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COMMERCE COMMISSION

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its Own Motion	)	
	)	Docket No. 01-0662
Investigation concerning Illinois Bell Telephone Company's compliance With Section 271 of the Telecommunications Act of 1996	)	Phase 2

EXCEPTIONS OF WORLDCOM, INC.

Exception Number One: The Proposed Order Erred By Adopting SBC's So-Called Compromise Remedy Plan For Section 271 Purposes.

For all of the reasons discussed in its Brief on Exceptions, WorldCom respectfully recommends that paragraph numbers 3428 through 3501 of the Administrative Law Judge's Proposed Final Order On Investigation be deleted and replaced with AT&T's exception language on the remedy plan issue, in which WorldCom concurs and adopts as its own. *See* AT&T Brief on Exceptions.

Exception Number Two: The Proposed Order Erred By Failing To Require SBC To Pay Remedies On Performance Measures Michigan 12 and 13.1.

For all of the reasons discussed in its Brief on Exceptions, WorldCom respectfully recommends that paragraphs 3529 through 3535 of the Administrative Law Judge's Proposed Final Order On Investigation be modified as follows:

e. Commission's Analysis and Conclusion

3529. At the outset, we see that ~~Staff~~ WorldCom has provided a clear and comprehensive explanation of the issues at hand. It is clear from WorldCom witness Kinard's affidavits that there is no overlap between the aspects of PM MI 13 and MI PM 13.1 that WorldCom requests be remedied. The Michigan Commission found applying remedies to both of these PMs does not result in multiple penalties applying to the same performance. We agree. ~~As such, it informs that the parties to the collaborative have indeed, and reasonably so in our view, agreed that multiple penalties do not apply to the same failed performance. (This, we would note, reflects a well-settled concept in the law).~~

~~WorldCom is seeking a change to the status quo and wants to have two performance measures, currently listed a diagnostic, made subject to remedy. As such, the question before us is whether adding penalties to the measures set out by WorldCom would amount to a doubling of remedies based on the same activity.~~

PM MI 13.1.

3530. While Staff tells us that adding remedies to PM MI 13.1 would duplicate the remedy associated with PM MI 13, we note that the Michigan Commission has determined that these same measures do not overlap. ~~Given that both measures report on the Company's timeliness in returning line loss notifications, any miss would be counted under both of these measures. According to Staff, and we agree, one and only one of the measures needs to be remedied.~~

3531. ~~To be sure, we do not know nor are we told, on what basis~~ WorldCom witness Kinard cited specific language from the Michigan that clearly describes why the Michigan PSC concluded as it did. This, combined with the knowledge that there are continuing problems with the OSS that is measured by MI PM 13.1, provides the Commission all of the evidence it needs to determine that PM 13.1 should be remedied. We note that WorldCom in its brief on exceptions note that it could accept remedies for 13 and 13.1 being set at a low level, as opposed to having only PM MI 13.1 remedied at a medium level as proposed by Staff. We find this reasonable and hereby require SBC to modify PM MI 13 and PM MI 13.1 to be remedied measures assigned a low ranking. ~~The Commission remains confident, however, that Staff and *SBC Illinois* have correctly framed the issue and the demonstration on record for this particular matter, has led us to the right decision.~~

PM MI 12.

3532. With respect to PM MI 12, Staff informs that this measure is a sub-set of the billing completeness process that PM 17 measures. As such, Staff notes, adding remedies to PM MI 12 would duplicate the remedy that already attaches to PM 17. To be absolutely sure of its position, Staff sought clarification from the Company as to whether, under PM 17, SBC Illinois includes all service orders posted to billing within the reporting timeframe regardless of whether or not the service orders were on time.

3533. The Company answered Staff's query confirming that PM 17 results assess all wholesale service orders posted to billing prior to the first bill cycle for the account after completion of the service order in the ordering system. Thus, PM 17 results are not based only on those service orders that post on time.

3534. Nevertheless, we are persuaded by WorldCom witness Kinard's arguments that there is no overlap between PM 12 and PM 17. In addition, we find her recommendation reasonable and direct SBC to modify PM 12 so that it is remedied at the low level. ~~This added information works itself into Staff's recommendation that the Commission deny WorldCom's request for PM MI 12 remedies. We find the recommendation reasonable.~~

3535. All in all, the relief sought by WorldCom and AT&T in these premises is granted ~~denied~~ on each of the two proposals.

Exception Number Three: The Proposed Order Erred By Finding SBC In Compliance With Checklist Item Number 2 Despite Its Recognition Of Continuing Billing And Line Loss Problems.

For all of the reasons discussed in its Brief on Exceptions, WorldCom respectfully recommends that paragraphs1312 through 1314 and paragraphs 1320 through 1333 of the Administrative Law Judge's Proposed Final Order On Investigation be modified as follows:

The Major Concern - Line Loss Notices (LLNs).

1312. Throughout this investigation, we have given special attention to the Line Loss Notification issue and, indeed, already considered this issue in the Phase I proceeding. At that stage, we took the initiative of requiring certain remedial actions be taken by the Company in order to: a) emphasize the importance we give to this matter; and b) have SBC Illinois work on and resolve the situation at the earliest opportunity. In order to address this serious issue, Staff proposed and we accepted concrete and detailed improvements to the Company's procedures dealing with line loss notifications. The Company agreed to implement each of these improvements~~, expended a good amount of resources and, in most cases has already completed the implementation of these measures. This has resulted in improved performance, as demonstrated both in the positive BearingPoint test results, and in the marked reduction of line loss notification problems.~~

1313. In our Phase I Order, we indicated that we would give "substantial weight" to the Company's implementation of Staff's recommendation, and we note favorably that the Company has complied with most of these recommendations. That is not to say, however, that the Company's performance is unblemished or that the problem is fully abated. The CLEC's point to line loss notification issues -- one of which has occurred as recently as March, 2003. W~~hile we~~e remain deeply concerned with these issues~~, it is incumbent upon this Commission to note that, in nearly each case, the Company has acted quickly to analyze and resolve the problem on a business to business basis with the CLECs. We consider it vital to encourage this type of cooperative behavior, which inevitably, lends itself to lasting solutions~~.

1314. ~~So too, although not required for 271 compliance, w~~We note favorably, that the Company has committed to an improvement program which should result in continued overall improvements to this process and we make clear that, unless otherwise directed, the Company will provide bi-monthly updates to the Commission outlining its activity and its progress in implementing the Line Loss Plan of record as finalized by the Michigan Commission. Our Staff will monitor and keep us informed of the situation. Nevertheless, we recognize that the line loss problem has been and continues to be a serious problem. We cannot rely on SBC's Line Loss Plan of record as finalized by the Michigan Commission to find compliance with Section 271 requirements because to do so would contravene the FCC's instruction that "paper promises" of future compliance cannot be relied upon in 271 proceedings. Accordingly, and unfortunately, we find that SBC comes up short with respect to line loss compliance. We need to be confident that line loss problems are fully and finally resolved. SBC has indicated at several points in this proceeding that line loss dysfunctions were no longer a problem. The record in this proceeding does not bear out those claims. ~~It is on the basis of our total account of the matter that we find the Company's line loss notification procedures to comply with section 271 requirements.~~

Billing.

1320. The Commission notes, at the outset, that ~~all~~ aspects of SBC Illinois' billing systems were ~~thoroughly~~ reviewed by BearingPoint, although the record in this proceeding makes clear that there are many problems with wholesale billing that the BearingPoint test did not uncover. Indeed, it is clear that SBC withdrew its Michigan 271 application from consideration at the FCC on April 16, 2003 because the FCC was poised to reject that application based on SBC's failure to meet the wholesale billing requirements of federal law. Since SBC has represented before this Commission that its OSS are region-wide, and since the record amply demonstrates that SBC's Illinois wholesale billing is not accurate, auditable or timely, we cannot find that SBC has met its 271 obligations with respect to this issue. ~~and virtually all of the billing tests havebeen resolved satisfactorily. Given that the BearingPoint Master Test Plan was adopted by this very Commission, with input from Staff and the CLECs, and that the BearingPoint test process was heavily monitored by those same parties, the Commission undoubtedly and reasonably attaches substantial weight to the positive overall BearingPoint results. These results, in our view, support a positive overall Section 271 conclusion with respect to billing. Other evidence and concerns appear of record, however, and must be considered by the Commission in determining whether further improvements need be made in these premises.~~

1321. With respect to billing accuracy, the majority of the issues appear to be related to UNE-P billing and involve rate changes ordered by the Commission in Docket Nos. 00-0700 and 98-0393. SBC Illinois concedes that errors were made but ~~explains~~ asserts that they were limited in scope and resulted to a large degree from confusion over whether CLECs were taking service under contract or tariff. The Commission finds these explanations unavailing given the sheer volume of record evidence indicating that wholesale billing problems are varied and wide-spread.~~While the Commission accepts these explanations, we remain concerned.~~

1322. The Commission firmly believes that any billing errors associated with the UNE-P must be corrected before 271 compliance can be found. We understand that SBC has taken certain steps to attempt to resolve some of the wholesale billing deficiencies. Foir example, ~~see that SBC Illinois already has committed to do so.~~ Aas we understand it, the affected CLECs' billing tables have ~~already~~ been or will be changed where appropriate and the credit process will be handled on a CLEC-by-CLEC basis. SBC Illinois' actions in this regard are appropriate and we hereby direct the Company to report back to the Commission when the current billing situation has been rectified, both with respect to updating CLEC billing tables to ensure that charges are correct on a going forward basis, and to its issuance of credits for past errors.

1323. Information provided by SBC Illinois indicates that the UNE-P related billing errors had resulted from human error and do not reflect any systemic problems inherent in SBC Illinois' billing systems. We, however, remain skeptical and ~~accept this showing but nevertheless~~ believe that SBC Illinois needs to improve the "contract management processes" associated with updating rate tables in interconnection agreements to cover the events where this Commission orders changes to SBC Illinois' UNE rates.

1324. ~~In this regard too, the Commission would agree with SBC Illinois that CLECs should not assume that any Commission-ordered rate changes will flow through automatically to the rates in an interconnection agreement. To be sure, the effect of a Commission order is near-certain to vary CLEC by CLEC, depending on the specific terms of each individual agreement. Based on the circumstances indicated in the record of this proceeding, CLECs might need to be more diligent in reviewing their interconnection agreements to determine whether further action is required, or permitted, to update UNE rates in their contracts. Effective communication resolves problems but it requires at least two willing participants.~~

1325. We note SBC Illinois to outline a "five step" program by which it proposes to improve its "contract management process" on a going forward basis relative to certain ~~these~~ billing issues. Our review indicates that these steps are appropriate and hopefully will have the effect of ~~substantially~~ reducing the potential for errors on a going forward basis. The Commission is led to understand that certain of these steps require affirmative action by the CLECs as well. As such, the Commission strongly encourages CLECs with older agreements (particularly ones form the 1997-98 time frame) to take advantage of the process outlined by SBC Illinois, i.e., to update their agreements and eliminate gaps that have contributed to these billing issues. Important to this Commission also, is SBC Illinois' offer to file reports on a bi-monthly basis and we hereby direct the Company to outline the progress made to implement these process improvements accordingly.

1326. With respect to the other billing accuracy issues raised by the CLECs, the Commission recognizes that record indicates wide-spread problems that portend underlying OSS failures which must be fixed before any finding of 271 compliance can be made. This is corroborated by SBC's withdrawal of its Michigan 271 application on

April 16, 2003, the day the FCC was poised to reject that application because of, among other things, SBC's failure to comply with wholesale billing requirements of federal law. That was confirmed by the Chairman of the FCC, Michael Powell, in a press released issued that same day. ~~fails to find any Section 271 compliance problems. Billing issues associated with the Line Loss Notices should be resolved, given the extensive progress made on line loss notices as developed on record and what we perceive as the Company's resolve to see this through. The remaining billing issues, largely raised by TDS, would appear to be isolated instances. Many, we are told, resulted from one time conversion projects and many others do not even appear to have affected CLECs in Illinois. As, and even more importantly, we see that most of the billing situations TDS complains of occurred in the past and have been resolved. Overall, we find no current compliance issue that needs to be addressed.~~

1327. ~~Turning to billing auditability, the Commission is persuaded that SBC Illinois' bill formats are consistent with industry standards and that adequate resources are available to assist CLECs in understanding their bills. To this end, the Commission also relies on BearingPoint's test results that did not find any material problems with bill auditability.~~

1328. That said, on the whole of the record before us, the Commission believes that SBC must go well beyond the Bill Auditability and Dispute Resolution Plan on record ~~(and~~ that is being implemented in Michigan before any finding can be made concerning SBC's compliance with wholesale billing requirements and checklist item number 2.~~) is likely to be of benefit to Illinois CLECs. Therefore, the Commission accepts SBC Illinois' commitment to implement the same improvements in Illinois and to file the same progress reports here that are to be filed in Michigan.~~ We therefore await with great interest SBC's explanation of how it will fix all of the wholesale billing problems that have been identified in this proceeding.

1329. ~~The seriousness with which we view and will treat billing concerns and issues on an on-going basis is well reflected in our remaining directives.~~

1330. ~~For its part, Staff reports that~~ In addition, we note that SBC's performance measures with respect to billing are generally satisfactory, but that ~~. T~~there is~~, however,~~ one exception noted by Staff as significant, i.e., PM17 - timeliness. SBC consistently gives its affiliate more timely bills than it gives the CLECs. According to Staff, this *appears to have been a persistent problem over the last year with not much improvement* over that time period. As such, Staff recommends that we have SBC Illinois identify the steps that it will take to correct its unsatisfactory performance with respect to PM17 - billing timeliness, implement such plan and demonstrate substantially improved performance six months hence. This recommendation is reasonable in our view and we direct the Company to comply in all particulars.

1331. There is yet another measure we deem prudent and that the Commission here directs.

1332. As already indicated, SBC must explain what it is doing to resolve all of the wholesale billing problems that have been identified in this proceeding. Moreover, we will require SBC to provide the Commission and all parties a detailed explanation of the root cause of the wholesale billing problems, the steps that SBC has taken or will take to resolve those root cause problems, and a timetable in which those problems will be fixed. ~~Illinois will put into effect, for Illinois, the Billing Auditability and Dispute Resolution Plan of record in this proceeding in the manner finalized by the Michigan Commission. To the extent, however, that any CLEC in Illinois did not participate in the Michigan collaboratives on that Plan, SBC Illinois will accept and further consider that CLEC's input and/or any of our Staff's proposals, on the need to expand the scope or detail of said Auditability Plan. Further, the Company will file a report to this Commission outlining the basis for rejecting or accepting any and all of those recommendations. In that report, it will identify specific dates and timelines for implementing any new corrective tasks.~~

1333. For all of the forgoing reasons, the Commission is unable at this time to find based on the record in this proceeding that SBC's wholesale billing OSS complies with the requirements of the Telecommunications Act of 1996. We urge SBC to resolve these issues expeditiously. ~~With this additional effort and commitment by the Company, the Commission believes that the CLECs concerns will be satisfied. It further leaves the Commission able to find that, on the totality of the facts and circumstances, SBC Illinois is benefit of Section 271 approval on this function.~~