

December 7, 2004

Mr. Eddie A. Reed, Jr.
Director – Contract Management
Industry Markets Support
SBC Telecommunications, Inc.
311 S. Akard, Room 940.01
Four SBC Plaza
Dallas, TX 75202

Dear Mr. Reed:

XO Illinois, Inc. (“XO”) and Allegiance Telecom of Illinois, Inc. (“Allegiance”) hereby provide Illinois Bell Telephone Company, SBC Illinois and SBC Corporation (jointly referred to herein as “SBC”) notice pursuant to Section 13-515(c) of the Public Utilities Act (“PUA”) of their intent to file an action under Section 13-515 of the PUA unless SBC corrects the situation described below within 48 hours of receipt of this notice.¹

Throughout May and June of 2004, Ms. Gegi Leeger, Director – Regulatory Contracts for XO, repeatedly informed SBC that both XO and Allegiance would be entering into successor agreements with SBC, through conversation and email with Ms. Ann Long, SBC’s Lead Negotiator. As early as June 10, 2004, Ms. Long acknowledged an email sent by Ms. Leeger that day, clearly indicating that both XO and Allegiance would be entering into successor agreements with SBC.

On July 8, 2004, Ms. Leeger made a formal request for both Allegiance and XO to adopt the Interconnection Agreement between SBC Illinois and AT&T Communications of Illinois, Inc. in the State of Illinois (“AT&T Agreement”), and the ITR Appendix from the Interconnection Agreement between SBC Illinois and the Sprint Communications Company, L.P. (“Sprint Agreement”), pursuant to Section 252(i) of the Telecommunications Act of 1996 (the “Act”) and the Amendments sent on September 3, 2004.

In response to XO’s and Allegiance’s July 8, 2004 formal request and numerous follow-up inquiries as to the status of such request, on September 10, 2004 SBC sent a conformed MFN agreement, but unfortunately only for Allegiance. This occurred despite repeated requests for both XO and Allegiance MFN agreements; equivalent documents for XO were not received until September 27, 2004 subsequent to additional inquiries at various levels of SBC. Not only were these documents late in arriving, but they also contain conditions outlined by SBC that are unacceptable and unlawful. As SBC is aware, XO and Allegiance have been ready to execute the above-described agreements since their initial requests on July 8, 2004. However, SBC’s proposed amendment language contained in its letters of September 23, 2004 and September 30, 2004 does not reflect the July timeframe in which XO and Allegiance made their requests.

¹ This 13-515 notice letter references some of the developments that have occurred since XO originally sent a 13-515 notice letter to SBC on October 18, 2004. XO incorporates that letter by reference here.

As SBC is aware, the parties have, as of November 9, 2004 filed conforming language pursuant to the Commission's Amendatory Arbitration Decision in *In the Matter of Petition for Arbitration of an Amendment to an Interconnection Agreement with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Communications Act of 1934 as Amended*, Docket No. 04-0371 (October 28, 2004).²

This is the second time XO has sent SBC a demand letter. XO sent the first such letter on October 18, 2004. XO believed a reasonable settlement might be concluded, but unfortunately SBC has continued to delay XO's adoption of the AT&T ICA. On October 21, 2004, Nicola Erbe of SBC sent a letter to Doug Kinkoph that outlined two SBC proposals. Proposal 1 referenced a coattails amendment that SBC required XO to sign. SBC, however, never provided a copy of the coattails amendment for XO to review. As part of Proposal 1, SBC also required that XO, in conjunction with SBC, withdraw the XO / SBC arbitration case, ICC Docket 04-0731. This action would not have been possible since the final order in that case had already been issued by the Commission. Proposal 2, which has since been withdrawn³, would have allowed XO and Allegiance to opt into the AT&T Agreement (and portions of the Sprint Agreement) and to amend the MFN Agreement with the Conforming Amendment from docket 04-0371. However, SBC unreasonably conditioned that proposal by stating, in part: "the MFN Agreement will not become effective until it and the Conforming Amendment have both been approved by the Commission" XO responded to SBC's October 21, 2004 letter on October 28, 2004.⁴ There, XO noted the defect in SBC's proposal where "the new agreement does not become effective until **both** the MFN Agreement and the Conforming Amendment have been approved by the Commission. XO made clear that it could not accept further delay by SBC. However, in an attempt to resolve the parties' differences, XO and Allegiance offered to opt into the AT&T agreement (with the Sprint provisions) and concurrently sign a Memorandum of Understanding ("MOU") that XO and Allegiance will adopt the Conforming Amendment upon its approval by the Commission. SBC rejected that offer in its November 3, 2004 letter.

In SBC's latest correspondence, a November 18, 2004 letter from Larry Cooper to Kristin Shulman of XO, SBC changed course by stating if "XO and/or Allegiance exercises it[s] rights under 252(i) to opt into another ICA in Illinois, SBC Illinois does not agree to amend the MFN Agreement for either XO or Allegiance with the XO Conforming Amendment. As I stated, SBC Illinois is willing to accept XO's and Allegiance's proposal to adopt the AT&T Agreement and incorporate the Sprint Provisions if XO and Allegiance concurrently execute a Coattails amendment." SBC has thus returned to its original unreasonable and illegal position. Further, SBC has not even shared with XO or Allegiance the Coattails amendment it is now proposing. XO and Allegiance continue to be willing to immediately opt into the AT&T agreement with the Sprint provisions, with the understanding outlined above and in XO's and Allegiance's October 28, 2004 letter that the parties would amend the agreement with the Conforming Amendment upon its approval by the Commission. That Conforming Amendment has now been approved by the ICC in its Order in Docket No. 04-0667. XO cannot, however, accept further delay to this already four-month-old saga.

² The conforming language was filed in docket 04-0667 on November 9, 2004. The Commission issued its final order on December 7, 2004.

³ November 3, 2004 letter from Nicola Erbe to Doug Kinkoph.

⁴ October 28, 2004 letter from Doug Kinkoph to Nicola Erbe.

SBC's stated time to produce executable contracts is ten (10) business days; therefore, XO and Allegiance have been expecting to receive the AT&T agreement with the Sprint provisions since July 22, 2004, over four months ago. SBC has further agreed (on more than one occasion) that XO and Allegiance are entitled to the agreements. SBC's unreasonable delay in providing those agreements is a violation of state and federal law including but not limited to, 47 USC 252(i), 47 C.F.R. § 51.809(a), 220 ILCS 5/13-514 (1), (2), (4), (5), (6), (8), (11) and (12) and 220 ILCS 5/13-801. SBC's actions are also unjust and unreasonable under Sections 220 ILCS 5/9-101 et seq., and 220 ILCS 5/9-250. SBC's unreasonable delay also violates previous orders of the Illinois Commerce Commission (the "Commission").

SBC's refusal to provide to XO and Allegiance the AT&T agreement with the Sprint provisions when combined with SBC's dilatory conduct since the receipt of the July 8, 2004 opt-in requests, is a violation of Section 13-514 of the Illinois Public Utilities Act. Under Section 252(i), SBC must "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 USC §252(i). Further, it is unlawful for SBC to delay providing executable agreements to XO or Allegiance:

(a) An incumbent LEC shall make available without unreasonable delay to any requesting carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.⁵

Section 13-514 of the Illinois Public Utilities Act describes prohibited actions of telecommunications carriers:

A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered per se impediments to the development of competition; however, the Commission is not limited in any manner to these enumerated impediments and may consider other actions which impede competition to be prohibited:

⁵ 47 C.F.R. § 51.809(a). On July 22, 2004 section (a) was changed to state: "an incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement."

(1) unreasonably refusing or delaying interconnections or collocation or providing inferior connections to another telecommunications carrier;

(2) unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications carrier;

* * *

(4) unreasonably delaying access in connecting another telecommunications carrier to the local exchange network whose product or service requires novel or specialized access requirements;

(5) unreasonably refusing or delaying access by any person to another telecommunications carrier;

(6) unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers;

* * *

(8) violating the terms of or unreasonably delaying implementation of an interconnection agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays, increases the cost, or impedes the availability of telecommunications services to consumers;

* * *

(11) violating the obligations of Section 13-801; and

(12) violating an order of the Commission regarding matters between telecommunications carriers.

SBC has unreasonably delayed Allegiance's and XO's interconnections with SBC and is now refusing to enter into interconnection agreements without the inclusion of a Coattails amendment. As noted above, SBC has previously agreed to provide executable agreements to XO and Allegiance, with the Conforming Amendment SBC is further aware that Allegiance and XO have been ready and willing to execute agreements for some time. SBC's unreasonable delay in providing those agreements to Allegiance and XO is a violation of state and federal laws including but not limited to, 47 USC 252(i), 47 C.F.R. § 51.809(a), 220 ILCS 5/13-514 (1), (2), (4), (5), (6), (8), (11) and (12) and 220 ILCS 5/13-801. SBC's actions are also unjust and unreasonable under Sections 220 ILCS 5/9-101 et seq., and 220 ILCS 5/9-250. SBC's unreasonable delay also violates orders of the Illinois Commerce Commission, including but not limited to orders in dockets 04-0371, 04-0677, 98-0603⁶ and 98-0747⁷.

⁶ *QST Communications v. Ameritech Illinois*, Docket 98-0603 (November 5, 1998).

⁷ *MEGSINET v. Ameritech Illinois*, Docket 98-0747 (October 26, 1998).

Pursuant to 200 ILCS 5/13-515(c), Allegiance and XO therefore demand that within 48-hours, SBC agree to provide within two (2) business days executable copies of (1) the Interconnection Agreement between SBC Illinois and AT&T Communications of Illinois, Inc., and (2) the ITR Appendix from the Interconnection Agreement between SBC Illinois and the Sprint Communications Company, L.P., with the Conforming Amendment now approved by the Commission in Docket 04-0667. If SBC refuses, XO and Allegiance will seek their legal remedies under applicable state and federal law, including penalties, attorneys' fees and costs.

Sincerely,

Douglas Kinkoph
Vice President, Regulatory
XO Illinois, Inc.

cc: N. Erbe
Thomas H. Rowland