

**UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

FRANK STOFFELS, LINDA VILLAFANE, BURNIE )  
JOE DUNN, JACK GIULIANI, and JAMES BELCHER, )  
on behalf of the SBC Telephone Concession Plan and )  
all other persons similarly situated, )  
Plaintiffs, )  
v. ) Civil Action No.: SA-05-CA-0233 WWJ  
SBC COMMUNICATIONS, INC., AND THE )  
SBC TELEPHONE CONCESSION PLAN, )  
Defendants. )

**NOTICE OF PENDENCY OF CLASS ACTION**

**TO: ALL PARTICIPANTS<sup>1</sup> AND BENEFICIARIES<sup>2</sup> OF THE SBC TELEPHONE CONCESSION PLAN AT ANY TIME FROM JANUARY 31, 2003, TO OCTOBER 1, 2005**

**Your Legal Rights Might Be Affected If You Fall Into One of the Following Three Categories:**

1. Retirees of an SBC Company (including, but not limited to Ameritech, Pacific Telesis, Southern New England Telephone, and Southwestern Bell Telephone Company, and any predecessor) who were eligible to receive a Telephone Concession after they retired while residing outside the SBC Service Area anytime from January 31, 2003, to October 1, 2005; or
2. Current or former employees of any SBC Participating Company with more than five years of service with an SBC Participating Company as of June 1, 2005, who were eligible or may become eligible to receive an Out-of-Service Telephone Concession after they retired (if he/she could meet the age and service requirements to receive Telephone Concession as a retiree, through additional service with an SBC Company); or
3. Members of the immediate family of any person in Group 1 or Group 2, including surviving spouses and the retiree dependents (and including Registered Domestic Partners of Pacific Telesis employees and retirees) during the time that SBC had a policy to provide employees of such SBC Participating Companies with a Telephone Concession after retirement.

**A Federal Court authorized this notice. This is not a solicitation from a lawyer. You have not been sued.**

**1. What is this lawsuit about?**

This case is called *Stoffels v. SBC Communications, Inc.*, Civil Action No. SA-05-CA-0233 WWJ (W.D. Tex.). The Court in charge of this case is the United States District Court for the Western District of Texas, San Antonio Division (the "Court"), and the Judge is the Honorable William Wayne Justice. The plaintiffs are Frank Stoffels, Linda Villafane, Burnie Joe Dunn, Jack Giuliani, and James Belcher (the "Plaintiffs"), five retirees of companies owned by SBC Communications, Inc. ("SBC"), which is now known as AT&T Inc. The Plaintiffs have brought this lawsuit on behalf of themselves and other retirees, former and current employees, and their family members who received or were eligible to receive a telephone concession when they resided outside of an area served by an SBC subsidiary (the "OOR Retiree Concession"). Defendants named in the lawsuit are SBC Communications, Inc., and the SBC Telephone Concession Plan (the "Defendants").

This case is about the Telephone Concession provided to certain retirees and employees after they retired when they lived outside of an area served by an SBC subsidiary. The OOR Retiree Concession provided cash payments to out-of-region retirees toward the cost of local telephone services. Plaintiffs' claims challenge the modification of the cash payments in 2003, when the monthly cash reimbursements were capped at \$25, and the modification announced in 2005, when certain retirees were advised that, in the future, they would be eligible only to receive up to 600 minutes per month of long-distance service in place of the cash payments.

Plaintiffs, on behalf of the Class Members (defined in the answer to Question 3 below), claim that by informing employees that they would receive a telephone concession when they retired with a service or disability pension and by providing the OOR Retiree Concession in the form of a cash payment to retirees who lived outside the SBC service area, SBC established and maintained a pension plan under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(1)(B), (a)(2), (a)(3), and (c)(3). ERISA is a law that establishes legal guidelines for private pension and employee benefit plans.

Plaintiffs claim that SBC and the OOR Retiree Concession should have complied with ERISA and did not, at least in the following respects:

1. Plaintiffs claim that beginning in January 2003, and continuing through at least October 2005, SBC announced a series of reductions, alterations, or eliminations of the OOR Retiree Concession and that these reductions or eliminations violated ERISA.
2. Plaintiffs claim that SBC, as the entity maintaining the OOR Retiree Concession, should have adopted a written plan document to govern the plan that designated named fiduciaries responsible for its operation.
3. Plaintiffs claim that SBC was required, but has failed, to establish and contribute to a trust to fund the OOR Retiree Concession as required by ERISA and that SBC failed to notify Plaintiffs and the Class that the OOR Retiree Concession did not meet ERISA's funding requirements. Plaintiffs claim that, as a result, SBC is subject to a fine (which may be imposed at the discretion of the Court).
4. Plaintiffs claim that the OOR Retiree Concession as maintained by SBC violated ERISA's vesting and accrual provisions. The vesting provision of ERISA provides that once an employee earning a pension benefit has satisfied certain requirements, the benefit cannot be forfeited. The accrual provision of ERISA provides that employees must earn any pension benefit gradually over their years of service.
5. Plaintiffs claim that SBC, as the OOR Retiree Concession Administrator, was required to provide certain disclosures to the Participants and Beneficiaries of the OOR Retiree Concession and to make certain filings with the IRS and the Department of Labor, but failed to do so.

<sup>1</sup> ERISA defines a "Participant" to include any employee or former employee of an employer who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or whose beneficiaries may be eligible to receive such a benefit. Plaintiffs allege that the persons defined in Groups 1 and 2 of Class I are participants in the SBC Telephone Concession Plan.

<sup>2</sup> ERISA defines a "Beneficiary" as a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder. Plaintiffs allege that the persons defined in Group 3 of Class I are beneficiaries of the SBC Telephone Concession Plan.

## **2. What has happened in this lawsuit?**

The initial Complaint in this lawsuit was filed on March 24, 2005, and an Amended Complaint was filed on July 18, 2005, which Defendant SBC moved to dismiss. On February 3, 2006, Defendants' motion to dismiss the Amended Complaint was denied. Plaintiffs filed their Second Amended Class Action Complaint on May 16, 2006, which Defendant answered. Thereafter, the parties engaged in significant fact and expert discovery.

As described below, the Court certified this case to proceed as a class action on October 3, 2006, on behalf of two groups or "classes."

The Court also decided that this case should proceed in two phases. In Phase I, the Court was to determine whether the OOR Retiree Concession is a pension plan under ERISA. After the parties completed discovery in Phase I, Defendant filed a motion for summary judgment (i.e., requesting a pretrial determination that Plaintiffs did not have sufficient evidence to support their claim). The Court denied Defendant's motion on November 26, 2007. Thereafter, a trial before the Court with an advisory jury was held from November 26, 2007, to November 30, 2007, on Phase I of this case.

On May 21, 2008, the Court issued its decision on Phase I of this case, concluding that the OOR Retiree Concession is a pension plan under ERISA maintained by Defendant SBC (now AT&T, Inc.). The Court's May 21, 2008, Order may be subject to reconsideration, appeal, or other adjustment and is not a final decision about the merits of the claims or defenses asserted in the lawsuit. The Court has not yet made any determination as to whether SBC has violated ERISA's vesting, accrual, and/or anticutback provisions (or any other provision of that statute). Following the Court's May 21, 2008, Order, the case may proceed to the second phase.

Phase II of the case will determine whether Defendant SBC has violated ERISA (including whether the \$25 cap on cash payments and the elimination of cash payments in 2005 for the substitution of free long-distance service violated ERISA). If SBC is found to have violated ERISA, the Court will determine the appropriate remedy for such violations, including whether the OOR Retiree Concession must be reformed and the amount of benefits, if any, to which each Class Member is entitled.

While the Court has determined that the OOR Retiree Concession is a pension plan under ERISA, no final judgment or settlement has occurred in the lawsuit and **you are not currently entitled to receive a payment from this lawsuit.**

## **3. Why did I get this Notice of Pendency of Class Action?**

On October 3, 2006, the Court authorized this case to proceed as a class action on behalf of two groups, or "classes," of persons to pursue claims in this lawsuit. The two Classes are as follows:

Class I relates to Plaintiffs' claims against Defendant SBC on behalf of the SBC Telephone Concession Plan (the "Plan Claims") and is defined as follows.

1. Retirees of an SBC Company receiving a Telephone Concession after they retired, anytime from January 1, 2002, to the present and who lived outside the SBC Service Area; or
2. Current or former employees of any SBC Participating Company with more than five years of service with an SBC Participating Company as of June 1, 2005, who were eligible or might become eligible to receive an Out-of-Service Telephone Concession after they retired; or
3. Members of the immediate family of any person in Group 1 or Group 2, including surviving spouses and the retiree dependents (and including Registered Domestic Partners of Pacific Telesis employees and retirees) during the time that SBC had a policy to provide employees of such SBC Participating Companies with a Telephone Concession after retirement.

Class II relates to the benefits claims against the SBC Telephone Concession Plan (the "Benefits Claims") and is defined as follows:

All participants and beneficiaries of the Telephone Concession Plan at any time from January 31, 2003 to October 1, 2005 for the Benefits Claims pursuant to ERISA § 502(a)(1)(B) against the Plan.

This Notice is being sent to advise the members of Class II in this lawsuit that their claims have been certified as a class action under Rule 23 of the Federal Rules of Civil Procedure. In a class action, one or more plaintiffs file suit on behalf of people who have similar claims, called Class Members. If you are a Class Member, your rights will be affected.

No final judgment or settlement has occurred in the lawsuit, and you are not currently entitled to receive a payment from this lawsuit. This Notice merely informs you that the action is proceeding, that the Court has made certain findings with respect to Class I, and that you may be a Member of Class II.

This Notice is not an expression of any opinion by the Court with respect to the merits of the claims or the defenses asserted in the lawsuit. You received this Notice because you were identified as a potential member of Class II. This Notice only advises you of the existence of the lawsuit and of your rights if you are a Class Member. If you received this Notice by mistake and you are not a member of Class II, you do not need to take any action and your rights will not be affected.

## **4. What are the Plaintiffs asking the Court to do?**

Plaintiffs, on behalf of Class I, have asked the Court for an Order requiring SBC to reform the OOR Retiree Concession to comply with ERISA (including declaring that the \$25 cap on cash payments and the elimination of cash payments and the substitution of free long-distance service for cash reimbursements violated ERISA). Plaintiffs, on behalf of Class I, have also asked the Court for an Order requiring SBC to fund a plan in accordance with ERISA's funding provisions and have requested appointment of an independent trustee to administer the OOR Retiree Concession as a plan governed by ERISA and manage its assets, including its right to receive contributions from SBC in compliance with ERISA. As explained above, the Court has determined that ERISA applies to the OOR Retiree Concession but has not yet determined whether the OOR Retiree Concession violated ERISA or must be reformed in any respect.

Plaintiffs, on behalf of Class II, are asking the Court for an Order requesting a declaration of their rights to benefits from the SBC Telephone Concession Plan and payment benefits to Plaintiffs and other Members of Class II consistent with the terms of the OOR Retiree Concession (as reformed). If SBC is found to have violated ERISA and if the OOR Retiree Concession is reformed, members of Class II, including you if you are a Member of Class II, may be entitled to additional benefits. As explained above, the Court has not yet determined whether any Class Members are entitled to any additional benefits.

## **5. How can I see a copy of the documents filed in this case?**

You may review a copy of the current Complaint; the Order denying the Motion to Dismiss; the Class Certification Order; the Order, Denying the Motion for Summary Judgment; and the recent Memorandum Opinion on the Trial of Phase I, as well as certain other documents in the case, by visiting the Class Counsel's website at [http://www.cohenmilstein.com/cases\\_sbctelecon.php](http://www.cohenmilstein.com/cases_sbctelecon.php). If you are interested in reviewing copies of other publicly filed documents in the case, you may either write to Class Counsel at the address listed below, requesting copies of those documents, or visit the Office of the Clerk of the United States District Court in San Antonio, Texas.

## 6. How have the Defendants responded to the Plaintiff's Complaint?

Defendant SBC denies any wrongdoing or liability for the claims alleged. SBC maintains that the OOR Retiree Concession portion of the telephone concession benefits was not a pension plan of any kind, but was created to provide parity to employees and retirees living outside SBC's service area who could not receive discounts on SBC local services like employees and retirees living inside the service area. SBC denies it established or maintained an ERISA-covered Telephone Concession Plan or that the OOR Retiree Concession was a plan required to comply with ERISA. Defendant SBC further denies that the OOR Retiree Concession must be reformed to comply with ERISA or that any additional benefits are due to Class II members.

## 7. Do I have a lawyer in the case?

The Court has approved the following law firm to serve as Lead Class Counsel on behalf of the Plaintiffs and Class Members in this litigation ("Class Counsel"):

Marc I. Machiz, Esq.  
R. Joseph Barton, Esq.  
COHEN MILSTEIN SELLERS & TOLL PLLC  
West Tower, Suite 500  
1100 New York Avenue, NW  
Washington, DC 20005  
Telephone: (877) 877-0881  
Email: [sbctelephoneconcession@cohenmilstein.com](mailto:sbctelephoneconcession@cohenmilstein.com)

Although the Court has approved this law firm to serve as Class Counsel, you have the right to also retain your own counsel. Any Class Member who does not request to be excluded may enter an appearance through their own counsel at their own expense (though you are **not** required to retain separate counsel). Class Counsel intends to seek a remedy on behalf of all of the members of Class II who are or will be entitled to benefits as participants or beneficiaries in the SBC Telephone Concession Plan (so long as such persons do not exclude themselves from Class II).

## 8. How will the lawyers be paid?

Class Counsel has agreed to pursue this class action on a contingent-fee basis. All attorneys' fees and expenses are payable only out of money recovered for the Class or SBC Telephone Concession Plan, if any, or out of money that may be awarded by the Court against Defendants to pay fees or expenses. Class Members will not have to separately pay lawyers any additional amounts, and in no event will individual Class Members be obligated to pay any judgment, court costs, or lawyers' fees for participating in this Class Action (unless they retain their own separate counsel).

## 9. How can I participate in this Class Action?

If you fall within the definition of Class II set forth above, you are a Class Member. **IF YOU WISH TO REMAIN A CLASS MEMBER, YOU DO NOT NEED TO DO ANYTHING AT THIS TIME.**

As a Class Member, you will be bound by any judgment or settlement, whether favorable or unfavorable, in this lawsuit. Thus, you may participate in any monetary settlement or judgment rendered in favor of the classes, and you will receive notice of such a settlement or judgment and may submit a Proof of Claim at that time. **No judgment or settlement has occurred at this time.** You will also be bound by any unfavorable judgment that may be rendered in favor of Defendants. You may not have a right to be excluded from the Classes at the time of settlement or judgment.

## 10. What if I do not want to participate in this Class Action?

With respect to Class I, Plaintiffs have sought a determination that the OOR Retiree Concession is a defined benefit plan under ERISA. Based on the Court's May 21, 2008 decision concluding that the OOR Retiree Concession is a pension plan, Plaintiffs are requesting that the Court issue an Order to reform the OOR Retiree Concession to comply with ERISA. Plaintiffs have brought these claims on behalf of the persons described as "Class I" and seek relief on behalf of the SBC Telephone Concession Plan. Class Counsel believes that Class II is a subset of Class I and that all members of Class II are also members of Class I; however, Class I is a mandatory class and you **cannot** request to be excluded.

With respect to Class II, Plaintiffs are requesting an Order requiring the OOR Retiree Concession, as reformed, to pay benefits to Plaintiffs and other Class Members, including benefits which were not paid after February 2003 because of imposition of the \$25 cap and benefits not paid after the substitution of up to 600 minutes per month of long-distance service for cash payments. Plaintiffs have brought these claims on behalf of the group of individuals above, known as "Class II." Class II is not a mandatory class. Members of Class II who wish to request exclusion may do so.

If you wish to be excluded from Class II, you must mail, by First-Class Mail, a written request for exclusion, **postmarked no later than MARCH 17, 2009**, addressed to the Notice Administrator at:

SBC TELEPHONE CONCESSION LITIGATION  
NOTICE ADMINISTRATOR  
C/O A.B. DATA, LTD.  
P.O. BOX 170500  
MILWAUKEE, WI 53217-8042

After that date, you cannot be excluded from Class II. In order to be valid, a request for exclusion must (1) state the name, mailing address, and Social Security number of the person who is requesting exclusion, (2) state the telephone number and address of the place where Telephone Concession checks were received, and (3) contain a signed statement that such person "requests exclusion from Class II in *Stoffels v. SBC Communications, Inc.*" **Only request exclusion if you do NOT wish to participate as a member of Class II of the Class Action and do not wish to share in any potential recovery that Class II may obtain.**

If you choose to be excluded from Class II (1) you will NOT be entitled to share in any recovery from any settlement or judgment, if any, that may be paid to members of Class II as a result of a trial or other settlement of this lawsuit with respect to the claims for benefits; (2) you will NOT be bound by any judgment or release entered in this lawsuit with respect to the claims for benefits; and (3) at your own expense, you MAY pursue any claims that you have by filing your own lawsuit or taking other action against the SBC Telephone Concession Plan for benefits.

## 11. How can I find out more?

This Notice contains only a summary of the litigation and your rights as a potential Class Member. For more detailed information regarding the matters involved in this litigation, please refer to the papers on file in this litigation, which may be inspected at the Office of the Clerk of Court of the United States District Court, 655 East Durango Boulevard, Room G65, San Antonio, Texas, during business hours of each business day (or are available online for a fee by obtaining a password at [www.uscourts.gov](http://www.uscourts.gov)). In addition, inquiries regarding this litigation may be addressed to Class Counsel or the Notice Administrator both identified above.

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If this Notice was mailed to you at an old address, or if you move, please advise the Notice Administrator of your current address by mail at SBC Telephone Concession Litigation, Notice Administrator, c/o A.B. Data, Ltd., P.O. Box 170500, Milwaukee, WI 53217-8042; or by fax at (414) 961-7480, or by email at [info@sbctelephonelitigation.com](mailto:info@sbctelephonelitigation.com) so that you can receive any future Notice and/or Proof of Claim forms.

**PLEASE DO NOT CALL THE COURT OR THE UNITED STATES DISTRICT CLERK'S OFFICE REGARDING THIS NOTICE.** If you have any questions, you should direct them to Class Counsel or the Notice Administrator.

DATED: JANUARY 26, 2009

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION