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May 10, 2000

FILED

MAY 10 2000

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

**Missouri Public
Service Commission**

RE: *SBC Advanced Solutions, Inc.*
Case No. TO-2000-261

Dear Mr. Roberts:

Enclosed are the original and eight (8) copies of SBC Advanced Solutions, Inc.'s Suggestions in Opposition to Application to Intervene and Request for Hearing of ALLTEL Communications, Inc. for filing in the above-referenced matter. A copy of the foregoing Suggestions in Opposition has been hand-delivered or mailed this date to parties of record.

Thank you for your attention to this matter.

Sincerely,



James M. Fischer

By: 

/jr
Enclosures

cc: Office of the Public Counsel
Dana K. Joyce, General Counsel
W.R. England III
Paul Lane

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
MAY 10 2000
Missouri Public
Service Commission

In the Matter of the Application of)
SBC Advanced Solutions, Inc., for)
Approval of an Interconnection) Case No. TO-2000-261
Agreement with Southwestern Bell)
Telephone Company.)

**SBC Advanced Solutions, Inc.'s Suggestions In Opposition to Application To
Intervene And Request For Hearing of ALLTEL Communications, Inc.**

Comes now SBC Advanced Solutions, Inc. ("ASI") and files these Suggestions In Opposition to the Application To Intervene And Request For Hearing filed by ALLTEL Communications, Inc. ("ACI"). In support of these Suggestions In Opposition, ASI states as follows:

1. On December 1, 1999, the Commission approved the interconnection agreement ("the Agreement") between Southwestern Bell Telephone Company ("SWBT") and SBC Advanced Solutions, Inc. ("ASI"). Order Approving Interconnection Agreement, Case No. TO-2000-261 (December 1, 1999).

2. On March 2, 2000, ASI filed Amendment No. 1 to the Agreement between ASI and SWBT. Amendment No. 1 is designed to modify the Agreement to be consistent with the FCC Merger Conditions imposed by the Federal Communications Commission ("FCC") as part of the approval of the merger of SBC Communications Inc. and Ameritech Corporation ("Merger Conditions").

3. On January 12, 2000, Lawrence E. Strickling, Chief, Common Carrier Bureau of the FCC, issued a letter to Ms. Janette Luebring, Chief of Telecommunications of the Kansas Corporation Commission (Attachment A), clarifying that Surrogate Line Sharing Charges should be included in the Agreement. In addition, Mr. Strickling noted that: "The *Merger Order* permits SBC/Ameritech to provide line sharing to its advanced services affiliate on an exclusive basis until SBC/Ameritech provides line sharing to unaffiliated carriers in the same geographic area. The *Merger Order* refers to this a 'interim line sharing.'" (Attachment A, fn.4)

4. As a result of Mr. Strickling's letter, SWBT agreed to amend the Agreement to be consistent with interpretations set forth in the FCC's letter. (See Attachment B) Amendment No. 1 modifies the Agreement to comply with the FCC's interpretation of the Merger Conditions, including the addition of provisions related to Discounted Surrogate Line Sharing Charges and Interim Line Sharing. The interim line sharing provisions were designed to be effective only on a temporary basis until SWBT is in position to provide line sharing to other carriers.

5. On or about May 2, 2000, ACI filed its Application To Intervene And Request For Hearing. As cause for its request for intervention and a hearing, ACI stated: "Specifically, it appears that the Amendment is discriminatory in that it purports to offer terms to SBC-ASI that will not be available to any other carrier, thereby violating the Telecommunications Act of 1996. . . ." (ACI Application to Intervene, p. 3).

6. ACI's Application should be denied for the following reasons. First, the FCC Merger Conditions specifically permit Interim Line Sharing to ASI on an exclusive basis prior to the time that line sharing is available to unaffiliated providers of Advanced

Services within the same geographic area. (See Paragraph 8, September 7, 1999 Ex Parte Presentation in Re Ameritech/SBC Communications, FCC Dkt. No. 98-141)(Attachment C)¹ This condition specifically permits SWBT to provide, on an interim basis, line sharing on an exclusive basis to ASI prior to the time that line sharing is available to other carriers. Second, line sharing is expected to be available to ACI and other carriers in Missouri by May 29, 2000. Amendment No. 2 sets forth the terms and conditions for providing DSL and the High Frequency Portion of the Loop by SWBT to Competitive Local Exchange Carriers, including ASI.

7. As explained above, the Commission should deny the ACI Application to Intervene And Request For Hearing in this proceeding since its stated concern regarding Amendment No. 1 is incorrect as a matter of law. In addition, ACI's concern will be moot on May 29, 2000, when line sharing becomes available to all CLECs. Amendment No. 2 provides for SWBT's provision of line sharing to other carriers which is the concern raised by ACI in its Application To Intervene And Request For Hearing. The terms and conditions for line sharing contained in Amendment No. 2 will be equally available to CLECs, which also retain the right to negotiate and, if necessary, arbitrate their own agreement.

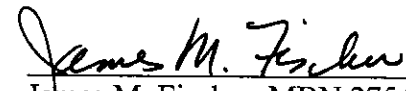
8. Under Section 252(e)(2) of the Telecommunications Act of 1996, a negotiated interconnection agreement may be rejected only if it discriminates against a telecommunication carrier not a party to the agreement or the agreement is not consistent with the public interest. Since Amendment No. 1 is filed to comply with the FCC's interpretation of the SBC-Ameritech Merger Conditions, and since Amendment No. 2

¹ This provision is also filed with ASI's Application in Case No. TA-2000-260, Attachment 5 to Application.

eliminates the stated (albeit erroneous) position for ACI's involvement, the intervention request should be denied.

WHEREFORE, SBC Advanced Solutions, Inc. respectfully requests that the Commission deny the Application To Intervene And Request For Hearing filed by ALLTEL Communications, Inc. in this proceeding, and to promptly approve both Amendments No. 1 and No. 2 to the SWBT-ASI interconnection agreements.

Respectfully submitted,


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Attorneys for SBC Advanced
Solutions, Inc.

CERTIFICATE OF SERVICE

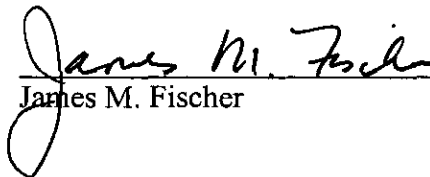
I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, or mailed, First Class postage prepaid, this 10th day of May, 2000, to:

Office of Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

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Brydon, Swearingen, & England P.C.
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Jefferson City, Missouri 65102-0456

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Southwestern Bell Telephone Company
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P.O. Box 360
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James M. Fischer

KEITH EPSTEIN

Federal Communications Commission

DA 00-52

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Adopted: January 11, 2000
Released: January 12, 2000

Ms. Janette Luehring
Chief of Telecommunications
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, KS 66604

Dear Ms. Luehring:

This letter responds to your request for guidance on interpreting certain conditions in the *SBC/Ameritech Merger Order*.¹ In your letter of January 3, 2000, you requested clarification of the *Merger Conditions* as they relate to the interconnection agreement between an SBC/Ameritech incumbent local exchange carrier ("LEC") and its advanced services affiliate. Specifically, you ask whether the "Surrogate Line Sharing Charges" that the incumbent LEC charges its affiliate may be posted on an Internet site instead of contained within the interconnection agreement. In addition, you asked whether information about the line sharing arrangement between the two companies must be contained in the interconnection agreement.

The *SBC/Ameritech Merger Order* requires SBC/Ameritech incumbent LECs and their advanced services affiliates to negotiate, and file for approval with the appropriate state commissions, interconnection agreements that set forth the "terms, conditions, and prices for the provision of interconnection, telecommunications services, and network elements that the affiliated incumbent LEC shall provide to the separate Advanced Services affiliate for the purposes of the separate affiliate's provision of Advanced Services."² In addition, such interconnection agreements "shall be sufficiently detailed to permit telecommunications carriers to exercise effectively their 'pick-and-choose' rights under 47 U.S.C. § 252(i) and the Commission's rules implementing that section."³

¹ Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket 98-141, Memorandum Opinion and Order, FCC 99-279 (rel. Oct. 8, 1999) ("SBC/Ameritech Merger Order").

² SBC/Ameritech Merger Order at Appendix C, para. 5(a).

³ *Id.*

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The *SBC/Ameritech Merger Order* further allows SBC/Ameritech incumbent LECs to provide "Interim Line Sharing" to their separate advanced services affiliates subject to certain provisions.⁴ With respect to Surrogate Line Sharing Charges, the *Merger Conditions* state: "The SBC/Ameritech incumbent LEC shall establish and make available through interconnection agreements with the separate Advanced Services affiliate . . . surrogate charges for the costs incurred in making available an unbundled local loop capable of providing Advanced Services . . . in combination with voice grade services [i.e., 'Surrogate Line Sharing Charges']".⁵

In accordance with the *Merger Conditions*, the interconnection agreement between SBC/Ameritech incumbent LECs and their advanced services affiliate must contain information about the Interim Line Sharing arrangement, even though SBC/Ameritech incumbent LECs may provide such arrangements to their affiliates on an exclusive basis for the interim period. Despite inclusion of information about Interim Line Sharing arrangements in the relevant interconnection agreements, we recognize that competing carriers will not be able to opt into such arrangements because of operational and technical issues discussed more fully in the Commission's *Advanced Services Third Report and Order*.⁶ Still, inclusion of information about the Interim Line Sharing arrangements is necessary to show that the affiliates operate at arm's length, and to inform the Commission, state commissions, and the public about important operational aspects of the relationship. Moreover, inclusion of the Interim Line Sharing arrangements is necessary to satisfy the "sufficiently detailed" requirement for interconnection agreements between SBC/Ameritech incumbent LECs and their advanced services affiliates.

The plain language of the *Merger Conditions* requires the Surrogate Line Sharing Charges to be contained within the interconnection agreement filed with the appropriate state

⁴ *Id.* at Appendix C, para. 8. The *Merger Order* permits SBC/Ameritech to provide line sharing to its advanced services affiliate on an exclusive basis until SBC/Ameritech provides line sharing to unaffiliated carriers in the same geographic area. The *Merger Order* refers to this as "interim line sharing." See *id.* at paras. 369-70.

⁵ *Id.* at Appendix C, para. 8(b). Calculation of the Surrogate Line Sharing Charge is set forth in the *Merger Conditions*.

⁶ Consistent with the Commission's rules, an incumbent LEC's pick-and-choose obligations do not apply when: (1) the cost of providing the target service or element is greater than the costs negotiated in the original interconnection agreement; and (2) technical infeasibility prevents such an arrangement. 47 C.F.R. § 51.309(b). The Commission recently found that certain operational and technical barriers temporarily prevent incumbent LECs from immediately providing line sharing to competing carriers. See *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order in CC Docket No. 98-147*, FCC 99-355, para. 161 (rel. Dec. 9, 1999) (establishing requirement to implement line sharing within six months after addressing technical and operational issues) ("Advanced Services Third Report and Order"). Once the technical and operational barriers are resolved, competing carriers will be able to pick-and-choose from available line sharing arrangements. The Order was published in the Federal Register on January 10, 2000. See *id.*, 65 Fed. Reg. 1331 (Jan. 10, 2000).

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JAN 12 2000 11:10 FR SBC SAN ANTONIO
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Federal Communications Commission

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commissions. Failure to include the Surrogate Line Sharing Charges in the interconnection agreement would be inconsistent with the text of the *Merger Conditions* and could impair the ability of unaffiliated third parties to exercise their rights under the *SBC/Ameritech Merger Order* and the Commission's rules.

Please do not hesitate to contact me if I can be of further assistance. You may also contact Anthony Dale in the Common Carrier Bureau directly at (202) 418-2260 for further information on this matter.

Sincerely,


Lawrence E. Strickling
Chief, Common Carrier Bureau

JAN 14 2000 (FRI)

10:04

PWS OVERLAND PARK

(FAX) 913 451 6205

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4-13-2000 14:18

SWBT KS LEGAL

P.02/02

April J. Rodewald
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Phone 785 278-8411
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January 13, 2000

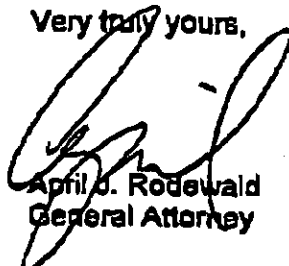
Ms. Janette Luehring
Chief of Telecommunications
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027Re: Interconnection Agreement between Southwestern Bell Telephone Company and
SBC Advanced Solutions, Inc.. Docket No. 00-SWBT-248-IAT

Dear Janette:

In response to the Federal Communication Commission's ("FCC") letter dated January 12, 2000, please be advised that Southwestern Bell Telephone Company ("SWBT") and SBC Advanced Solutions, Inc. ("ASI") will amend their Interconnection Agreement consistent with interpretations set forth in the FCC's letter. SWBT and ASI will file the amendment to the Interconnection Agreement by February 10, 2000.

It is our understanding that the KCC Staff will recommend to the Commission approval of the Interconnection Agreement, conditioned upon our filing of the above-described amendment. Thank you for your assistance in this matter.

Very truly yours,


April J. Rodewald
General Attorney

JAN 14 2000 10:08

Attachment B

customers.

8. Provisioning of Interim Line Sharing to the Separate Advanced Services Affiliate.

Notwithstanding the non-discrimination provisions of Paragraph 3 above, an SBC/Ameritech incumbent LEC may provide Interim Line Sharing (as defined in Paragraph 3d) to a separate Advanced Services affiliate on an exclusive basis in accordance with the following provisions:

a. The SBC/Ameritech incumbent LEC may provide Interim Line Sharing capability to the separate Advanced Services affiliate within a certain geographic area for the provision of Advanced Services activated prior to the time that line sharing is provided to unaffiliated providers of Advanced Services within the same geographic area.

b. The SBC/Ameritech incumbent LEC shall establish and make available through interconnection agreements with the separate Advanced Services affiliate (and with unaffiliated telecommunications carriers pursuant to the provisions of Paragraph 14) surrogate charges for the costs incurred in making available an unbundled local loop capable of providing Advanced Services (such as ADSL) in combination with voice grade services ("Surrogate Line Sharing Charges"). For purposes of this Section I, "voice grade service" means the transmission of an analog signal within an approximate bandwidth of 300 to 3000 Hz. The Surrogate Line Sharing Charges shall be 50 percent of the lowest monthly recurring charge, 50 percent of the lowest non-recurring line or service connection charge, and 100 percent of the lowest non-recurring service order charge (i.e., there is no discount for the service order charge), for the unbundled local loop then effective that have been established by the state commission pursuant to 47 U.S.C. § 252(d)(1). The lowest non-recurring charges used in calculating the Surrogate Line Sharing Charges shall be the set of non-recurring charges contained in a tariff and/or single interconnection agreement for which the sum of the non-recurring line or service connection charge and the non-recurring service order charge is the lowest. The SBC/Ameritech incumbent LEC shall charge the separate Advanced Services affiliate these Surrogate Line Sharing Charges for the affiliate's shared use of a local loop if: (i) the SBC/Ameritech incumbent LEC is able to provision the Advanced Service of the separate Advanced Services affiliate over the same loop that the incumbent LEC is using to provide voice grade services on either a retail or wholesale basis, and (ii) the Advanced Service is within a spectral mask that is compatible with the incumbent LEC's voice grade service and the filters used by the incumbent LEC to provide Interim Line Sharing. The compatibility standard in the previous sentence shall be presumptively met if the Advanced Service utilizes a technology for which the spectral mask complies with an industry-recognized standard that would be compatible with both (i) the incumbent LEC's voice grade service, and (ii) the filters specified in Annex E to ANSI standard T1.413-1998. For any other technology, the separate Advanced Services affiliate may meet the compatibility standard by showing that the technology (i) would be compatible with the incumbent LEC's voice grade service and (ii) is compatible with the filters specified in Annex E to ANSI standard T1.413-1998. Surrogate Line Sharing Charges shall not apply retroactively to charges for an unbundled loop incurred prior to the effective date of the Surrogate Line Sharing Charges, but will apply to charges incurred after the effective date of the Surrogate Line Sharing Charges for both (i) recurring charges for qualifying loops in service, and (ii) recurring and non-recurring charges for new installations of qualifying loops. In order to be entitled to the Surrogate Line Sharing Charges, however, the SBC/Ameritech separate Advanced Services affiliate must certify to the incumbent LEC that it is not providing voice grade service in conjunction with Advanced Services over the broadband channel. The Surrogate Line Sharing Charge may be billed through credits, true-ups, or other billing mechanisms provided, however, that such credits, true-ups or other mechanisms are applied within 60 days of the initial billing for the service.