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June 11, 2004

Mr. William R. Drexel  
General Counsel  
SBC  
One SBC Plaza, #2900  
Dallas, Texas 75202

Mr. Danny S. Ashby  
Mr. Marion VanBebber  
Hughes & Luce, LLP  
1717 Main Street, Ste. 2800  
Dallas, Texas 75201

Re: Docket Nos. 28821 and 29824;  
Accessible Letter Number CLECALL04-095, *SBC Announces UNE-P rate  
stability through the end of 2004*

Dear Messrs. Drexel, Ashby and VanBebber:

Today SBC issued an Accessible Letter<sup>1</sup> in which it states that it has committed

not to unilaterally increase the pricing for mass market UNE-P, or  
USTA II-affected high-capacity loops, or USTA II-affected high  
capacity dedicated transport between SBC's offices through at  
least the remainder of 2004.

On behalf of the CLECs identified below,<sup>2</sup> I am writing to obtain clarification of the commitment  
that SBC is making to CLECs. The CLECs consider clarification essential, in light of SBC's

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<sup>1</sup> Accessible Letter CLECALL04-095, attached.

<sup>2</sup> This letter is being sent, with permission, on behalf of the following CLECs: AMA  
Communications, L.L.C. dba AMA\*Techtel Communications, Birch Telecom of Texas, LTD, LLP  
Cbeyond Communications of Texas, LP, ICG Communications., KMC Telecom III, McLeod USA  
Telecommunications Services, Inc., nii communications, Ltd., NTS Communications, Inc., Time Warner

statement to the PUC in its responsive filing yesterday in Texas Docket Nos. 28821 and 29824 that SBC's commitment to FCC Chairman Michael Powell obviates any need for PUC action in these Dockets.<sup>3</sup> The CLECs cannot rely on a promise that, upon close inspection, is far less comforting than it first appears.

First, the Accessible Letter states that SBC "will continue providing to our wholesale customers mass-market UNE-P" through at least the remainder of the year. As you know, the term "mass-market" for local switching and the UNE Platform was not defined by the FCC in the TRO and, instead, the meaning of "mass-market" has been a contested issue in TRO implementation dockets in every state, including Texas. Is it SBC's intention to apply its own definition of "mass-market" irrespective of the fact that no consensus exists on the meaning of this term? If so, does SBC define "mass-market" for purposes of its commitment as customers served by fewer than 4 voice grade lines, which is the position it has taken in Docket No. 28607? And, aside from this definitional issue, does SBC intend to deny new orders for UNE-P on June 16?

Second, I note that nothing in the Accessible Letter indicates that SBC-Texas is making any commitment regarding continued provisioning of UNE-P for the "non-mass-market," whatever SBC considers that to be. Is it SBC's intent to apply its own definition of this term? And, if so, is it also SBC's plan to try to cease accepting orders for UNE-P for the non-mass-market after June 16? And, after June 16, does SBC contend it can convert non-mass-market UNE-P arrangements to resale or something else? What notice does SBC-Texas intend to provide to its wholesale customers regarding its position on the availability and provisioning of UNE-P to serve the non-mass-market?

Third, SBC has committed that it will not unilaterally increase pricing for USTA II-affected high-capacity loops or for USTA II-affected high capacity dedicated transport through at least the end of 2004. It is not clear what SBC considers to be a "USTA-II affected loop or transport." For example, are dark fiber DS1 or DS3 loops subject to SBC's commitment? And, is dark fiber DS1 and DS3 transport between SBC central offices subject to SBC's commitment? Again, is it SBC's intent to deny new orders on June 16?

Fourth, we cannot determine whether SBC's commitment really extends to the rest of 2004. SBC previously has stated that it reserves the right to invoke Sections 14.3.1 and 14.4.1 of the T2A to change UNE prices to market prices on 60 days' notice. The Accessible Letter does not state that SBC agrees to forego such action. Instead it contains a caveat that TELRIC-based rates could change if an interconnection agreement so permitted.

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Telecom of Texas, L.P., Westel, Inc., Xspedius Communications, LLC, and Z-Tel Communications, Inc. (collectively the "CLEC Coalition"); GCEC Technologies, Smartcom Telephone, LLC, Quick-Tel Communications, Inc., Connect Paging, Inc. d/b/a Get A Phone, BasicPhone, Inc., BroadLink Telecom, LLC, Rosebud Telephone, LLC, IQC, LLC, and Superior Phone Company, Inc.

<sup>3</sup> "CLECs have failed to demonstrate the existence of an actual controversy that would warrant any-much less emergency-relief by this Commission." SBC Texas' Response to Joint CLECs Request for Interim Relief at 5.

[SBC's] commitment means that SBC will continue providing to our wholesale customers mass-market UNE-P, DS1 and DS3 loops, and DS1 and DS3 dedicated transport between SBC central offices, and will not unilaterally increase the applicable state-approved prices for these facilities through December 31, 2004. *Of course, those TELRIC rates are otherwise subject to change in accordance with the provisions of each CLEC's interconnection agreement.*

(emphasis supplied) Does SBC continue to reserve its assertion of rights under Sections 14.3.1 and 14.4.1 of the T2A to issue notice and initiate a move to "market prices" if the FCC or the PUC declares any network element to no longer be a UNE, an action the FCC could take at any time after June 15? Is it SBC's intent in Texas to provide UNEs through at least the rest of 2004 to those CLECs that have the T2A or a T2A-based agreement, irrespective of the release of an FCC order declaring that these facilities no longer are UNEs?

Fifth, is SBC making a commitment that it will not seek a true-up of TELRIC-based UNE rates back to June 16? I note that the Accessible Letter states that SBC's commitment

does not constitute agreement by SBC that any of these facilities are lawfully required under Section 251(c)(3), and, of course, SBC reserves any and all rights to challenge the lawfulness of any requirement to provide these facilities, *along with their associated rates.*

(emphasis supplied) Is it SBC's intent to reserve a right to recover the difference between TELRIC-based UNE rates and whatever other rates (e.g., resale, special access) SBC eventually may contend apply? If so, does SBC intend to issue advance notice so that CLECs can order UNE loops in place of UNE-P?

Last, what transition plan does SBC have in mind for CLEC migration of customer service from UNE-P to UNE loops, and over what time period, so that any conversions desired by CLECs can be accomplished before the expiration of the commitment contained in the Accessible Letter?

The CLECs share SBC's desire for stability in the marketplace so that the parties' efforts can focus on negotiation rather than litigation, but until SBC provides assurances on these fundamental matters that *still* remain open, CLECs' business plans and the viability of their existing operations are no more settled today than they were a month ago. It is impossible to overstate the disruption that already exists because CLECs do not know what services will be available to them and at what price, and for how long. A commitment that leaves open so many vital issues only extends the uncertainty, it does not eliminate it. If the parties are to be able to move toward the new, rational business relationship (and achieve the consumer benefits) that

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SBC's press release describes, then a renewed and unequivocal commitment to SBC's wholesale customers is what is needed. Please let me hear from you no later than June 15.

Very truly yours,

Susan C. Gentz

Bill Magness

Casey & Gentz, L.L.P.

Attorneys for CLEC Coalition

cc: Mr. Tom Horn  
Mr. Michael Auinbauh  
Ms. Terri Mansir  
Mr. Larry Jones  
Ms. Tammy Cooper  
All other parties of record in  
Texas PUC Docket Nos. 28821 and 29824