory considerations. There are three primary asset groups involved in Project Pronto: newly placed fiber feeder facilities, Advanced Services Equipment and upgraded or new Remote Terminals ("RTs"). The plan to date has been that the SBC incumbent LECs will own and manage the newly placed fiber feeder facilities and the RTs, and the Advanced Services affiliates will own and operate Advanced Services Equipment.

One of the underlying issues involves the physical space limitations of RTs and how to most efficiently provide non-discriminatory access to both unaffiliated providers and the Advanced Services affiliates. The objective has been to fashion a solution to provide such access and not create a scenario involving numerous RTs on the same site, a so-called "village of RTs," which neighborhoods and governmental entities would not find acceptable. Nor did we want to find ourselves in the equally unacceptable situation of having to create RTs the size of central offices. As will be discussed, we believe that we have developed a unique and workable solution to this RT space limitation problem.

As indicated, SBC's incumbent LECs own or will own three types of RTs: controlled environmental vaults (CEVs), huts and cabinets. There will be over 20,000 upgraded or newly placed RTs throughout SBC's 13 states during the life of Project Pronto.

As to newly placed Pronto CEVs and huts, the SBC incumbent LECs are currently planning for additional space than would be required to meet their own needs, in order to create additional potential space for some unaffiliated and affiliated CLECs for collocation purposes. For both existing and new CEVs and huts, physical collocation will be provided on a nondiscriminatory, limited space available basis, consistent with Commission and state rules.

Cabinets, on the other hand, are designed, pre-sized and pre-provisioned to serve a certain number of living units (e.g., households over a certain number of years). In other words, there is little or no excess space in cabinets. To overcome these space limitations in cabinets, we have developed two unique alternatives to provide efficient and nondiscriminatory access to this particular type of RT (These options would also be available in CEVs and huts that have Project Pronto Litespan equipment.)

With this background, the first ownership issue needing prompt resolution involves the ownership of combination plugs/cards that are placed in RTs. In the first option we developed, all CLECs, including SBC's Advanced Services affiliates, would own their combination plugs/cards (i.e., ADLU cards), and the inventory of plugs would be managed and installed in the RT by the SBC incumbent LEC on a nondiscriminatory basis, which some have come to call "plug and play." (See attached diagram)

Under "plug and play," the CLEC would have an efficient, convenient and less capital intensive means to access the data subloop in the RT by the placement of the ADLU card. This option is especially valuable where there is no space available in the RT for the CLEC's own equipment. The ADLU card is an ADSL service card that provides the same functionality as a DSLAM in that it splits the voice and data signal. An ADLU card has the capability to support more than one voice/data end user and the cards can be set to provide service at different speeds. The benefits of this option include each CLEC purchasing and owning its ADLU cards and the lessening of easement and rights-of-way and tax issues which may be created by the "village of RTs" scenario if additional cabinets had to be installed to accommodate numerous CLECs.

In initial meetings between CLECs and SBC, CLECs, generally indicated a positive interest in this "plug and play" option. However, during further discussions it became readily apparent that managing this pool of plugs, which could involve thousands of plugs owned by numerous CLECs in several thousand cabinets across 13 states, would be difficult, if not practically impossible. This option would create numerous and substantial administrative, tax and inventory receipt and control problems for both incumbent LECs and CLECs that may make it infeasible in practice.

Based upon this feedback from data CLECs and these serious practical considerations, SBC developed a second "plug and play" option, which is the subject of this letter. Under our proposed approach, the SBC incumbent LEC would own the combination plugs/cards in the RTs and include them in a new nondiscriminatory unbundled network element ("UNE") offering to all CLECs, including the SBC Advanced Services affiliates. (See attached working draft Interconnection Agreement language, which when finalized will be applied on a nondiscriminatory basis.) This option provides the same functionality to CLECs and the SBC Advanced Services affiliates for provision of advanced services to their respective customers. This second option preserves the benefit of providing DSLAM capabilities on a non-discriminatory basis, but avoids the serious administrative, tax and inventory issues that may make the first option unworkable. Like the first variant of plug and play, this option would facilitate the mass-market deployment of broadband services by both CLECs and SBC.

consistent with the goals of the Commission and the recent UNE Remand and Line Sharing Orders.

We believe that the option of the incumbent LEC owning the combination card/plug is consistent with the Merger Conditions because the combination card/plug is an integrated piece of technology having both POTS and DSLAM capabilities as well as the "splitter" functionality. In fact, the majority of cards/plugs will likely be used to provide POTS services rather than Advanced Services (at least initially). Paragraph 3d of the Merger Conditions indicates that equipment used for both non-Advanced Services and Advanced Services purposes need not be quarantined from the incumbent LEC. Paragraph 3d requires the Advanced Services affiliates to own newly placed Advanced Services Equipment that is "used to provide Advanced Services." The paragraph then amplifies this requirement by recognizing that integrated equipment (including spectrum splitters and DACs frames) may be used for both Advanced Services and non-Advanced Services, and clarifying that such equipment should be isolated from the incumbent LEC only if it used "solely" in the provision of Advanced Services. In short, the combination card/plug with splitter functionality is not used "solely in the provision of Advanced Services."

In light of these provisions, Paragraph 3d is most fairly read as excluding mixed-use equipment such as the combination cards/plugs from the definition of Advanced Services Equipment; and, thus the requirement to be owned by the Advanced Services affiliate. Moreover, even if these cards/plugs were Advanced Services Equipment, they would not be "used to provide Advanced Services" in the sense intended by Paragraph 3d and, thus may be owned by the incumbent LEC. The incumbent LEC may use such equipment in the provision of its services and in the provision of UNEs to all CLECs.

It should be noted that ownership of the combination cards/plugs by the LEC would be transparent to the end user customer who will still obtain the Advanced Service from either the Advanced Service affiliate or an unaffiliated Advanced Service provider.

SBC has discussed this proposal for incumbent LEC ownership of the combination plugs/cards with unaffiliated data CLECs. SBC believes that these have been positive meetings. Northpoint has indicated that it has not yet reached a final position with regard to this ownership proposal. Covad Communications, Co., has indicated that it will contact the Commission directly about its position on these matters.

In summary, SBC believes that incumbent LEC ownership of the combination plugs/cards is in the best interest of all parties as it is responsive to

CLEC concerns and will provide efficient, lawful and non-discriminatory access to and in RTs for line sharing and unbundling purposes.

II. Ownership of Optical Concentration Device

The new network architecture associated with Project Pronto combined with the factors of multiple RTs and multiple CLECs utilizing those RTs has created the need for a new piece of equipment called an Optical Concentration Device (OCD). The nature of this equipment (located in the LEC central office) and its function has led to an issue of ownership under the Merger Conditions and recent Commission orders. Under the new developing Broadband UNE, the OCD would aggregate data traffic from multiple RTs and for various CLECs in a central office, and then route the traffic to each respective CLEC's ATM cloud. (See attached diagram). The issue here is whether SBC will be able to accommodate the concerns of its CLEC customers, consistent with the Merger Conditions and Commission Orders.

The OCD is technically an ATM switch. ATM switches used in the provision of Advanced Services are generally deemed to be Advanced Service Equipment under Paragraph 3d of the Merger Conditions, and thus may be owned by the Advanced Services affiliates. Accordingly, SBC had planned to have the Advanced Services affiliates own the OCDs and lease back only the OCD functionality to the SBC LECs for delivery of UNEs by the LECs to all advanced services providers.

However, in recent meetings with data CLECs, at least one CLEC voiced strong concerns and objections about a competitor, SBC's Advanced Services affiliate, owning the OCDs. We believe this concern is not well founded, especially since the incumbent LEC will be responsible for providing the UNE capability to the unaffiliated providers, and given the nature of the telecommunications industry where carriers are routinely interconnected with competitors. Nonetheless, in response to this CLEC customer's concern and the fact that the primary function of the OCD is to concentrate and route data signals to various CLECs rather than to provide retail Advanced Services to customers, SBC is now proposing that the SBC incumbent LECs own the OCDs for use in providing the new Broadband UNE on a nondiscriminatory basis. The same basic rationale that applies to the ownership of the combination plug/card applies to the OCD with the distinction that the OCD is not an integrated piece of equipment (i.e., its only purpose is to route data signals). In short, the OCD is not used to provision Advanced Services to customers but to concentrate and route traffic to the appropriate provider of Advanced Services (both affiliated and unaffiliated providers).

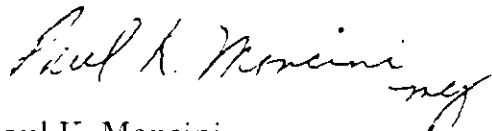
As with the combination plug/card question, SBC has discussed ownership of OCDs with unaffiliated Advanced Services providers. SBC believes that these meetings have been positive. Northpoint has indicated that it has not yet reached a final position with regard to this ownership proposal. As indicated above, Covad has indicated that it will contact the Commission directly about its position with regard to these matters.

The ownership of the OCD by the incumbent LEC is consistent with the Merger Conditions and Commission orders, is lawful and non-discriminatory and is directly responsive to concerns raised by SBC's CLEC customers.

In order for us to continue to move forward with expeditiously complying with the UNE Remand and Line Sharing Orders, the Project Pronto deployment and the transition to the SBC Advanced Services affiliates, we respectfully request resolution of these two important issues within a matter of days. Specifically, we are requesting Common Carrier Bureau/Commission concurrence that SBC incumbent LEC ownership of the combination card/plugs and OCDs is consistent with the current terms of the Merger Conditions. If you disagree, however, we would request a modification of the Merger Conditions or, under Paragraph 72, an indefinite extension of SBC's obligation to comply with Paragraphs 3d and 4n(5) with respect to this particular equipment. The ownership scenario should be permissible either by an interpretation of the current Merger Conditions, modification of those Conditions, or an indefinite extension. SBC's proposal is in the public interest, is non-discriminatory, promotes the efficient mass-market deployment of advanced services, and is consistent with recent Commission rulings with respect to unbundling, line sharing and access in and to incumbent LEC Remote Terminals. The rejection of SBC's proposal, on the other hand, could lead to unnecessary delay in bringing the benefits of advanced services to customers on a wide-spread basis.

Your prompt attention to this matter is greatly appreciated.

Very truly yours,



Paul K. Mancini
Vice-President & Assistant General Counsel

Attachments

cc: All Parties of Record in CC Docket No. 98-141
Mr. Robert Atkinson
Ms. Carol Matthey

Mr. Tony Dale
Ms. Michelle Carey
Mr. Jake Jennings