

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
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Application of SBC Communications )  
Inc. et al. Pursuant to Section 271 of the )  
Telecommunications Act of 1996 to ) CC Docket No. 97-121  
Provide In-Region, InterLATA )  
Services in the State of Oklahoma )  
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ADDENDUM TO THE EVALUATION OF THE  
UNITED STATES DEPARTMENT OF JUSTICE

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Several parties have informally asked the Department to clarify its views concerning two issues that have arisen in connection with this proceeding: (1) whether we agree with the argument made by some commentators that under Section 271(c)(1)(A) ("Track A"), each separate class of subscribers that must be served to satisfy that entry track, i.e., residential and business, must be served "exclusively . . . or predominantly" over the telephone exchange facilities of an unaffiliated provider;<sup>1</sup> and (2) the importance (and meaning) of "performance benchmarks" in assessing whether BOC in-region interLATA entry would be in the public interest. To address any confusion on these points, the Department now files this addendum.

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<sup>1</sup> See, e.g., Opposition of Brooks Fiber Properties, Inc. to Application of SBC Communications, Inc., CC Docket No. 97-121, at 8-9 (May 1, 1997).

I. Section 271(c)(1)(A) Does Not Require That Both Residential and Business Customers Be Served Over the Facilities-Based Competitors' Own Facilities

Section 271(c)(1) requires that a BOC's application to provide in-region interLATA services proceed under one of two distinct tracks. As our evaluation explained, SBC's application is governed by the standards of Track A. 47 U.S.C. §271(c)(1)(A). See SBC Evaluation at 9-20. Under Track A, a BOC must be providing "access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers." The statute further specifies that "such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier." 47 U.S.C. § 271(c)(1)(A). As we explained in our evaluation, SBC does not meet the standards of Track A because there is no facilities-based competitor offering service to residential subscribers. See SBC Evaluation at 20-21. Brooks Fiber, to which SBC points as a residential service provider, is merely testing its ability to offer residential service by providing uncompensated service to four employees; thus, it does not compete with SBC to serve any residential "subscribers." See id.

Some parties have pressed for rejection of SBC's application on the additional ground that Brooks does not provide residential service to anyone, including its four employees, over its own facilities. In their view, Track A requires, among other things, that residential service is being provided completely or predominantly over a competitor's own facilities. We disagree.

The statute requires that both business and residential subscribers be served by a competing provider, and that such provider must be exclusively or predominantly facilities-based. It does not, however, require that each class of customers (i.e., business and residential) must be served over a facilities-based competitor's own facilities. To the contrary, Congress expressly provided that the competitor may be providing services "predominantly" over its own facilities "in combination with the resale of " BOC services. 47 U.S.C. § 271(c)(1)(A). Thus, it does not matter whether the competitor reaches one class of customers -- e.g., residential -- only through resale, provided that the competitor's local exchange services as a whole are provided "predominantly" over its own facilities.

This reading is not only consistent with the language of the statute, but also serves Congress' twin purposes of maximizing competition in local exchange and interexchange telecommunications markets. To ensure that the BOCs truly opened up their local networks to competitors, Congress required that any BOC qualifying for Track A consideration wait until a facilities-based competitor became operational -- provided that there is at least one potential competitor proceeding toward that goal in a timely fashion -- before that BOC could satisfy the statute's in-region interLATA entry requirements. In mandating that such a facilities-based competitor offer both residential and business service, Congress ensured both that (1) the facilities-based entry path is being used wherever requested; and (2) at least one facilities-based competitor is offering service to residential, as well as business, subscribers. See SBC Evaluation at 14-17. Once those two basic conditions have been satisfied, however, there is no reason to

delay BOC entry into interLATA markets simply because competitors that have a demonstrated ability to operate as facilities-based competitors, and that are in fact providing service predominantly over their own facilities, find it most advantageous to serve one class of customers on a resale basis. Imposing this requirement would tip unnecessarily the statute's balance between facilitating local entry and providing for additional competition in interLATA services by adding an unnecessary prerequisite to Track A that might foreclose entry in certain cases for no beneficial competitive purpose. Cf. id. at 22.

## II. The Importance of Performance Benchmarks

In articulating the Department's approach to assessing BOC applications for in region, interLATA authority, we stated that the existence of "performance benchmarks" serves an important purpose in demonstrating that the market has been "irreversibly opened to competition." To better explain the role of "performance benchmarks," "performance standards," and "performance measures" in our analysis, we have outlined further the definition and importance of these concepts below.<sup>2</sup>

At bottom, a "performance benchmark" is a level of performance to which regulators and

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<sup>2</sup> To reflect this typology, our evaluation should be modified as follows:  
Page 45, line 2 of heading "b." (and Table of Contents), "**standards**" to "**benchmarks**";  
Page 47 line 3, "**measures**" to "**benchmarks**";  
Page 47 line 5, "**measures**" to "**benchmarks**";  
Page 48 line 9, "**measures**" to "**benchmarks**" and add "**as well as its commitment to adhere to certain performance standards**" to the end of the sentence;  
Page 60 line 9, "**measures**" to "**benchmarks**"; and  
Page 60 lines 11, 15, 18 "**standards**" to "**measures**."

competitors will be able to hold a BOC after it receives in-region interLATA authority. The most effective benchmarks are those based on a "track record" of reliable service established by the BOC. Such benchmarks may reflect either the BOC's performance of a wholesale support function for a competitor, or, in areas where the BOC performs the same function for its competitors as it does for its own retail operations, a benchmark may also be established by the BOC's service to its own retail operations. In instances where neither type of benchmark is available, the Department will consider other alternatives that would ensure a consistent level of performance, such as, for example, a commitment to adhere to certain industry performance standards and/or an audit of the BOC's systems by a neutral third party. Such benchmarks are significant because they demonstrate the ability of the BOC to perform a critical function -- for example, the provisioning of an unbundled loop within a measurable period of time. Thus, benchmarks serve, as explained in our evaluation, the important purpose of foreclosing post-entry BOC claims that the delay or withholding of services needed by its competitors should be excused on the ground that the services or performance levels demanded by competitors are technically infeasible. See SBC Evaluation at 45-48.

To make "performance benchmarks" a useful tool for post-entry oversight, we also expect the BOC to adopt the specific means and mechanisms necessary to measure its performance -- i.e., "performance measures." That is, if there are no such systems in place, it will be considerably more difficult to ensure that the BOC continues to meet its established performance benchmarks. Finally, we acknowledge that there may be areas in which the present industry standards will be

updated, requiring new levels of performance. Accordingly, the Department will also focus on the importance of commitments by BOCs to adhere to "performance standards," even when they will be imposed upon it post-entry.

Respectfully submitted,

Joel I. Klein  
Acting Assistant Attorney General  
Antitrust Division

Andrew S. Joskow  
Deputy Assistant Attorney General  
Antitrust Division

Lawrence J. Fullerton  
Deputy Assistant Attorney General  
Antitrust Division

Philip J. Weiser  
Senior Counsel  
Antitrust Division

---

Donald Russell  
Chief

Carl Willner  
Jonathan D. Lee  
Stuart H. Kupinsky  
Attorneys  
Telecommunications Task Force

Gerald B. Lumer  
Economist  
Competition Policy Section

Antitrust Division  
U.S. Department of Justice  
555 4th Street, N.W.  
Room 8104  
Washington, D.C. 20001  
(202) 514-5621

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