

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
The Public Utility Commission of Texas)	CCBPol 96-13
)	
The Competition Policy Institute, IntelCom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc.)	CCBPol 96-14
)	
Teleport Communications Group, Inc.)	CCBPol 96-16
)	
City of Abilene, Texas)	CCBPol 96-19
)	
Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995)	

ORDER

Adopted: October 31, 2003

Released: October 31, 2003

By the Senior Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant Southwestern Bell Telephone, L.P.'s (SWBT's) Request for Permission to Withdraw Without Prejudice¹ (Request to Withdraw) its Petition for Partial Reconsideration² of the Commission's 1997 *Texas Preemption Order*.³ We also dismiss as moot

¹ SWBT Request for Permission to Withdraw Without Prejudice [Its] Petition for Partial Reconsideration, filed Oct. 7, 2003.

² SWBT's Petition for Partial Reconsideration, *In the Matter of Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCBPol 96-13, 14, 16 and 19, filed Oct. 31, 1997 (Reconsideration Petition).

³ *In the Matter of The Public Utility Commission of Texas, The Competition Policy Institute, IntelCom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc., Teleport Communications Group, Inc., City of Abilene, Texas Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, CCBPol 96-13, 96-14, 96-16 and 96-19, 13 FCC Rcd 3460 (1997).

its Motion for Administrative Stay⁴ of the portion of the *Texas Preemption Order* covered by its Reconsideration Petition, and terminate the above-captioned proceedings.

II. BACKGROUND

2. The 1997 *Texas Preemption Order*, among other things, “preempt[ed] the enforcement of the continuous property restriction⁵ applicable to SWBT’s centrex service⁶ when made available for resale.”⁷ The Commission found that state commission approval of the continuous property restriction violated the terms of section 253 of the Act,⁸ and concluded “that enforcement of the continuous property restriction constitute[d] an ‘unreasonable or discriminatory limitation’ on resale in violation of section 251(c)(4)(B) of the Act and [the Commission’s] implementing regulations.”⁹

3. SWBT sought reconsideration and an administrative stay of the portion of the *Texas Preemption Order* addressing Centrex resale. A number of parties filed pleadings addressing SWBT’s requests for stay and reconsideration.¹⁰ SWBT’s Reconsideration Petition and Stay Motion as well as the responsive pleadings provided significant new information and substantially clarified the issues involved.

4. On October 7, 2003, SWBT filed a Request for Permission to Withdraw Without Prejudice its Petition for Partial Reconsideration.¹¹ SWBT states that it continues to believe that “the relevant facts and law support reversal of the Commission’s preemption decision.”¹² “[I]n the interests of administrative convenience and economy,” however, SWBT “requests permission to withdraw its petition without prejudice to its right to raise the factual and legal issues

⁴ SWBT’s Motion for Administrative Stay, *In the Matter of Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCBPol 96-13,14, 16 and 19, filed Oct. 31, 1997 (Stay Motion).

⁵ The “continuous property restriction” in SWBT’s Centrex tariff generally permitted the resale of Centrex service only to subscribers in a continuous property area. *Texas Preemption Order*, 13 FCC Rcd 3558, para. 214 & n.490, 3561, para. 220.

⁶ “ ‘Centrex’ is the generic name for central office-based private branch exchange (PBX)-type services that provide an end user with features and functions that a customer premises-based PBX would provide, *i.e.*, intercom, access line pooling, call transfer, conference calling etc.” *Id.* at 3559, n.492. At the time of the *Texas Preemption Order*, SWBT’s active Centrex-type offerings were referred to as Plexar service. SWBT also had other services limited to existing customers that were referred to as Centrex service. SWBT Reconsideration Petition at 1, n.1; *Texas Preemption Order* at 3559, n.492. For the sake of convenience, we refer to all of these SWBT offerings as Centrex.

⁷ *Id.* at 3561, para. 218 (footnotes added).

⁸ *Id.*

⁹ *Id.*

¹⁰ The parties responding to SWBT’s request for partial reconsideration and/or its request for stay included AT&T Corp., Competition Policy Institute, McLeodUSA Telecommunications Services, Inc., Public Utility Commission of Texas, Telecommunications Resellers Association, and WorldCom, Inc.

¹¹ No parties have filed oppositions to SWBT’s Request to Withdraw.

¹² SWBT Request to Withdraw at 2.

presented by its petition in a future proceeding.”¹³ SWBT also states that “the impact of the Commission’s preemption order has not been as significant as anticipated when SWBT filed its petition for reconsideration almost six years ago[,]”¹⁴ and notes that the likelihood that the record is no longer fresh could complicate Commission action to resolve the issues on the merits.¹⁵ In light of these factors, SWBT states that the Commission could more productively use its resources to address a number of other matters.¹⁶

5. SWBT, however, specifies that “if CLECs’ purchase of Centrex for resale in Texas and other states results in significant market distortions, or otherwise begins to adversely affect SWBT, [it] must have the right to seek relief from the Commission through a petition for declaratory ruling, or other appropriate proceeding.”¹⁷ SWBT adds that it cannot withdraw its petition “unless the Commission permits [it] to withdraw its petition without prejudice, thereby ensuring SWBT that it can obtain a hearing on the merits (including the factual and legal arguments contained in SWBT’s petition) in a future proceeding, should that prove necessary.”¹⁸

III. DISCUSSION

6. We conclude that it is appropriate to grant SWBT’s Request to Withdraw without prejudice, and terminate the reconsideration proceeding since this action will foster administrative efficiency while protecting the interests of the parties involved. Grant of SWBT’s Request to Withdraw without prejudice preserves SWBT’s ability to raise issues concerning preemption of the Centrex continuous property restriction in future proceedings if warranted.¹⁹ The interests of other parties will also be protected since the Commission’s preemption decision concerning the continuous property restriction will remain in effect as discussed below.

7. We emphasize, however, that SWBT must comply with the *Texas Preemption Order* determinations concerning the Centrex continuous property restriction until the Commission relieves it of this obligation. Moreover, our action here is not intended to allow SWBT to challenge, on a retroactive basis, its obligation to comply with the requirements of the *Texas Preemption Order*. At the same time, the Bureau believes that SWBT should remain free to raise issues concerning preemption of the continuous property restriction, and seek termination of its current obligations flowing from the *Texas Preemption Order* through appropriate future proceedings. SWBT also remains free to raise issues concerning whether its actions constitute

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ For example, SWBT would be free to file a petition for declaratory ruling or make other appropriate filings raising the issues addressed in its Petition for Partial Reconsideration previously filed in this proceeding. Grant of SWBT’s Request to Withdraw without prejudice, however, would not allow SWBT to file another request for reconsideration in this proceeding concerning the Commission’s decisions regarding Centrex. See 47 U.S.C. § 405(a).

compliance with the *Texas Preemption Order*. In the event that SWBT raises such issues in future proceedings, we expect that they will be addressed in an expeditious manner.

8. In light of our decision to grant SWBT's Request to Withdraw its Petition for Partial Reconsideration, and the passage of time since the Commission's decision in the *Texas Preemption Proceeding*, we also dismiss SWBT's Motion for Administrative Stay of the portion of that decision concerning the Centrex continuous property restriction. Under the present circumstances, this request for stay has clearly become moot. We also terminate the above-captioned proceedings since our actions in this Order resolve all outstanding requests for action in these proceedings.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, SWBT's Request to Withdraw IS GRANTED without prejudice consistent with the above discussion. IT IS FURTHER ORDERED that SWBT's Motion for Administrative Stay IS DISMISSED as moot.

10. IT IS FURTHER ORDERED that the above-captioned proceedings ARE TERMINATED. The Bureau takes these actions pursuant to Sections 151 and 154(i) & (j) of the Communications Act, 47 U.S.C. §§ 151, 154(i) & (j), and authority delegated under Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291.

11. IT IS FURTHER ORDERED that this Order IS EFFECTIVE upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey Carlisle
Senior Deputy Chief, Wireline Competition Bureau