

FCC 97-228 - MEMORANDUM OPINION AND ORDER
RELEASED: June 26, 1997

SBC Communications Inc. Oklahoma Section 271 Application

I. INTRODUCTION

SBC filed its Section 271 application on April 11, 1997. The FCC determined that since SBC had not satisfied section 271(c)(1)(A) and could not proceed pursuant to section 271(c)(1)(B), SBC did not satisfy the requirements of subsection 271(c)(1). Therefore, the Commission denied SBC's application pursuant to section 271(d)(3).

II. STATUTORY FRAMEWORK

This section discusses the statutory requirements in the Telecommunications Act of 1996 regarding conditions each Bell Operating Company (BOC) must satisfy in order to be able to provide interLATA services originating in any in-region state.

III. REQUIREMENTS OF SECTION 271(c)(1)(A)

A. Background

In order to satisfy the requirements of Section 271(c)(1)(A), A BOC must demonstrate...Since SBC relied exclusively on Brooks Fiber for purposes of satisfying this section, the FCC focused only on the record evidence concerning Brooks' activities in Oklahoma. The FCC stated that a key issue in determining SBC's compliance with this item was whether Brooks is a competing provider of telephone exchange service to both residential and business subscribers.

B. Positions of the Parties

SBC position is that Brooks is a competing provider that satisfies the requirements of section 271(c)(1)(A).

Brooks position is that they are not a residential service provider in Oklahoma. Brooks states that the sole purpose of its test is to identify and correct any problems in SBC's and Brooks' resale support and ancillary services system. Brooks' test of four circuits to the homes of its employees does not constitute residential service for the purpose of this section. Brooks represents that it "is not now offering residential service in Oklahoma, nor has it ever offered residential service in Oklahoma," and that it "is not accepting any request in Oklahoma for residential service."

CompTel's position is that it does not even appear that

Brooks' four 'customer' test is a telecommunications service at all because it is neither available to the public nor offered for a fee.

C. Discussion

The Commission found that SBC has failed to satisfy certain threshold requirements. Specifically, SBC has failed to demonstrate that there is a competing provider of telephone exchange service to both residential and business subscribers in Oklahoma. The Commission concluded that the provision of local exchange service by Brooks Fiber Properties, Inc. on a test basis to the homes of four of its employees does not qualify Brooks as a competing provider of telephone exchange service to residential subscribers. The Commission also emphasized that Brooks has represented that it currently is not accepting requests for residential service in Oklahoma.

IV. REQUIREMENTS OF SECTION 271(c)(1)(B)

A. Background

Section 271(c)(1)(B) allows a BOC to seek entry under Track B if "no such provider has requested the access and interconnection described in Section 271(c)(1)(A).

B. Position of Parties

SBC contends that it is entitled to proceed under Track B.

ALTS asserts the SBC is precluded from proceeding under Track B because "interconnection requests" have been filed in Oklahoma.

C. Discussion

The Commission also concluded that SBC may not pursue in-region interLATA entry in Oklahoma under Track B at this time because it has received requests from potential competitors to connect to its network that, if implemented, will lead to the provision of competing local telephone service of the type described in Track A to residential and business customers. The Commission found that this interpretation of Track B is the most natural reading of the statute and the only interpretation consistent with the statutory goal of facilitating competition in the local exchange market. Track B enables a BOC in certain limited circumstances to obtain long distance authority without showing that it faces competition in the provision of local telephone services to residential and business customers. The Commission rejected the argument by SBC and most other BOCs that Track B entry is available in a state unless the BOC has received a request for access and interconnection from an

operational facilities-based competing provider of local telephone service to residential and business customers. Adoption of this interpretation, the Commission concluded, would create an incentive for a BOC to delay the provision of facilities in order to prevent any new entrants from becoming operational and thereby preserve the BOC's ability to enter under Track B.

V. CONCLUSION

The Commission found that SBC has failed to satisfy the requirements of section 271(c)(1), it did not address SBC's compliance with the competitive checklist, the requirements of section 272, or whether SBC's entry into the long distance market is consistent with the public interest.

VI. ORDERING

The Commission Ordered SBC Communications application be denied. It also Ordered the motion filed by the Association for Local Telecommunication Service be Dismissed as moot. Finally, the Commission Ordered the request for sections filed by the Association for Local Telecommunication Service be denied.