

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

In the Matter of)	
)	File No. EB-03-IH-0013
)	
)	Acct. No. 200332080019
)	
SBC Communications Inc.)	FRN No. 0004333571
)	

ORDER

Adopted: September 25, 2003

Released: October 1, 2003

By the Commission:

1. The Commission has been conducting an investigation into possible violations by SBC Communications Inc. (“SBC”) of section 271 of the Communications Act of 1934, as amended, in connection with the provisioning of in-region interLATA services in states where SBC had not received authorization to provide such services pursuant to section 271 of the Act.¹

2. The Commission and SBC have negotiated the terms of a Consent Decree that would terminate the Commission’s investigation. A copy of the Consent Decree is attached hereto and is incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial and material questions of fact as to whether SBC possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations.

5. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), that the Consent Decree, incorporated by reference in and attached to this order, is hereby ADOPTED.

¹ See Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Michelle Thomas, Executive Director, Federal Regulatory, SBC Communications Inc., dated March 10, 2003.

6. IT IS FURTHER ORDERED that the Secretary SHALL SIGN the Consent Decree on behalf of the Commission.

7. IT IS FURTHER ORDERED that the above captioned investigation IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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CONSENT DECREE

1. The Federal Communications Commission (the “Commission” or the “FCC”) and SBC Communications Inc. (“SBC”) hereby enter into this Consent Decree for the purpose of terminating an investigation by the Commission into whether SBC provided interLATA services prior to its receipt of authorization pursuant to section 271 of the Communications Act of 1934, as amended (the “Act”). As part of the investigation, the Enforcement Bureau (“Bureau”) has examined SBC’s compliance with sections 271(a) and (b) of the Act, 47 U.S.C. §§ 271(a) and (b), which prohibit a Bell Operating Company (“BOC”) from providing in-region interLATA services in states where it has not received authorization to provide such services pursuant to section 271 of the Act.²

2. For purposes of this Consent Decree, the following definitions shall apply.
- (a) “FCC” or the “Commission” means the Federal Communications Commission and all of its bureaus and offices.
 - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (c) “SBC” means the SBC Communications Inc., its incumbent local exchange telephone companies, any wholly or partially owned subsidiary, or other affiliated companies or business, and their successors and assigns.

² See Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Michelle Thomas, Executive Director, Federal Regulatory, SBC Communications Inc., dated March 10, 2003.

- (d) “Parties” means SBC and the Commission.
- (e) “In-region state” is defined at 47 U.S.C. § 271(i)(1), and for SBC includes Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- (f) “Order” or “Adopting Order” means an order of the FCC adopting the terms of this Consent Decree without change, addition, or modification.
- (g) “Final Order” means an order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.
- (h) “Investigation” means the investigation commenced by the Bureau on March 10, 2003 into whether SBC provided, marketed and/or sold in-region, interLATA services prior to its receipt of authorization pursuant to section 271 of the Act during the period from January 1, 2002 to the present. The term specifically includes the matters identified in SBC’s responses to the Bureau’s Letter of Inquiry dated March 10, 2003, and the events discussed in the SBC voluntary disclosure letters to the Commission dated July 3, 2002 and November 19, 2002, and in meetings with the Bureau on June 21, 2002 and January 15, 2003.
- (i) “Effective Date” means the date on which the Commission adopts the Order.
- (j) “Compliance Plan” means the safeguards stated in paragraphs 8 and 9 herein.

I. BACKGROUND

3. SBC is prohibited from providing certain interLATA (or “long distance”) services originating in a particular in-region state until it receives authorization to provide such services in such state pursuant to section 271 of the Act. 47 U.S.C. § 271(a). To obtain authorization to provide in-region interLATA services under section 271, SBC must show, among other things, that it fully implemented a “competitive checklist” designed to give competitors nondiscriminatory access and interconnection to its network. 47 U.S.C. § 271(d)(3)(A).

4. SBC received authorization pursuant to section 271 to provide long distance services to customers in Texas in 2000, and in Arkansas, Kansas, Missouri, and Oklahoma in 2001. More recently, SBC received authorization pursuant to section 271 to provide long distance services to customers in California on December 19, 2002, in Nevada on April 14, 2003, and in Michigan on September 17, 2003. On July 17, 2003, SBC filed its pending applications for authorization to provide long distance services to customers in Indiana, Illinois, Ohio and Wisconsin.

5. On March 1 and 19, June 21 and 24, July 3, November 19, December 30, 2002, and January 15, 2003, SBC disclosed to FCC staff in the Wireline Competition Bureau and the Enforcement Bureau certain incidents that potentially constituted providing long distance services in pre-relief states. SBC states that it made these disclosures in good faith soon after SBC learned of the incidents and that SBC took immediate steps to correct the problems as described herein. On March 10, 2003, the Enforcement Bureau opened an informal Investigation. SBC states that it cooperated with the Bureau's Investigation in good faith. The Bureau's Investigation included review of the following incidents:

- (a) Continued Provisioning to Former Affiliates: Prior to the SBC/Ameritech merger, Ameritech affiliates had received long-distance service on approximately 980 lines from Ameritech's 272 affiliate, pursuant to the Official Communications Services ("OCS") exemption in section 271(f) of the Act, 47 U.S.C. § 271(f). Following the SBC/Ameritech merger, SBC divested these affiliates, however, many of the lines associated with the service of these previous affiliates continued to be identified in an SBC database as an affiliate line although the section 271(f) exemption no longer applied. SBC states that it failed to remove these lines from its OCS database due to human error and between October 1999 and November 2002 inadvertently continued to provide the long-distance service free-of-charge. SBC states that once it discovered the problem, it promptly took steps to remove these lines from the OCS database, terminated the provision of long distance service over these lines, and voluntarily disclosed the matter to Commission staff.
- (b) ASI Provisioning: SBC states that between February 2001 and April 2002, SBC's advanced services affiliate, Advanced Services, Inc. ("ASI") inadvertently provided interLATA transport of traffic for nine customers in California. SBC states that these incidents occurred because an SBC technician mistakenly used an interLATA connection between ASI and the customers' Internet service providers ("ISPs"), instead of an intraLATA connection. SBC states that ASI did not bill the ISPs or the end user customers for the interLATA connections, and that SBC voluntarily disclosed this matter to Commission staff.
- (c) SBC West Provisioning: SBC states that between July 1987 and November 2002, SBC inadvertently provided and billed for in-region long-distance service involving approximately 140 lines in its former Pacific Bell (now SBC West) region. SBC states that it discovered these lines following a comprehensive review of its circuits in the SBC West region. SBC states that, in many cases, the causes of the problems are unknown to SBC, but SBC generally attributes the problems to a combination of human error and problems with SBC and third-party databases. SBC states that once it discovered this issue, it promptly took steps to terminate service over the affected lines and voluntarily disclosed the matter to Commission staff. SBC states that it voluntarily refunded all charges for inadvertently provided interLATA service.

- (d) California Pre-Launch Testing Provisioning: On December 19, 2002, the Commission released its decision authorizing SBC to provide long-distance service in California. Prior to the effective date of that order, SBC began testing its process for connecting long-distance customers in California, which involved changing customers' presubscribed interexchange carrier ("PIC") from another long distance provider to SBC. Although the test was intended to be internal, SBC's system sent twelve PIC change orders to Verizon. Verizon converted five of the twelve orders on December 23, 2002, and SBC was designated as the presubscribed long distance service provider for these customer accounts. SBC and Verizon returned all of these customers to their original carriers no more than eight days later. SBC states that this event occurred because SBC personnel did not realize that the California order delivery process was active at the time of the testing.
- (e) PIC and Switched Toll Free Orders: SBC states that in 37 separate instances, SBC inadvertently placed orders to either change a customer's presubscribed interexchange carrier or establish a toll-free service terminating in states where it did not have section 271 authority. SBC states that in most cases it cancelled these orders before they were provisioned and it did not complete or bill for any long distance calls as a result of the PIC changes. SBC asserts that these incidents were due to inadvertent mistakes by sales representatives.

II. AGREEMENT

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between SBC and the Commission of the Investigation. In consideration for the termination of this Investigation in accordance with the terms of this Consent Decree, SBC agrees to the terms, conditions, and procedures contained herein.

7. SBC and the Bureau agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by SBC with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, SBC does not admit any noncompliance, violation or liability associated with or arising from its actions or omissions as described herein.

8. SBC states that it took the following corrective measures in response to the incidents described in paragraph 5 herein:

- (a) Implemented processes to validate new numbers added to affiliate databases.

- (b) Implemented the following processes applicable to the SBC-West ordering and provisioning systems:
- (1) Designed and implemented pre-design and post-design Trunk Information Record Keeping System (“TIRKS”) edits to prevent the provisioning of interLATA circuits without human intervention.
 - (2) Required manager approval to override TIRKS system edit.
 - (3) Updated Methods and Procedures to educate provisioning and maintenance managers on permissible interLATA serving arrangements prior to section 271 authorization.
 - (4) Updated Network Operations and Translation methods and procedures to add steps to the provisioning and maintenance process to identify interLATA circuits and document the interLATA exemption that applies.
 - (5) Designed additional system edits to the Service Order Retrieval and Distribution (“SORD”) ordering system and the Carrier Access Billing System (“CABS”) to prevent the ordering of interLATA circuits without human intervention. These system edits will be completed on or before December 31, 2003.
- (c) Made edits in the SBC Long Distance ordering system that provide notice to service representatives when an attempt is made to establish an account in an unauthorized state. Service representatives now must get legal and/or regulatory approval to proceed with the order.
- (d) Required refresher training to service representatives and sales teams on Switched Toll Free Service to ensure that the terminating telephone number is in a state where SBC is an authorized long distance provider.
- (e) Ensured that SBC Long Distance daily report that identifies billing accounts established in unauthorized states is reviewed early in the day and acted on before the end of the same day to ensure that ordering errors are corrected before services are provisioned. If any unauthorized accounts are identified within the SBC Long Distance organization, the accounts are cancelled, and the billing system is checked for usage on the accounts to ensure that no customer is billed.

9. Compliance Plan. For purposes of settling the matters set forth herein, SBC commits to retain and incorporate into a Compliance Plan the safeguards described in paragraph 8 herein, except for the processes set forth in paragraph 8(b). In addition to retaining these measures, SBC commits to implement the following additional safeguards as part of the Compliance Plan:

- (a) SBC will implement a process for regular review and validation of LATA tables used in provisioning and pre-order systems to detect errors downloaded from third-party databases.
- (b) SBC will modify its Methods and Procedures to add steps to the provisioning and maintenance process to identify interLATA circuits.
- (c) SBC will enhance its affiliate OCS administration procedures, expanding semi-annual review of affiliate database telephone numbers and migration procedures for the sale or purchase of affiliates.
- (d) SBC will develop a comprehensive plan for administering OCS to its affiliates to prevent the inadvertent provision of interLATA OCS to unaffiliated entities. Upon initiating the sale or divestiture of an affiliate, SBC will undertake a process to identify and migrate the affected affiliate's official communications services.
- (e) SBC will modify its existing section 272 compliance training materials and section 272 employee compliance guidelines to add additional emphasis as to the impermissibility of premature selling, marketing and provisioning of interLATA services. These materials will be made available to employees via SBC's intranet website.

10. SBC will assign the oversight of the Compliance Plan to the SBC 272 Oversight Team that is comprised of senior managers. The SBC 272 Oversight Team will meet monthly and review compliance with this Compliance Plan.

11. Review of SBC's compliance with this Compliance Plan will be included in the Enforcement Bureau's Section 271 Compliance Review Program.

12. SBC will implement this Compliance Plan within 30 days of the Effective Date of the Consent Decree, unless otherwise noted in the Compliance Plan.

13. This Compliance Plan shall remain in effect until such time as SBC obtains authorization pursuant to section 271 of the Act to provide long distance services in each of its twelve in-region states.

14. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the Investigation.

15. SBC will make a voluntary contribution to the United States Treasury in the amount of \$1.35 million within 10 calendar days after the Commission Order adopting this

Consent Decree becomes final. SBC must make this payment by check, wire transfer or money order drawn to the order of the Federal Communications Commission, and the check, wire transfer or money order should refer to “Acct. No. 200332080019” and “FRN No. 0004333571.”

If SBC makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P. O. Box 73482, Chicago, Illinois, 60673-7482. If SBC makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

16. The Commission agrees that, in the absence of material new evidence relating to incidents that SBC has not disclosed to the Bureau through the Effective Date of this Consent Decree, it will not use the facts developed in this Investigation, or the existence of this Consent Decree, to institute, on its own motion, any new proceedings, formal or informal, or to make any actions on its own motion against the Company concerning the matters that were disclosed in the Investigation. The Commission also agrees that, in the absence of material new evidence relating to incidents that SBC has not disclosed to the Bureau through the Effective Date of this Consent Decree, it will not use the facts developed in the Investigation to institute on its own motion any proceeding, formal or informal, or take any action against SBC with respect to its basic qualifications, including its character qualifications, to be a Commission licensee. Nothing in this Consent Decree limits the Commission’s authority to consider and adjudicate any formal complaint that may be filed pursuant to sections 208 or 271 of the Communications Act, as amended, and to take any action in response to such formal complaint.

17. SBC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, or modification.

18. SBC’s decision to enter into this Consent Decree is expressly contingent upon the Commission’s issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

19. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

20. If either party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Adopting Order, neither SBC nor the Commission shall contest the validity of the Consent Decree or Adopting Order, and SBC will waive any statutory right to a trial *de novo*.

21. Any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

22. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which SBC does not consent) that provision will be superseded by such Commission rule or order.

23. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By: _____
Marlene H. Dortch
Secretary

SBC COMMUNICATIONS INC.

By: _____
James C. Smith
Senior Vice President – Federal Regulatory
SBC Telecommunications, Inc.