

Before the
ILLINOIS COMMERCE COMMISSION

In the Matter of the Petition of)
SCC Communications Corp.)
for Arbitration Pursuant to Section 252(b))
of the Telecommunications Act of 1996)
to Establish an Interconnection Agreement)
with SBC Communications Inc.)

Docket No. _____

SCC COMMUNICATIONS CORP. PETITION FOR ARBITRATION

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SCC COMMUNICATIONS CORP. PETITION FOR ARBITRATION

SCC Communications Corp. ("SCC"), through its attorneys, hereby petitions the Illinois Commerce Commission ("Commission") for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with SBC Communications Inc. ("SBC") pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act") and the Commission's rules § 761.100-150.^{1/} SCC requested interconnection negotiations on March 27, 2000 and SBC acknowledged its receipt of the request on April 5, 2000. The Parties, later, however, extended SBC's date of receipt until June 28, 2000. The 135th day after SBC's receipt of the request fell on November 10, 2000 and the 160th day after the request falls on December 5, 2000. March 28, 2001 is nine months after SBC's receipt of SCC's interconnection request.

OVERVIEW

~~SBC's pattern of behavior, whether inadvertent or intentional, has undermined SCC's ability to obtain an interconnection agreement with SBC through negotiations.~~

^{1/} See 47 U.S.C. § 252(b) (2000); 83 ILL. ADM. CODE 761.100-150 (2000).

Beginning with SCC's initial request for interconnection, SBC has been unresponsive and unprepared, demonstrated a general unwillingness to dedicate the requisite personnel and resources necessary to reach a negotiated agreement, and routinely revised its own template interconnection agreement language making it virtually impossible to comprehend SBC's position on many contract provisions at any given time.^{2/}

Throughout these negotiations, SCC has compromised with SBC, provided detailed explanations of SCC's interconnection needs time and time again, and accommodated SBC's routine personnel changes that brought new negotiators and subject matter experts into the Parties' negotiations. SCC's efforts have been met by delay, unresponsiveness, and an unwillingness to address substantive issues. As a result, eight months after SCC requested interconnection with SBC, the Parties are not close to reaching an agreement. SBC's recalcitrance has left SCC with no choice but to request the Commission's assistance to secure a swift conclusion to these woefully unsuccessful negotiations through this Petition for Arbitration ("Petition").

INTRODUCTION

SCC has authority to provide competitive local telecommunications services in Texas, Colorado, Massachusetts, Montana, Washington, and the District of Columbia,

^{2/} Although the FCC and the Public Utility Commission of Texas have supported SBC's entry into the interLATA market in Texas, SBC's behavior during these negotiations demonstrates that SBC is not operating with a pro-competitive attitude and that SBC's markets are not irreversibly open to competition. *See In the Matter of Application by SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order ¶ 436, 15 FCC Red 10148 (rel. Jun. 30, 2000). In light of SBC's behavior in these interconnection negotiations with SCC, SCC requests that the Commission closely evaluate any application SBC files to enter the interLATA market in Illinois pursuant to § 271.

and SCC is in the process of obtaining authority to provide competitive local telecommunications services throughout the United States.^{3/} SCC filed an application for a Certificate of Service Authority to provide facilities-based telecommunications services throughout the state of Illinois in September 2000.^{4/} While this application has not been granted yet, the Federal Communications Commission ("FCC") has held that a party may not refuse to negotiate with a requesting telecommunications carrier because of the status of the state certification process.^{5/} SCC provides telecommunications services that facilitate, enhance, and advance the provision of emergency services throughout the United States to end users of wireline, wireless, and telematics (e.g., On Star and Automatic Crash Notification) service providers. Specifically, SCC aggregates and transports such traditional and nontraditional emergency call traffic from multiple service providers to appropriate Selective Routing Tandems where such traffic is then

^{3/} See *Public Utility Commission of Texas, Application of SCC Communications Corp. for a Service Provider Certificate of Authority*, Docket No. 21544 (Jan. 13, 2000); *Massachusetts Department of Telecommunications and Energy, Application of SCC Communications Corp. to Provide Telecommunications Services in Massachusetts* (Sept. 25, 2000); *Public Utilities Commission of Colorado, In the Matter of SCC Communications Corp. for a Certificate to Provide Basic Emergency Services and Notice of Intention to Exercise Operating Authority and Certificate of Public Convenience and Necessity to Provide Basic Emergency Services* Docket No. 00A-468T (Sept. 27, 2000); *Washington Utilities and Transportation Commission, In the Matter of the Application and Petition of SCC Communications Corp. for Registration as a Telecommunications Company and Classification as a Competitive Telecommunications Company*, Docket No. UT-001317 (Sept. 27, 2000); *Public Service Commission of the District of Columbia, In the Matter of the Approval of SCC Communications Corporation to Provide Telecommunications Services in the District of Columbia*, Docket No.892 (Nov. 28, 2000). The Montana Public Service Commission has also granted SCC authority to provide competitive local telecommunications services.

^{4/} See *Illinois Commerce Commission, Application of SCC Communications Corp. for a Certificate of Service Authority*, Docket No. 00-0606 (filed Sept. 14, 2000).

transported to the appropriate Public Safety Answering Points ("PSAP").^{6/} Aggregating emergency call traffic reduces the number of facilities that must interconnect with the incumbent local exchange carriers' ("ILECs") Selective Routing Tandems, resulting in a more efficient use of the telecommunications network. Such aggregation also reduces the ILEC's administrative responsibilities: rather than coordinate and interconnect with multiple service providers individually, the ILEC need only coordinate and interconnect with SCC in order to handle the emergency call traffic from multiple service providers. In addition, SCC offers its service provider customers and the interconnecting ILEC assurance that emergency call traffic will be passed to the ILEC's Selective Routing Tandems through redundant, self-healing facilities provided by SCC.

Not only will SCC provide efficient and reliable transport of emergency call traffic, but SCC also offers state-of-the-art database management services through its 9-1-1 SafetyNetSM product offering. These database management services provide enhanced Automatic Number Identification ("ANI") and Automatic Location Identification ("ALI") services to end users of wireline, wireless, and telematics service providers.

^{5/} See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 ¶ 154 (rel. Aug. 8, 1996) (subsequent history omitted) ("*Local Competition Order*")

^{6/} SCC aggregates and transports 9-1-1 and emergency call traffic from end users of wireline, wireless, and telematics service providers to an ILEC's Selective Routing Tandem and ultimately to the appropriate PSAP. The method of transmission of the 9-1-1 and emergency call traffic to SCC's aggregation point is transparent to the PSAP. All necessary conversion functions and special applications necessary to transport calls and information from wireless and telematics end users calling 9-1-1 or requesting emergency assistance are made within SCC's network. The PSAP that receives a 9-1-1 call from a wireless or telematics end user will be able to process such calls in a manner no different than that currently used for 9-1-1 calls made by wireline end users.

Such advanced services allow PSAPs to provide quicker and more accurate emergency services, saving innumerable lives.

In order to provide the aforementioned aggregation, transport, and database management services, SCC must interconnect its network with the ILECs that have connections with and provide 9-1-1 services to the PSAPs. Thus, pursuant to the Act, SCC seeks to interconnect its network with SBC's network at every SBC Selective Routing Tandem in SBC's operating territories. SCC seeks to interconnect with SBC's Selective Routing Tandems, just as other competitive carriers do to provide their end users with emergency services. In addition, SCC seeks to interconnect its ALI nodes with SBC's ALI nodes (*i.e.*, ALI Steering^{7/} or Dynamic ALI Updates) so that PSAPs can access location information of the end users of wireless and telematics service providers where such information resides in SCC's ALI nodes.

ALI connectivity arrangements are not new to SBC, for SBC provides ALI Steering services and performs Dynamic ALI Updates today. Through its subsidiary Southwestern Bell Telephone Company, SBC already performs ALI Steering functions with SCC in Texas through an Interoperability Agreement.^{8/} SBC also offers ALI

^{7/} ALI Steering is the capability by which competitive ALI providers steer to each other's ALI nodes when searching for a specific ALI record associated with a wireless or telematics 9-1-1 call. When the ILEC finds no ALI record in its database for the end user calling 9-1-1, the ILEC checks the ALI database of the competitive ALI provider via the direct interconnection of the two carriers' databases to obtain the ALI record.

^{8/} The Interoperability Agreement No. 00008318 Between SCC Communications Corp. and Southwestern Bell Telephone Company Regarding 9-1-1 Services in Texas arose out of SCC's contract with the Texas Commission on State Emergency Communications ("CSEC") to provide wireline and wireless E9-1-1 database management services for 9-1-1 systems managed by the state. Because a number of telephone exchanges overlap into jurisdictions that are not managed by CSEC (and therefore, are jurisdictions served by Southwestern Bell Telephone Company ("SWBT"), not SCC), it is necessary to steer between SCC's and SWBT's ALI nodes for calls

Steering functions in California and to wireless carriers throughout SBC's operating regions. SBC also performs Dynamic ALI Updates in its Ameritech region. SCC now seeks to obtain the same ALI node connectivity functions, as well as the physical interconnection arrangements, and unbundled network elements necessary to provide SCC's 9-1-1 services pursuant to an interconnection agreement consistent with the Act.

~~SCC is eager to reach agreement with SBC so that SCC can begin offering its combined transport and database services to the end users of its wireline, wireless, and telematics service provider customers in Illinois. The Act requires SBC, as an ILEC, to negotiate in good faith the terms and conditions of interconnection agreements to fulfill its obligations under the Act.⁹¹ To date, the Parties have been unable to reach a comprehensive negotiated agreement as contemplated by Section 252 of the Act. SBC's unreasonable delay, failure to dedicate sufficient and appropriate resources to the Parties' negotiations, and general recalcitrance call into question SBC's ability and willingness to fulfill its obligations under the Act.~~

transferred between jurisdictions. This ALI Steering functionality was memorialized in the Interoperability Agreement, which provides a framework for how SCC, as a competing 9-1-1 database management services provider, will interface with SWBT. The Interoperability Agreement is not attached because it contains proprietary information that may not be disclosed without written agreement by both SCC and SWBT. SCC is willing to file the Interoperability Agreement with the Commission under confidential seal upon SWBT's consent.

~~⁹¹ See 47 U.S.C. § 251(c)(1) (2000). The FCC has found that actions that are intended to delay negotiations, including failure of a party to designate a representative with authority to make binding representations on behalf of the party, is inconsistent with the statutory duty to negotiate in good faith. See *Local Competition Order* ¶ 154.~~

Section 252(b) permits either party to negotiations to petition a state commission to “arbitrate any open issues” unresolved by voluntary negotiations.^{10/} As SCC and SBC have not reached a voluntary negotiated agreement, SCC hereby files this Petition. With the Commission’s assistance, SCC hopes to secure prompt resolution of the outstanding issues set forth herein.

FACTUAL BACKGROUND

On March 27, 2000, SCC sent a letter to SBC via overnight delivery requesting interconnection with SBC in Texas.^{11/} On April 5, 2000, SBC sent correspondence to SCC acknowledging that SBC had received SCC’s interconnection request.^{12/} SBC identified Ms. Patti Hogue as the lead negotiator for SBC. Nearly one month later, SBC assigned Ms. Suzette Wolfe as SBC’s new lead negotiator for the interconnection negotiations with SCC. During SCC’s initial discussion with Ms. Wolfe on May 2, 2000, she recommended that SCC negotiate a multi-state interconnection agreement with SBC if SCC was interested in interconnecting with SBC in its other operating areas. Based on Ms. Wolfe’s recommendation, SCC decided to pursue a multi-state interconnection agreement with SBC, which would include interconnection with SBC in Illinois.

^{10/} See 47 U.S.C. § 252(b)(1). Pursuant to that provision, either party may petition the State commission for arbitration during the period from the 135th day to the 160th day (inclusive) after the date on which the incumbent carrier received the request for negotiation.

^{11/} See Letter from David Huberman, regulatory counsel for SCC, to SBC’s Executive Director of the Local Provider Account Team (Mar. 27, 2000) (Attachment 1).

^{12/} See Letter from Jack Frith, counsel for SBC, to Mr. David Huberman, regulatory counsel for SCC (Apr. 5, 2000) (Attachment 2).

On May 9, 2000, SBC forwarded an electronic version of its multi-state interconnection template to SCC.^{13/} On June 29, 2000, SCC informed SBC that it desired to proceed with the negotiation of a multi-state interconnection agreement, provided a marked-up version of the GT&C section and the Appendix 911 of SBC's multi-state template interconnection agreement ("June 29 Revisions"), and indicated that SCC was reviewing other sections of the template interconnection agreement.^{14/} All of SBC's appendices under its multi-state interconnection template are linked to the GT&C section. Accordingly, SCC revised and sent SBC the GT&C section and the Appendix 911 first because coupled together, these sections contain the provisions that are critical to SCC's business needs. The revised Appendix 911 embodies the core interconnection arrangement SCC needs to send aggregated emergency call traffic from SCC's point of presence ("POP") to SBC's Selective Routing Tandems, and then to the appropriate PSAPs for emergency response. SCC strongly believed that if the Parties could reach

^{13/} See E-mail correspondence (four-part message) from Marianne Kline, SBC, to Elizabeth Dickerson, counsel for SCC (May 9, 2000) (Attachment 3) and five attachments. General Terms & Conditions section ("SBC 5/9 GT&C") (Attachment 4), Appendix 911 ("SBC 5/9 911") (Attachment 5), Appendix Network Interconnection Method ("SBC 5/9 NIM") (Attachment 6), Appendix Interconnection Trunking Requirements ("SBC 5/9 ITR") (Attachment 7), and Appendix Unbundled Network Elements ("SBC 5/9 UNE") (Attachment 8). Due to the voluminous size of the complete multi-state template interconnection agreement that SBC provided, SCC only attaches to this Petition hard copies of the five sections of the template agreement that SCC considered relevant for its interconnection needs and to which SCC proposed revisions. All other sections of SBC's multi-state template have been provided on CD-ROM. See Attachment 54.

^{14/} See Letter from David Huberman, regulatory counsel for SCC, to Suzette Wolfe, SBC (Jun. 29, 2000) (Attachment 9) and attachments of marked-up versions of the GT&C section ("SCC 6/29 GT&C") (Attachment 10) and the Appendix 911 ("SCC 6/29 911") (Attachment 11) to SBC's multi-state template interconnection agreement.

agreement on the terms and conditions of the Appendix 911, the other provisions of the Agreement would fall into place.

Despite repeated telephone calls to and messages left for Ms. Wolfe to schedule a conference call to begin discussions of the June 29 Revisions, SCC did not hear back from SBC until July 13, 2000, when Ms. Wolfe called to inform SCC that she had been reassigned and that a new lead negotiator for SBC would be assigned. Ms. Wolfe informed SCC that she would forward the June 29 Revisions to SBC's new negotiator. Thus, during the first three months after SCC's request for interconnection, SBC shuffled SCC from one negotiator to another and another without ever responding to SCC's requests for substantive discussions to address SCC's interconnection needs.

During the week of July 17, 2000, SCC received a voicemail message from SBC's latest designated negotiator, Mr. Ronald Hill. SBC made arrangements to speak with SCC on July 24, 2000 to schedule a conference call to discuss SCC's interconnection request; however, SCC did not hear from SBC until July 25, 2000. On July 25, 2000, SCC outlined its interconnection plans in broad terms for SBC. Mr. Hill indicated that he needed to consult with his superiors to determine what other SBC personnel should be included in the Parties' negotiations. Mr. Hill stated that he would call SCC the next day to schedule a more in-depth conversation. SBC did not contact SCC on July 26, 2000. In fact, SBC did not contact SCC again until August 2, 2000 after SCC left SBC several voicemail messages expressing SCC's frustration over its inability to schedule a conference call with SBC to discuss SCC's June 29 Revisions. On August

2, 2000, SBC called SCC and its counsel requesting an electronic copy of the June 29 Revisions. The documents were successfully sent to SBC on August 3, 2000.^{15/}

On August 11, 2000, the Parties held an initial conference call. During the call, SBC informed SCC that SBC's subject matter experts had not reviewed SCC's June 29 Revisions because SBC had just received the electronic versions of these documents. When asked why its subject matter experts had been unable to review the hard copy version of the June 29 Revisions received by SBC nearly one and one-half months prior to the conference call, SBC offered no explanation. Thus, by August 11, 2000, more than four months after SCC requested negotiations with SBC, the Parties still had not had their first substantive discussion regarding SCC's interconnection needs because SBC would not - and did not - devote the necessary personnel and resources to the Parties' negotiations.

On August 18, 2000, SCC's counsel sent a letter to SBC recapping the events that had transpired to date with regard to SCC's interconnection request.^{16/} SCC's counsel noted that the window for filing a petition for arbitration was September 17, 2000 to October 12, 2000, adding that the Parties were left with essentially six weeks in which to negotiate the interconnection agreement.^{17/} SCC also confirmed its understanding from discussions with SBC that SCC could expect to receive SBC's feedback to SCC's June

^{15/} See E-mail correspondence from Elizabeth Dickerson, counsel for SCC, to Mr. Ron Hill, SBC (Aug. 3, 2000) (Attachment 12).

^{16/} See Letter from Chérie R. Kiser, counsel for SCC, to Mr. Ron Hill, SBC (Aug. 18, 2000) (Attachment 13).

^{17/} *Id.* at 3.

29 Revisions by August 30, 2000.^{18/} Finally, SCC expressed its hopefulness that the Parties could reach a negotiated agreement quickly in light of the limited modifications made by SCC to only a few appendices of SBC's interconnection template agreement.^{19/} SCC did not receive SBC's feedback to SCC's June 29 Revisions on August 30, 2000. Rather, on September 8, 2000, SBC informed SCC that SBC was unable to understand the type of interconnection requested by SCC based on review of SCC's June 29 Revisions.^{20/}

On September 12, 2000, SCC's counsel sent SBC three additional revised appendices (Appendix NIM, Appendix ITR, and Appendix UNE) to SBC's multi-state interconnection template ("September 12 Revisions").^{21/} These revisions were minor.^{22/} SCC also indicated that it did not anticipate making revisions to any other appendices of the SBC multi-state template agreement. SBC responded to SCC on September 14, 2000, stating that the three additional appendices had been forwarded to SBC's subject matter experts for review, and that review was to be complete by September 26, 2000.^{23/} As of

^{18/} *Id.*

^{19/} *Id.*

^{20/} See E-mail correspondence from Ron Hill, SBC, to Cherie R. Kiser, counsel for SCC, and David Huberman, regulatory counsel for SCC (Sept. 8, 2000) (Attachment 14).

^{21/} See E-mail correspondence from Robin Tuttle, counsel for SCC, to Mr. Ron Hill, SBC (Sept. 12, 2000) (Attachment 15) and three attachments, Appendix NIM ("SCC 9/12 NIM") (Attachment 16), Appendix ITR ("SCC 9/12 ITR") (Attachment 17), and Appendix UNE ("SCC 9/12 UNE") (Attachment 18).

^{22/} *Id.*

^{23/} See E-mail correspondence from Ron Hill, SBC, to Robin Tuttle, counsel for SCC (Sept. 14, 2000) (Attachment 19).

September 12, 2000, SCC still had not received any feedback regarding its June 29 Revisions.^{24/}

Eager to get substantive discussions underway, SCC's representatives traveled to Dallas, Texas to meet with SBC at its offices on September 19, 2000. This meeting constituted the first substantive discussion between the Parties regarding SCC's interconnection needs. At the beginning of the meeting, SBC noted the presence of SBC product and service representatives. SCC provided an overview of its business plan and interconnection needs. SCC explained that it will provide transport and database services to wireline, wireless and telematics service providers; that it will aggregate and transport traditional and nontraditional emergency calls from these service providers' end users to the appropriate PSAPs; that it needs to interconnect with SBC's Selective Routing Tandems so that the calls and associated number and location data can be transported to the appropriate PSAPs; and that it needs an interface with SBC's ALI nodes in order to provide ALI data for certain end users.

Importantly, SCC noted that the necessary interconnection pieces needed were already in place through the SBC multi-state interconnection template and the Parties' Interoperability Agreement.^{25/} SCC also noted that it was simply seeking to formalize the arrangement addressed in the Interoperability Agreement through the interconnection process as well as expand its interconnection arrangements to other SBC Selective Routing Tandems.^{26/} Finally, SCC confirmed that it no longer sought to: (1) exchange

^{24/} In fact, as discussed *supra* herein, SCC did not receive such feedback until Sept. 29, 2000.

^{25/} See *supra* note 8.

^{26/} *Id.*

selective routing information via recent change files; or (2) exchange ALI information through Dynamic ALI Updates unless that was the method begin used in some portions of SBC's operating territory, *i.e.*, the Ameritech region.

With a better understanding of SCC's interconnection needs, SBC began to identify potential issues such as whether the arrangement that SCC seeks falls within § 251 interconnection and how reciprocal compensation would be set. SBC also expressed an interest in pursuing the Parties' network interconnection through a business arrangement outside of the § 251 context. The Parties scheduled a conference call for September 27, 2000 to resume these discussions.

Despite SCC's requests to confirm the conference call, on September 27, 2000, Mr. Hill abruptly cancelled the conference call minutes before it was scheduled to occur, ostensibly because one of SBC's subject matter experts was sick and could not participate. While the Parties agreed not to have the call, SCC and SBC's lead negotiator, Mr. Hill, spoke briefly to confirm other matters. Specifically, the Parties agreed that regardless of whether the Parties decided to move forward with SBC's proposal to craft a business arrangement for the network interconnection that SCC seeks, the Parties would continue to negotiate the § 251 interconnection agreement that SCC had requested. SCC also noted that it had not received SBC's responses to SCC's September 12 Revisions despite SBC's commitment to review and respond to the September 12 Revisions by September 26, 2000. SBC indicated that its responses to SCC's September 12 Revisions would be sent that day. The Parties also scheduled another conference call for September 29, 2000.

SCC did not receive SBC's response to the September 12 Revisions on September 26, 2000. SCC had not received SBC's response on September 28, 2000, when SCC's counsel sought to confirm with SBC the conference call scheduled for September 29, 2000. In this correspondence, SCC reiterated that it still had not received SBC's response to the September 12 Revisions.^{27/}

The Parties' conference call scheduled for September 29, 2000, like the call scheduled for September 27, 2000, was cancelled abruptly by SBC minutes before the planned starting time. This time, Mr. Hill represented that the same subject matter expert who had been unable to participate on the September 27, 2000 call was now unable to participate on the September 29, 2000 call because he supposedly was testifying before a state public utility commission. Logic dictates that SBC should have known about this conflict more than ten minutes prior to the call. Nonetheless, the Parties agreed to schedule a conference call during the following week of October 2, 2000 pending confirmation from SBC.

SCC inquired again about the status of SBC's responses to all of SCC's June 29 Revisions and September 12 Revisions.^{28/} Later that day, on September 29, 2000, SBC finally sent SCC two of the five sections of the SBC multi-state interconnection template that SCC had revised.^{29/} SBC maintained that the Appendix 911 was "troublesome"

^{27/} See E-mail correspondence from Robin Tuttle, counsel for SCC, to Mr. Ron Hill, SBC (Sept. 28, 2000) (Attachment 20).

^{28/} See Attachments 10, 11, 16, 17, and 18.

^{29/} See E-mail correspondence from Ron Hill, SBC, to Chérie R. Kiser, counsel for SCC, forwarding SBC's revisions to two of the five sections of the interconnection agreement template revised by SCC (Sept. 29, 2000) (Attachment 21) and e-mail attachments, Appendix NIM ("SBC 9/29 NIM") (Attachment 22) and Appendix ITR ("SBC 9/29 ITR") (Attachment 23).

because SCC's proposed revisions regarding Dynamic ALI Updates and recent change files assumed network capabilities that were not available.^{30/}

Truly troublesome, however, was the fact that SBC made this remark at all. During the Parties' meeting in Dallas on September 19, 2000, SCC explained to SBC that SCC would not seek to: (1) exchange selective routing information via recent change files; or (2) exchange ALI information through Dynamic ALI Updates unless that was the method being used in some portions of SBC's operating territory, *i.e.*, the Ameritech region.^{31/} Rather, SCC agreed to forego recent change files and to exchange ALI information through ALI Steering, which SCC recognized is the method currently used between SBC and SCC in California, Texas, as well as other locations.^{32/} There was no reason for SBC to reference Dynamic ALI Update and recent change files as concerns because SCC had already acknowledged that it might not be appropriate to include these items in the Parties' Agreement. SBC's reference to this non-issue is telling, for it highlights SBC's failure to devote sufficient attention and resources to the Parties' negotiations.

On September 29, 2000, SCC sent correspondence to SBC expressing SCC's frustration with SBC's inability to schedule or keep scheduled interconnection negotiation sessions. SCC also raised concerns about SBC's failure to provide responses to the three remaining interconnection agreement sections (Appendix 911, Appendix

^{30/} *Id.*

^{31/} Dynamic ALI Update is the capability by which competitive ALI providers update records of each other's ALI nodes to deliver the appropriate ALI record associated with a wireline or wireless 9-1-1 call.

^{32/} *See supra* note 8.

UNE, GT&C section),³³ two of which had been sent to SBC on June 29, 2000, and the other one on September 12, 2000.^{34/} In response, SCC received SBC's responses to two of the outstanding three sections.^{35/}

The Parties held another conference call on October 2, 2000. SBC introduced new subject matter experts to the negotiations and requested that SCC present its interconnection needs again, for at least the third time. SCC did so, and SCC also discussed the technical elements of the type of interconnection requested. SCC reiterated that it was no longer seeking to (1) exchange selective routing information via recent change files; or (2) exchange ALI information through Dynamic ALI Updates unless that was the method being used in some portions of SBC's operating territory, *i.e.*, the Ameritech region. Upon SBC's request, SCC agreed to provide SBC with a diagram and details of how SCC's network would interconnect with SBC's network, despite the fact that a similar diagram had been provided to SBC at the Parties' meeting in Dallas on September 19, 2000.

On October 6, 2000, the Parties agreed to extend the deadline for filing a petition for arbitration to October 23, 2000.^{36/} After the Parties agreed to the extension on October 6, 2000, no negotiations of the interconnection agreement were conducted during

³³ See SCC 6/29 911 (Attachment 11); SCC 9/12 UNE (Attachment 18); SCC 6/29 GT&C (Attachment 10).

^{34/} See E-mail correspondence from Chérie R. Kiser, counsel for SCC, to Mr. Ron Hill, SBC (Sept. 29, 2000) (Attachment 24).

^{35/} See E-mail correspondence from Ron Hill, SBC, to Chérie R. Kiser, counsel for SCC (Sept. 29, 2000) (Attachment 25) and e-mail attachments, Appendix UNE ("SBC 9/29 UNE") (Attachment 26) and GT&C section ("SBC 9/29 GT&C") (Attachment 27).

^{36/} See Letter from Ron Hill, SBC, to Chérie Kiser, counsel for SCC, and signed by David Huberman, regulatory counsel for SCC (Oct. 6, 2000) (Attachment 28).

the following two weeks. With the new arbitration deadline approaching, on October 18, 2000, the Parties agreed to further extend the deadline for filing a petition for arbitration to December 5, 2000, as memorialized in a Memorandum of Understanding ("MOU").^{37/} The MOU also memorialized SBC's self-imposed deadline for reaching agreement with SCC - November 17, 2000.^{38/}

After repeated requests from SCC to SBC on October 23, 26, and 27, 2000 to schedule the Parties' next conference call, to confirm the call once SBC proposed a date, and to reiterate that SCC still had not received SBC's response to the Appendix 911^{39/} that SCC sent to SBC on June 29, 2000,^{40/} SCC finally heard from SBC on October 27, 2000.^{41/} SBC confirmed the Parties' next conference call for October 30, 2000 and provided SBC's response to SCC's mark-up of the Appendix 911, four months after SCC sent the document to SBC.

SBC's response to SCC's revisions to Appendix 911 was useless for purposes of negotiations because it deleted all provisions of Appendix 911, but for the introductory provisions. SBC maintained that the edits that SCC had made to the document were unacceptable as a 9-1-1 appendix to an interconnection agreement because the edited

^{37/} See Memorandum of Understanding, an agreement by which the Parties established that they would negotiate a business agreement to interconnect their networks and also by which the Parties would extend the deadline for filing a petition for arbitration in these § 251 interconnection negotiations (Oct. 18, 2000) (Attachment 29).

^{38/} *Id.*

^{39/} See SCC 6/29 911 (Attachment 11).

^{40/} See E-mail correspondence from Robin Tuttle, counsel for SCC, to Mr. Ron Hill, SBC (Oct. 23, 2000) (Attachment 30), (Oct. 26, 2000) (Attachment 31), (Oct. 27, 2000) (Attachment 32).

version no longer represented SBC's 9-1-1 service offering. SBC's response was remarkable in light of the fact that SBC returned to SCC a document that not only deleted revisions by SCC, **but also SBC's own original language.**^{42/} As reflected in Attachment 11 to this Petition, while SCC revised portions of SBC's Appendix 911, SCC's revisions hardly could be classified as a wholesale rewrite.^{43/} Yet, SBC deleted all of the substantive provisions in their entirety without identifying any specific problems with SCC's revisions or SBC's own language. Devoid of any substance or explanation, SBC's response was, as a practical matter, no response at all, thereby continuing SBC's pattern of delay and unresponsiveness.^{44/}

^{41/} See E-mail correspondence from Ron Hill, SBC, to Robin Tuttle, counsel for SCC (Oct. 27, 2000) (Attachment 33).

^{42/} See Appendix 911 sent by SBC on Oct. 27, 2000 attached to e-mail from Ron Hill, SBC, to Robin Tuttle, counsel to SCC (Oct. 27, 2000) ("SBC 10/27 911") (Attachment 34).

^{43/} See SCC 6/29 911 (Attachment 11).

^{44/} On Nov. 1, 2000, SCC sent a letter to SBC expressing concern that SBC did not provide any productive marked-up response to the Appendix 911; that SBC appeared to have only discrete issues of concern with SCC's marked-up version of the Appendix 911 based on comments made by SBC on the Parties' Oct. 30, 2000 conference call; that one of the discrete issues, provisions relating to Dynamic ALI Updates and recent change files, was a matter that SCC had addressed in the Parties' Sept. 19, 2000 meeting in Dallas, where SCC noted that it would not seek exchange certain ALI data through Dynamic ALI Update or recent change files; that SBC continues to introduce new subject matter experts that are not prepared to negotiate the interconnection that SCC needs; that SBC actually recommended that SCC start over with regard to the Appendix 911 because a new subject matter expert was interjected into the negotiations; and that SCC provide technical information immediately despite SBC's continued delinquency in providing information and documents to SCC throughout the negotiation process. See Letter from David Huberman, regulatory counsel for SCC, to Mr. Ron Hill, SBC (Nov. 1, 2000) (Attachment 35).

SBC's claim that some attention had been paid to the Appendix 911 is simply inaccurate and disingenuous. While SCC had explained its interconnection needs to SBC on several occasions, the Parties had never discussed any provisions of the Appendix 911. In fact, the only attention that SBC paid to the Appendix 911 was to strike virtually

During the Parties' October 30, 2000 conference call, SBC introduced yet another new subject matter expert to the negotiation session. Keeping with SBC's negotiating form, the new subject matter expert was unprepared to participate in the negotiations because she was unfamiliar with SCC's business and interconnection needs, and she had not been provided with the correct version of SCC's revised Appendix 911.^{45/} Despite being completely unprepared and uninformed, SBC represented that this new subject matter expert was responsible for the SBC revised Appendix 911^{46/} that deleted virtually every provision. She explained that SBC rejected the entire Appendix 911^{47/} because it believed SCC's revisions completely altered the nature of its 9-1-1 service offering.

SCC asked SBC to identify the changes that SBC believed altered SBC's services, provision-by-provision, so SCC could address SBC's concerns. SBC's new subject matter expert indicated that she did not have the correct version of SCC's revised Appendix 911,^{48/} whereupon SCC immediately sent her an electronic copy. Despite receiving the electronic copy within seconds, SBC's new subject matter expert indicated that she did not have time to go through the document provision-by-provision. None of SBC's other representatives were prepared to provide SCC with specific details of the problems that SBC maintained existed. Pressed for more information regarding its concerns, SBC acknowledged that it had a few discrete concerns, one of which was that

all of the provisions in the appendix without any constructive comments. *See* Letter from Ron Hill, SBC, to Mr. David Huberman, regulatory counsel for SCC (Nov. 2, 2000) (Attachment 36).

^{45/} *See* SCC 6/29 911 (Attachment 11).

^{46/} *See* SBC 10/27 911 (Attachment 34).

^{47/} *See* SBC 10/27 911 (Attachment 34).

^{48/} *See* SCC 6/29 911 (Attachment 11).

SBC could not provide direct access to its databases for selective routing updates, *i.e.*, recent change files.^{49/} Once again, SCC reminded SBC that SCC had explained during the Parties' meeting in Dallas on September 19, 2000, and again during the October 2, 2000 conference call, that SCC was no longer seeking to exchange selective routing information via recent change files. SCC also reiterated that it was no longer seeking to exchange ALI data through recent change files and Dynamic ALI Updates unless that was the method being used as it is in some portions of the SBC territory, *i.e.*, the Ameritech region. At the conclusion of this call, SBC agreed to revisit its wholesale rejection and deletion of its Appendix 911.

On October 31, 2000, SCC provided SBC with the call flow diagram that SBC had requested.^{50/} Because the call flow diagram contained confidential and proprietary information, it was provided to SBC pursuant to the Parties' Mutual Confidentiality and Nondisclosure Agreement.^{51/}

On November 2, 2000, SBC confirmed that the Parties' next scheduled conference call was November 3, 2000, and SBC committed to provide SCC with a

^{49/} In fact, SBC stated that it did not believe the interconnection SCC has requested is contemplated by § 251 of the Act. SBC had indicated in previous conversations similar thoughts.

^{50/} See E-mail correspondence from David Huberman, regulatory counsel for SCC, to Mr. Ron Hill, SBC (Oct. 31, 2000) (Attachment 37), and attachment, SCC ECN Network Architecture (Attachment 38). The ECN Network Architecture diagram was the diagram that SBC previously had demanded as critical to the Parties' ability to move forward in their negotiations even though the same information had been substantively explained to SBC in the Parties' meeting in Dallas on Sept. 19, 2000 and during the Parties' conference call with SBC's subject matter experts on Oct. 2, 2000.

^{51/} See Mutual Confidentiality and Nondisclosure Agreement signed by the SCC on May 5, 2000 and by SBC on April 12, 2000 (Attachment 39).

portion of SBC's revised response to SCC's revisions to the Appendix 911.^{52/} Upon prodding by SCC,^{53/} SBC provided its revised response to the Appendix 911 and noted that this document would be the first item of discussion during the conference call the next morning on November 3, 2000.^{54/} Four months after SCC provided SBC with SCC's June 29 Revisions, the Parties held a conference call on November 3, 2000 to begin their first substantive discussion regarding the Appendix 911.

Subject matter experts representing both parties, including yet another new SBC representative participating in the negotiations for the first time, were present on the November 3, 2000 call.^{55/} The Parties made some progress in the negotiations. Both Parties agreed to some changes made by the other, and the Parties even crafted revisions to some provisions of SCC's revised Appendix 911 to address SBC's concerns. Certain provisions of the Appendix 911 were identified as open issues pending additional research, revisions, and discussion. While SBC noted that it was continuing to discuss provisions related to ALI Steering with its subject matter experts -- ALI Steering is a critical function to SCC's interconnection with SBC -- SBC never indicated that the

^{52/} See E-mail correspondence from Ron Hill, SBC, to Robin Tuttle, counsel for SCC (Nov. 2, 2000) (Attachment 40).

^{53/} See E-mail correspondence from Robin Tuttle, counsel for SBC, to Mr. Ron Hill, SBC (Nov. 2, 2000) (Attachment 41).

^{54/} See E-mail correspondence from Ron Hill, SBC, to Robin Tuttle, counsel for SCC (Nov. 2, 2000) (Attachment 42) with attachment, Appendix 911 ("SBC 11/2 911") (Attachment 43).

^{55/} It is noteworthy that SCC had the requisite subject matter experts and those with the authority to make decisions during negotiations on every call. The FCC has found that "if a party refuses throughout the negotiation process to designate a representative with authority to make binding representations on behalf of the party, and thereby significantly delays resolution of issues, such action would constitute failure to negotiate in good faith." *Local Competition Order* ¶ 154.

provision of this function presented a major issue. As previously indicated, SBC already provides ALI Steering to SCC in Texas pursuant to the Parties' Interoperability Agreement,^{56/} and SBC provides ALI Steering in California and to wireless carriers throughout SBC's operating territory. At SBC's request, SCC agreed to provide an additional diagram, which clarified how SCC's Signaling System 7 ("SS7") network would interconnect with SBC's network. The Parties scheduled another conference call for November 7, 2000.

On November 6, 2000, SCC provided SBC with the requested SS7 diagrams.^{57/} Because the SS7 diagrams contain confidential and proprietary information, they were provided to SBC pursuant to the Parties' Mutual Confidentiality and Nondisclosure Agreement.^{58/}

On November 7, 2000, SCC provided SBC with a further revised version of the Appendix 911 (renamed "Appendix A" on the document).^{59/} SCC's additional revisions specified the method by which the Parties would interconnect their networks at SBC's Selective Routing Tandems and incorporated revisions that the Parties had agreed to during their November 3, 2000 conference call. Some of SCC's revisions were made simply for organizational purposes.

^{56/} See *supra* note 8.

^{57/} See E-mail correspondence from David Huberman, regulatory counsel for SCC, to Mr. Ron Hill, SBC (Nov. 6, 2000) (Attachment 44) with attachments, revised SCC ECN Network Architecture (Attachment 45) and SS7 Connectivity diagrams (Attachment 46).

^{58/} See *supra* note 51.

^{59/} See E-mail correspondence from Robin Tuttle, counsel for SCC, to Mr. Ron Hill, SBC (Nov. 7, 2000) (Attachment 47) with attachment, revised, marked-up Appendix 911 ("SCC 11/7 911") (Attachment 48).

The Parties held their next conference call on November 8, 2000. True to form, SBC brought in another new company representative who clearly had no background concerning the negotiations or SCC's business and interconnection needs. Indeed, SBC's new representative, a member of SBC's retail group, suggested that SCC was seeking a retail offering rather than interconnection, a misunderstanding that SCC immediately corrected. Once again, SCC was asked to explain its business, network, and interconnection needs, which had already been explained to SBC at the Parties' meeting in Dallas on September 19, 2000 and to other SBC subject matter experts during conference calls on October 2, October 30, and November 3, 2000. The November 8, 2000 call was unproductive.

On November 15, 2000, the Parties held another conference call to continue negotiations. Although the Parties were not able to begin discussions of the Appendix 911^{60/} because they were discussing other contractual issues, the Parties did schedule another conference call for November 16, 2000.

The Parties reached a critical point in the negotiations during the November 16, 2000 conference call, which occurred one day before SBC's self imposed deadline for reaching agreement with SCC. During that call, SBC stated for the first time that it would not agree to provide ALI Steering in SBC regions outside of Texas. SBC proposed that the Parties incorporate additional attachments to address emergency call traffic originated by end users of wireless and telematics service providers. Just as the Parties seemed to be heading towards agreement on the Appendix 911, SBC brought the negotiations to a sudden and unexpected halt. Indeed, until November 16, 2000, SBC

^{60/} See SCC 11/7 911 (Attachment 48).

had given no indication that ALI Steering was an issue. SBC took an action item to continue review of the ALI Steering issue and determine alternative solutions; however, SBC has not provided SCC with any feedback on this issue since the November 16, 2000 call. SBC also proposed to schedule additional conference calls for the beginning of the week of November 20, 2000, but proposed dates or times were not provided. No further negotiations were held.

Finally, while the Parties did negotiate the Appendix 911, albeit unsuccessfully, SBC never engaged SCC in negotiations to discuss SCC's proposed revisions to the GT&C, NIM, ITR, and UNE Appendices^{61/} of SBC's template interconnection agreement. In addition, SBC has never provided SCC with any pricing information or relevant tariffs, despite SCC's requests for such information.

The little progress SCC made in these interconnection negotiations with SBC took eight months to accomplish and was the direct result of SCC's persistence. Given the manner in which SBC has conducted negotiations, or more aptly, has failed to conduct negotiations, it is impractical and unreasonable for SCC to continue to try to reach a negotiated agreement with SBC. As such, resolution of the outstanding issues described in this Petition does not appear possible at this stage without Commission intervention.

Although the situation has compelled SCC to pursue arbitration, SCC will continue to pursue vigorously a negotiated agreement with SBC. Nevertheless, SCC respectfully requests that the Commission consider SCC's requests contained herein and resolve the outstanding issues in this arbitration as requested in the Petition.

^{61/} See SCC 6/29 GT&C (Attachment 10); SCC 9/12 NIM (Attachment 16); SCC 9/12 ITR (Attachment 17); SCC 9/12 UNE (Attachment 18).

OUTLINE OF THE PETITION

Section 252 of the Act requires the party petitioning the Commission for arbitration to submit all relevant documents concerning the unresolved issues, the position of each of the parties with respect to those issues, and any other issues discussed and resolved by the parties.^{62/} All relevant documents are affixed as Attachments ~~through 55~~ through 55. In accordance with § 252, the remainder of the Petition will detail the unresolved issues identified by the Parties during negotiations, and SCC's and SBC's positions on each issue.^{63/}

^{62/} See 47 U.S.C. § 252(b)(2)(A) (2000).

^{63/} See 47 U.S.C. § 252(b)(2).

SBC's Position

SBC has proposed language stating that rates for leased interconnection facilities will be determined "at the time of the request."^{202/} For the reasons discussed above, SCC expects this interconnection agreement to address the necessary components and pricing for interconnection of the two Parties' networks. Pricing must be addressed with specificity in the Agreement, not dependent on vague statements that prices will be determined at some point in the future.

~~Indeed, given SBC's recalcitrance during the Parties' negotiations, SCC has absolutely no reason to believe that pricing issues could be resolved fairly and in a timely manner.~~

F. Bona Fide Request Process

Issue Presented

Whether SCC should have to make a Bona Fide Request ("BFR") where necessary facilities and/or equipment are not available.

SCC's Position

SBC's proposed language requires SCC to make a BFR if necessary facilities are not available. This language is not consistent with the Act or the FCC's *Local Competition Order*.^{203/} Under applicable legal precedent, SCC should have to make a BFR only when it seeks equipment and/or facilities that fall outside of the FCC's established list of unbundled network elements. Imposing a full-fledged BFR process on CLECs for interconnection facilities that may not be available when requested would violate SBC's duty to be just and reasonable under § 251(c)(2)(D).^{204/} SBC is not subject to a BFR process when facilities are not available and imposing such a lengthy, administratively burdensome and costly process on CLECs amounts to

^{202/} See SBC 5/9 NIM § 6.4 (Attachment 6).

^{203/} See *Local Competition Order* ¶¶ 224, 255.