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February 18, 1999

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FEB 18 1999

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. TO-99-227

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **HEARING MEMORANDUM**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Penny G. Baker".

Penny G. Baker
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PGB/slr
Enclosure
cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

FILED

FEB 18 1999

Missouri Public
Service Commission

Application of Southwestern Bell)
Telephone Company to Provide)
Notice of Intent to File an)
Application for Authorization to)
Provide In-Region InterLATA)
Services Originating in Missouri)
Pursuant to Section 271 of the)
Telecommunications Act of 1996.)

Case No. TO-99-227

HEARING MEMORANDUM

Submitted by:

The Staff of the Missouri Public Service Commission
The Office of the Public Counsel
The State of Missouri
Southwestern Bell Telephone Company
Associated Industries of Missouri, Inc.
Missouri Cable Telecommunications Association
Digital Teleport, Inc.
McLeodUSA Telecommunications Services, Inc.
AT&T Communications of the Southwest, Inc.
Birch Telecom of Missouri, Inc.
e.spire Communications, Inc.
Intermedia Communications
MCI WorldCom Companies
Show Me Competition
Small Telephone Company Group
Sprint Communications L.P.

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**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

Application of Southwestern Bell)
Telephone Company to Provide Notice)
of Intent to File an Application for)
Authorization to Provide In-Region)
InterLATA Services Originating in)
Missouri Pursuant to Section 271 of the)
Telecommunications Act of 1996.)

Case No. TO-99-227

HEARING MEMORANDUM

I. PROCEDURAL HISTORY

In Case No. TO-97-56 the Public Service Commission ("Commission") granted intervention to the following parties: Mid-Missouri Group of local exchange companies ("MMG"), GTE Midwest Incorporated ("GTE"), Sprint Communications L.P. and United Telephone Company d/b/a Sprint ("Sprint"), AT&T Communications of the Southwest, Inc. ("AT&T"), TCG of St. Louis, Small Telephone Company Group ("STCG"), Bourbese Telephone Company and Fidelity Telephone Company, ALLTEL Missouri, Inc., Green Hills Telephone Corp., a member of STCG.

In Case No. TO-99-227, the Commission granted intervention to the following parties: AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc. (collectively referred to as "AT&T"), MCI Telecommunications ("MCI"), Sprint, Digital Teleport, Inc. ("DTP"), MMG, all Missouri competitive local exchange companies ("CLECs"), all local exchange companies ("LECs"), the State of Missouri, Associated Industries of Missouri, Inc. ("AIM"), e.spire Communications Inc. ("e.spire"), and Advanced Communications Group ("ACG"), Show Me Competition, Inc. ("Show Me"), and the Missouri Cable Telecommunication Association ("MTCA"). The Commission also allowed the following parties to participate without intervention: the City of Springfield, Telecommunications Resellers Association and the Missouri

Alliance of Area Agencies on Aging, the Missouri Association for the Deaf, the Missouri Council of the Blind, the National Silver Haired Congress, the National Council of Silver Haired Legislatures, PARAQUAD, and St. Louis Gateway Seniornet.

MCI filed a petition on August 9, 1996, requesting the Commission institute an investigation into the requirements of Section 271 of the Telecommunications Act of 1996. The Commission issued an order establishing an investigatory case (TR-97-56) on October 1, 1996.

The parties met in a technical conference, filed comments, and Staff of the Public Service Commission ("Staff") filed a report with the Commission on January 16, 1997. The parties then filed responses to Staff's report. On September 9, 1997, MCI filed a motion requiring Southwestern Bell Telephone Company ("SWBT") to notify the Commission and all parties 90 days before it planned to file a Section 271 application with the FCC, requiring SWBT to file direct testimony supporting its filing at the same time, and, after filing, set a procedural schedule allowing rebuttal testimony and an evidentiary hearing.

On September 25, 1997, the Commission issued an order requiring SWBT to file a pleading with the Commission 120 days before SWBT files its Section 271 application with the FCC and to concurrently file direct testimony in support of its application.

SWBT filed a Notice of Intent to File an Application for Authorization to Provide In-Region, InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996 with the Commission on November 20, 1998. SWBT concurrently filed the direct testimony of: Adair, Auinbauh, Bailey, Brainard, Deere, Dysart, Fleming, Ham, Hearst, Kahn and Tardiff, Kramer, Larkin, Locus, Lube, Moore, Raimondi, Rehmer, Schmalense and Brandon, Tebeau, Thorsen, and Weckel.

On November 24, 1998, AT&T filed an application to intervene and motion for entry of a procedural schedule and attached a proposed procedural schedule.

On November 25, 1998, Staff filed a Motion to Consolidate or in the Alternative to Reject Filing. This was to consolidate TO-99-227 with TO-97-56 or reject the filing of TO-99-227 for not complying with the September 27, 1997 Order in TO-97-56. On November 30, 1998, MCI filed a Motion to Reject Filing or Require Service. On December 3, 1998, the Office of the Public Counsel ("OPC") filed a response to the motions stating that the Commission was not bound by the 120 day requirement in TO-97-56. SWBT filed its response to Staff, MCI, and AT&T's motions on December 4, 1998. In its response, SWBT included a proposed procedural schedule. On December 7, 1998, Staff filed a Clarification of Proposed Procedural Schedule recommending that if SWBT is allowed to file surrebuttal, all parties should be allowed to file surrebuttal. On December 8, 1998, MCI filed its response to SWBT's procedural schedule and opposed concluding this case prior to April 1, 1999.

On December 9, 1998, the Commission issued an Order Granting Interventions, Granting Protective Order, and Establishing Procedural Schedule. In this Order, the Commission established a procedural schedule and closed TO-97-56.

OPC filed a Motion to Modify Procedural Schedule on December 15, 1998. On December 16, 1998, DTI and MTCA filed motions to adopt OPC's proposed procedural schedule.

On December 21, 1998, SWBT filed a Response to OPC's Motion to Modify the Procedural Schedule. On December 23, 1998, AT&T, Sprint, and MCI filed a Motion to Modify the Procedural Schedule. On December 24, 1998, Staff filed its Response to OPC's Motion to Modify the Procedural Schedule. On December 28, 1998, SWBT filed a Response in Opposition to AT&T, Sprint, and MCI's Motion to Modify the Procedural Schedule.

On December 29, 1998, SWBT filed its Response to Staff's Response to OPC's Motion to Modify the Procedural Schedule.

On December 30, 1998, the Commission issued an Order Granting Interventions and Modifying the Procedural Schedule.

On January 25, 1999, the following persons filed rebuttal testimony:

Staff: Winter and Voight;
Show Me: Ensrud;
Intermedia: Strow;
AT&T: Morgan, Dalton, Falcone, Minter, Witcher, Barnes, Flappan, Turner, Gillan, Mayo, Kohly, and Crombie;
OPC: Cooper and Meisenheimer;
McLeod: Shirar;
e.spire: Kaufman and Dunaye;
Birch: Tidwell and Scott;
Sprint: Frigon, Smith, Stahly, and Wescott;
MCI: Martinez, Champlin, and Gaul.

Also on January 25, 1999, AT&T filed a statement in regards to the Supreme Court Decision issued that day and MCI filed a motion to accept late-filed rebuttal testimony.

On February 4, 1999, the following witnesses filed surrebuttal testimony:

Staff: Voight;
Intermedia: Strow;
AT&T: Dalton and Schmersahl;
SWBT: Antey, Bailey, Brainard, Deere, Dysart, Fleming, Gordon, Ham, Kahn, Tardiff, Kramer, Larkin, Locus, Lube, Moore, Raimondi, Rehmer, Brandon, Tebeau, Thorsen, Weckel, and Auinbauh; and
OPC: Meisenheimer.

On February 8, 1999, the prehearing conference began and it concluded on February 9, 1999. AT&T filed a motion to require briefing and allow for supplemental testimony regarding AT&T Corp. v. Iowa Utilities Board, and also filed a motion to require expedited response to that motion. On February 9, 1999, OPC and the State filed joint comments on hearing procedure proposals and a joint position on hearing procedures. On February 10, 1999, Staff filed two alternative hearing procedures that were developed during the prehearing conference.

On February 10, 1999, the Commission issued an Order Granting Interventions, Granting Participation, Requesting Briefing on Legal Issues, Notice of Ex Parte Contacts, and Notice of Time

to Respond. The Commission also ordered the parties to file legal memoranda on the Supreme Court's Decision in AT&T Corp. et al. v. Iowa Board of Utilities et al., No. 97-826 (January 25, 1999), to file any motions to alter the procedural schedule as a result of the Supreme Court's decision, and to file any responses to AT&T's motion to require briefing and allow supplemental testimony regarding the Supreme Court Decision.

Unless otherwise indicated, by signing this hearing memorandum no party shall be deemed to have acquiesced in the position or statements of any other party with respect to any issue or allegation of fact. Furthermore, by signing this hearing memorandum, the parties did not intend to preclude a party from cross-examining witnesses (excluding friendly cross-examination) and briefing issues identified in this document for which no position is taken by said party in this document.

All parties reserve the right to inquire into and establish a position concerning any issue which is pertinent to the proceedings as a new issue based on matters which could not reasonably have been contemplated based on the filings and pleadings herein as of the date hereof.

II. ISSUES

The contested issues are outlined below, followed by the positions of the parties. The following parties submitted generalized positions as set out below:

SWBT: Southwestern Bell Telephone Company believes that it has met each of the items set forth in the "competitive checklist" contained in Section 271(c)(2)(B) of the Telecommunications Act of 1996, along with other related requirements necessary to obtain authority to provide in region, interLATA services in Missouri. The public interest clearly would be served by SWBT's participation in the interLATA services market in Missouri. Based on the record in this case, the Commission should issue a favorable recommendation to the FCC regarding SWBT's application for authority to provide such services in Missouri.

OPC: At this time it would be premature and not in the public interest to grant SWBT's application. The evidence shows that SWBT has not complied with the Federal Telecommunication Act so as to grant it interLATA long distance authority in Missouri. It does not meet all of the 14 checklist items. It does not meet the Track A requirement of a facilities-based competitors serving both business and residential customers. It does not meet the safeguards in Section 272 for affiliate long distance subsidiaries. Competition has not developed in Missouri to give customers a realistic choice of local service providers in both urban and rural Missouri such that the competition is substantial, effective and irrevocable.

The Commission should adopt a full and complete factual record and provide all parties a full and fair opportunity to present evidence in support of their positions so the Commission can make an informed decision and the record can serve as a basis for FCC review. Public Counsel would like to see specific guidelines and performance standards emerge from this process so it is not simply a yes or no, but a true guide on how to open the network to competition in full compliance with the Act and only then allow SWBT into the interLATA market to provide competition to benefit consumers. (Meisenheimer Rebuttal, pp. 6-7; 60-63; Surrebuttal, pp. 9-10).

AIM: Associated Industries of Missouri (AIM) believes it is critically important that Missouri develop pro-competitive policies that encourage the development of full and fair competition in both local exchange and interexchange markets. AIM strongly believes that policies that give businesses and other consumers maximum choice in their telecommunications providers will result in lower prices and higher quality of service. In this proceeding, AIM believes that SWB, like all other local and long distance companies, should be allowed to compete in both the local and long distance markets. We believe this policy will help stimulate competition in Missouri and help grow economic development.

Missouri Cable Telecommunications Association: Missouri Cable Telecommunications Association takes the position herein that this Commission should not recommend to the FCC that Southwestern Bell Telephone Company's (SWBT) application for authorization to provide in-region interLATA services originating in Missouri pursuant to Section 271 of the Federal Telecommunications Act of 1996 (FTA96) be approved. SWBT has not met the requirements of the Section 271(c)(2)(B) checklist and thus has not allowed effective competition to other telecommunications carriers into its own market.

To allow SWBT to provide in-region interLATA services when it has failed to meet the requirements of the Federal Telecommunications Act of 1996 is absolutely not in the public interest. SWBT has shown by its policies and practices that it seeks to prohibit competition in its own markets while it is seeking to enter the markets of its competitors.

Digital Teleport, Inc.: Digital Teleport, Inc. (DTI) takes the position herein that this Commission should not recommend to the FCC that Southwestern Bell Telephone Company's (SWBT) application for authorization to provide in-region interLATA services originating in Missouri pursuant to Section 271 of the Federal Telecommunications Act of 1996 (FTA96) be approved. SWBT has not met the requirements of the Section 271(c)(2)(B) checklist and thus has not allowed effective competition to other telecommunications carriers into its own market.

To allow SWBT to provide in-region interLATA services when it has failed to meet the requirements of the Federal Telecommunications Act of 1996 is absolutely not in the public interest. SWBT has shown by its policies and practices that it seeks to prohibit competition in its own markets while it is seeking to enter the markets of its competitors.

McLeodUSA: It is not consistent with the public interest to permit SWBT entry into the interLATA services market at this time because its local markets are not currently experiencing effective competition. Allowing SWBT into interLATA markets will remove whatever incentive currently exists for it to cooperate in the opening of its local markets. SWBT impedes the progress of competition by CLECs by its policies, pricing and refusal to cooperate and negotiate with CLECs. SWBT also improperly restricts the resale of some of its services, fails to provide reasonable access to the simplest method of OSS, charges unreasonably high collocation costs, and delays installation of CLEC customer lines to such an extent that it is faster for a prospective CLEC customer to order a new line from SWBT then switch service to the CLEC rather than ordering directly through the CLEC. (Shirar Rebuttal).

State of Missouri: The State was not on the Commission's service list until recently. Consequentially, several parties did not distribute testimony to the State until very recently. The State has only recently received the testimony filed on behalf of AT&T. For these reasons, the State reserves its right to formulate its position on the various hearing issues after it has had the opportunity to fully examine the testimony and cross examine witnesses at the hearing.

With respect to hearing procedure and scheduling, the State reincorporates the positions asserted in its joint filings with the Office of Public Counsel following the prehearing conference. The State is content to be the last part to cross examine witnesses. Hopefully, that will alleviate the need for redundant cross examination. The State does not consent to any time limitations for its cross examination.

Small Telephone Company Group (STCG): The STCG, at this time, takes no position on any of the issues listed in the Hearing Memorandum. The STCG does not intend to participate in the evidentiary hearing but does reserve the right to file a post-hearing brief.

1. Has SWBT satisfied the requirements of Track A?

SWBT: Yes. Although Missouri does not have the population or business density to be an early target of CLECs' local entry efforts, telephone exchange competition has come to the State. Wireline competitors in Missouri serve a verifiable minimum of 35,323 business and residential lines in Missouri. (See, Tebeau Direct, Schs. 2, 7.). A more realistic estimate, based on comparisons of the Missouri CLECs' operations to the operations of other CLECs whose actual customer bases are known, is that these carriers serve approximately 64,000 lines. (Tebeau Direct, p. 8). Information compiled by the Staff demonstrates that competitors serve a minimum of 55,409 access lines. (See, Voight Rebuttal, p. 9). Facilities-based CLECs are operating networks in Kansas City, St. Louis, and Springfield. (Id. at 7). In addition, at least 16 CLECs are reselling SWBT's local retail services. (Id. at 17-18 & Sch. 2). SWBT has entered into 53 interconnection and/or resale agreements with CLECs, 43 of which have been approved by the Missouri Public Service Commission (Commission). (Bailey Direct, pp. 10-11 & Sch. 2). For purposes of satisfying section 271(c)(1)(A) ("Track A"), SWBT relies upon its approved interconnection agreements with two predominantly facilities-based carriers – Brooks and e.spire – as well as resellers of residential services, such as Omniplex and Preferred Carrier Services.¹ Individually and collectively, these carriers provide "an actual commercial alternative" to WBT.²

¹ In order to support this Track A application, SWBT must demonstrate that one or more unaffiliated carriers: (1) have "agreements that have been approved under section 252 . . . specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities," (2) are "competing providers of telephone exchange service [other than] . . . exchange access," (3) serve residential and business subscribers; and (4) offer service exclusively or predominantly over their own telephone exchange service facilities. 47 U.S.C. § 271(c)(1)(A). In making this showing, SWBT has sought to provide all reasonably available information regarding the operations of facilities-based CLECs in Missouri. If CLECs disagree with this evidence, they bear the burden of coming forward with concrete, detailed evidence about their own operations, much of which lies uniquely within the CLECs' own control.

² Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543, 20585, ¶ 77 (1997) ("Michigan Order").

While facilities-based competition is extensive in Missouri and several facilities-based carriers have substantial numbers of subscribers, there is no statutory requirement that a qualifying CLEC under section 271(c)(1)(A) serve any particular number of customers. Congress rejected metric tests of actual competition in favor of a clear statutory "test of when markets are open," as the Commission recognized in its Michigan Order. (141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler); see Michigan Order, 12 FCC Rcd at 20584-85, ¶¶ 76-77; see also Memorandum Opinion and Order, Application of BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, FCC 98-271, ¶ 40 n.94 (rel. Oct. 13, 1998) ("Second Louisiana Order") (noting that the Commission does not "in any way, intend [] to suggest the use of a market share test for entry under Track A").

Brooks provides local service to business customers and a handful of residential customers over its own network. (See, Tebeau Direct, Sch. 7). Brooks operates a Lucent 5ESS switch and a 78 route-mile fiber-optic network serving Kansas City and Springfield. (Id. at 10-12 & Schs. 4, 7, 5-3 (network maps)). Brooks has interconnection arrangements with SWBT, under which Brooks has established working physical collocations and received a substantial number of interconnection trunks from SWBT. (Id. at 11). Brooks has reserved nine NXX (central office) codes, representing 90,000 phone numbers, for its customers' use. (Id.). SWBT also has provided unbundled local loops and ported business and residential telephone numbers to Brooks, each representing one or more lines SWBT has lost to Brooks. (Id. at 11 & Sch. 7). Brooks and SWBT have exchanged millions of minutes of traffic between their networks in Missouri. (Id. Sch. 7).

Brooks' network in Kansas City passes within 1,000 feet of one out of every four switched business access lines in Kansas City. (Id. Sch. 6-3). More than 18,000 residential lines are within 1,000 feet of Brooks's network as well. (Id.). In Springfield, Brooks's facilities pass within 1,000

feet of 25 percent of business lines and more than 9 percent of residential lines. (Id. Sch. 6-4). By ordering unbundled loops, Brooks is able to serve on a facilities basis any customer served out of a SWBT central office where Brooks has collocated. (See, Id. at 11).

In addition to its facilities-based service, Brooks serves business customers on a resale basis. (See Id. Schs. 2, 7-1). However, the number of lines Brooks serves by resale is smaller than the minimum number of lines Brooks is known to serve over its own facilities, confirming that Brooks's service is predominantly facilities based. (See, Id. at 11 & Sch. 7).

e.spire, formerly known as ACSI, has been serving local business customers in Missouri on a facilities basis since April 1997. (Id. at 12). e.spire has a 75-mile fiber-optic network and 5ESS switch in Kansas City, hundreds of interconnection trunks, unbundled loops, and operational physical and virtual collocations. (Id. at 12-13 & Sch. 7). e.spire has reserved 120,000 phone numbers for customers served over its network. (Id. at 12). The hard data available to SWBT shows that e.spire serves more business lines over its own facilities than through resale (Id. & Sch. 7); given that SWBT cannot identify all of e.spire's facilities-based lines, the predominance of e.spire's facilities-based service over its resale service almost certainly is greater than SWBT's records show.

Whereas Brooks and e.spire resell SWBT's local service to supplement their facilities-based service, other carriers are pure resellers. As the FCC suggested in its Second Louisiana Order, the combination of facilities-based business service and residential resale satisfies Track A where, as here, the Track A CLECs' service is predominantly facilities-based overall. (Second Louisiana Order ¶¶ 46-48). Section 271(c)(1)(A) authorizes interLATA relief based on "one or more binding

agreements” under which a Bell company provides access and interconnection for the facilities of “one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers.” (47 U.S.C. § 271(c)(1)(A)) (emphasis added). Track A therefore can be satisfied by a combination of CLECs, rather than the activities of just one CLEC alone.³

Moreover, where a CLEC or combination of CLECs provides service to both residential and business subscribers, Track A does not require that both classes of subscribers be served on a facilities basis. The United States Department of Justice (“DOJ”) has explained that “there is no reason to delay BOC entry into interLATA markets simply because competitors that have a demonstrated ability to operate as facilities-based competitors, and that are in fact providing service predominantly over their own facilities, find it most advantageous to serve one class of customers on a resale basis.”⁴ The FCC has agreed that “it does not appear to be consistent with congressional intent to exclude a BOC from the in-region, interLATA market solely because the competitors’ service to residential customers is wholly through resale.” (Second Louisiana Order ¶ 48).

This analysis is apt as applied to the local exchange market in Missouri. Any of the five operational, wireline carriers in Missouri readily could serve large numbers of residential customers; Brooks and Intermedia are in fact serving some residential lines. The facilities-based CLECs simply have decided it is more profitable to focus their attention on business customers. Requiring SWBT to wait until facilities-based carriers alter their business plans and join resellers as strong participants in the residential market “would tip unnecessarily the statute’s balance between facilitating local entry and providing for additional competition in interLATA services by adding an

³ See Michigan Order, 12 FCC Rcd at 20587-88, ¶ 82 (“[W]hen a BOC relies upon more than one competing provider to satisfy section 271(c)(1)(A), each such carrier need not provide service to both residential and business customers . . . this aspect of section 271(c)(1)(A) is met if multiple carriers collectively serve residential and business customers.”) (footnote omitted).

⁴ Addendum to Evaluation of the United States Department of Justice at 3-4, Application of SBC Communications Inc. For Provision of In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121 (FCC filed May 21, 1997) (“DOJ Oklahoma Addendum”).

unnecessary prerequisite to Track A that might foreclose entry in certain cases for no beneficial competitive purpose.” (DOJ Oklahoma Addendum at 4).

Nor does it matter that CLECs in Missouri collectively serve a large number of resale customers. The 1996 Act requires a Bell company applying under Track A to point to “one or more binding agreements” with “one or more unaffiliated competing providers.” (47 U.S.C. § 271(c)(1)(A)). When the Bell company decides which CLEC(s) it wishes to rely upon to satisfy Track A, the FCC will evaluate its eligibility for interLATA relief based upon that designation. (See Michigan Order, 12 FCC Rcd at 20585, ¶ 78; Second Louisiana Order ¶ 47). The activities of other CLECs are not relevant.⁵ In short, the fact that some carriers in Missouri serve thousands of lines via resale proves only that there is substantial competition in the State. If facilities-based CLECs are not serving residential customers in large numbers, it is because their current plans call for cream-skimming lucrative business customers, instead of serving all Missourians seeking service, as SWBT has done for decades.

Staff: As SWBT has not met the requirements of the 14-point checklist, Staff does not take a position on whether SWBT's interconnection agreements with facility-based providers is sufficient to meet the requirements of Track A.

OPC: SWBT has not demonstrated compliance with Track A. Section 271 (c) (1) (A). There is no single facilities-based competitor or group of competitors of facilities-based carriers whose offerings meet all the criteria in that section. The only two carriers providing facilities-based service to business customers do not provide residential service as a normal retail offering sufficient to meet the requirements for Track A compliance. (Meisenheimer Rebuttal, pp. 11-12; 8-14; Cooper Rebuttal, p. 21).

⁵ Any different interpretation of section 271 would penalize SWBT for opening its local markets to resale competition. It would be a perverse reading of the Act to suggest that increased local competition could prevent Track A compliance.

AT&T: Section 271(c)(1)(A), generally referred to as Track A, sets up the procedure for ensuring that meaningful facilities-based competition has developed before long distance entry by a BOC, such as SWBT, is authorized. Track A is triggered when a carrier requests negotiations with SWBT in accordance with the requirements in Sections 251 and 252 of the Act. That carrier and SWBT subsequently enter into a binding interconnection agreement, either through negotiations, or if a fully negotiated agreement is not reached, through arbitration. Section 271(c)(1)(B), generally referred to as Track B, provides that if no carrier requests interconnection, the BOC may 10 months after enactment, proceed with a statement of the terms and conditions that it generally offers for access and interconnection (i.e. an SGAT) in lieu of an actual agreement.

There is no de minimus number of lines that competitors must serve which will automatically allow SWBT to be able to meet its burden for the purpose of granting this application. Discussions of the FCC and other jurisdictions suggest that true competition must be accomplished through facilities-based offerings in combination with resale.

Mr. Turner's testimony provides facts regarding the presence, extent, and effectiveness of local exchange competition in Missouri. These facts are relevant since SWBT must satisfy three requirements to receive interLATA authority. First, SWBT must demonstrate that it is actually providing access and interconnection to a predominantly facilities-based competing provider pursuant to an approved interconnection agreement. Specifically, Section 271(c)(1)(A) of the Telecommunications Act of 1996 (the "Act") requires SWBT to demonstrate whether there are "unaffiliated competing providers of telephone exchange service ... to residential and business subscribers ... either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another." Second, the access and interconnection must be provided in a manner that "fully implements" the "competitive checklist" of Section 271(c)(2)(B).

Third, SWBT must demonstrate that it has complied with the separate affiliate requirements of Section 272 and that granting its application would be "consistent with the public interest, convenience, and necessity" within the meaning of Section 271(d)(3)(C) of the Act.

Mr. Turner's testimony demonstrates: (1) that facilities-based competition exists only in a very limited form in Missouri and at such a nascent level that it cannot provide a "check" on the anticompetitive tendencies of local exchange service monopolies; and (2) why resale agreements, and SWBT's heavy dependence on them in its application, do not provide facilities-based competition and, indeed, offer only very limited forms of competition.

Facilities-based competition is present in Missouri on only the most limited basis at present. The best measure of local competition is the quantity of local minutes being switched by the five CLEC switches in Missouri. Based on SWBT's own data, only .077% of the local traffic in Missouri is switched by CLECs. Further, of this minute fraction of the local exchange business, 98% of the CLEC local traffic terminates to companies such as Internet Service Providers. The net effect is that only **0.0014%** of the local exchange traffic generally is switched by CLECs.

SWBT points to the **capacity** for competition throughout its filing. The federal Act requires that SWBT demonstrate that local competition *exists*. Moreover, this Commission must evaluate whether sufficient competition exists to provide a "check" on SWBT's current monopoly hold on the local market in Missouri. Given that SWBT constitutes to hold **99.9986%** of the local market in Missouri, it is clear such a "check" is not yet in place.

Birch Telecom: Birch Telecom takes no position on this issue at this time.

MCI: Any application for in-region interLATA long-distance entry by SWBT in Missouri must proceed under the "Track A" provisions of Section 271 of the Telecommunications Act of 1996 due to the fact that SWBT has entered into interconnection agreements with one or more potential Track

A-qualifying CLECs. Conversely, Track B is not available under the circumstances for SWBT in-region, interLATA entry in Missouri.

While SWBT's application in this case must be evaluated under the standards contained in Track A, SWBT has failed to demonstrate that the conditions of Track A have been satisfied in Missouri – SWBT has failed to demonstrate that it has entered into a binding interconnection agreement under which SWBT "is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service...to residential and business subscribers...by...competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT has failed to demonstrate the presence of competition in Missouri. (Stahly Testimony, p. 10). SWBT has not demonstrated that PCS service is in competition with its wireline service. PCS currently cannot be used to access the internet and it has several other technological shortcomings compared to wireline service. Additionally, PCS service does not compete with traditional wireline service on price. (Stahly Testimony, pp. 11-13).

2. Has SWBT provided nondiscriminatory access to interconnection?

SWBT: Yes. SWBT provides interconnection at any technically feasible point within its network that is at least equal in quality to the interconnection that SWBT provides itself on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the Act and Missouri Commission Orders. SWBT's provides interconnection agreements with carriers such as Brooks Fiber, e.spire, and AT&T (any of which could be adopted by other CLECs pursuant to section § 252(i) and/or MFN clauses in existing agreements), establish four standard methods of

interconnection: mid-span fiber interconnection, SONET-based interconnection, physical collocation, and virtual collocation. Each of these interconnection arrangements is available at the line side or trunk side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. (Deere Direct, pp. 2-14).

Mid-span fiber interconnection is available at any mutually agreeable, economically and technically feasible point between a CLEC's premises and a SWBT tandem or end office. (Id. at 2-3).

Physical collocation of CLECs' equipment in SWBT buildings is available wherever space permits, on a first-come, first-served basis. (Deere Direct, p. 6; see Auinbauh Direct, p. 16). Pursuant to Commission Order, physical collocation pricing is determined on an individual case basis in order to accommodate the varying requests of CLECs and the unique circumstances of each collocation site and recovers only SWBT's actual costs. (Auinbauh Direct, pp. 23-25). CLECs in Missouri are successfully using SWBT's physical collocation offerings both for interconnection and to combine UNEs obtained from SWBT with other network facilities. (Auinbauh Direct, pp. 28-29). Five Missouri CLECs have been provided with 29 physical collocation spaces in 15 different SWBT central offices. (Auinbauh Direct, pp.14, 28-29; Deere Direct, p. 8). Throughout SWBT's five-state region, 262 physical collocation arrangements had been installed and delivered to CLECs for their use. (Auinbauh Direct, Sch. 3).

Wherever physical collocation space is unavailable, or if requested by a CLEC, virtual collocation and similar SONET-based interconnection arrangements are offered by SWBT, pursuant to SWBT's FCC tariff No. 73. (Aunibauh Direct, p. 19; Deere Direct, pp. 8-9).

SWBT allows CLECs to access UNEs using virtual collocation, and permits CLECs using virtual collocation to connect with other CLECs that are collocated in SWBT's central offices.

SWBT has completed 8 virtual collocation arrangements in Missouri in 5 different locations. (Auinbauh Direct, pp. 15, 19, 25; Deere Direct, p. 8).

In addition to these standard offerings, CLECs may request specially tailored interconnection arrangements through the Bona Fide Request ("BFR") process. (Deere Direct, pp. 9, 20). This process, described in various Commission-approved interconnection agreements and also known as the "Special Request" process, allows CLECs to request modifications to existing arrangements as well as additional arrangements. (See, e.g., Brooks Agreement App. UNE § III; e.spire Agreement App. UNE § III; AT&T Agreement Attach. 6 § 2.22; SWBT, Auinbauh Direct, p. 26).

SWBT also offers interconnection trunking arrangements and has furnished nearly 18,000 one- and two-way trunks for CLECs in Missouri (and has furnished more than 161,000 trunks in the five SWBT states). (Direct, Auinbauh, Sch. 3).

Interconnection with CLECs is accomplished using the same facilities, interfaces, technical criteria, and service standards as SWBT uses for its own retail operations. Data from the extensive performance monitoring SWBT performs of its interconnection trunking arrangements confirms that SWBT is successfully furnishing interconnection on a nondiscriminatory basis. (Deere Direct, p. 9).

Staff: SWBT does not meet this checklist item. ICB rates for collocation do not meet the requirement to provide interconnection on rates, terms and conditions that are just, reasonable, and nondiscriminatory.

OPC: SWBT has not demonstrated compliance with this checklist item. SWBT has attempted to demonstrate compliance through the use of performance standards. Based on the evidence provided, SWBT fails to show it meets this checklist item due to the lack of relevant data,

inadequacies in the data or unidentified target or benchmark performance standards. (Meisenheimer Rebuttal, pp. 15-25).

AT&T: A section 271 applicant is required to show that it provides or generally offers other telecommunications carriers interconnection that meets the requirements of sections 251(c)(2) and 252(d)(1).⁶ The interconnection that SWBT provides to CLECs must be at least equal in quality to what it provides to itself or to any affiliate.⁷ Interconnection must be provided on terms that are just, reasonable, and nondiscriminatory, and in conformance with sections 251 and 252 of the Act.⁸ The requirements of section 251 include the duty to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at ILEC premises, on rates, terms and conditions that are just, reasonable, and nondiscriminatory.⁹ Interconnection must be offered in accordance with the cost-based pricing standards of section 252(d)(1).

The testimony of Larry Barnes demonstrates that SWBT has not established that it is providing physical or virtual collocation in a manner that is consistent with Sections 271(c)(2)(B)(i), 251(c)(2), and 252(d)(1) of the Act. With respect to physical collocation, SWBT has not demonstrated checklist compliance because (1) SWBT requires individual case basis pricing for physical collocation, which creates an unworkable and discriminatory environment for the CLEC; (2) SWBT has failed to offer reasonable and nondiscriminatory access to “cageless” or other alternative physical collocation arrangements that may provide CLECs access to interconnection and UNEs at lower cost and with more efficient use of limited space resources in SWBT central offices; and (3) more generally, SWBT’s evidence is insufficient to establish that CLECs in

⁶ 47 U.S.C. § 271(c)(2)(B)(i).

⁷ 47 U.S.C. § 251(c)(2)(C).

⁸ 47 U.S.C. § 251(c)(2)(D).

⁹ 47 U.S.C. § 251(c)(6).

Missouri have just, reasonable, and nondiscriminatory access to physical collocation. With respect to virtual collocation, SWBT's Expanded Interconnection Tariff does not provide nondiscriminatory access to, or cost-based rates for, unbundled network elements or interconnection as required by Section 271(c)(2)(B)(i) of the Act.

Birch Telecom: SWBT has failed to meet its obligation to provide interconnection to competitive carriers on a competitively neutral and nondiscriminatory basis. SWBT does not afford physical collocation to competitive carriers on reasonable terms and conditions in that, inter alia, it imposes charges for collocation which are excessive, not justified by costs, and fails to deliver collocation at agreed times.

e.spire: Southwestern Bell Telephone (SWBT or SBC) fails to meet checklist item (i) in that it is not providing interconnection in accordance with the requirements of 251(c)(2) and 252(d)(1). SWBT has not provided any hard data that it is providing interconnection with e.spire's network at least equal in quality to that provided to itself or to any other party to which SWBT provides interconnection, and that it is provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. (Kaufman Rebuttal, pp. 8-10).

Intermedia Communications: SWBT's current collocation practices militate against a finding that SWBT meets its interconnection obligations under Sections 251(c)(2) and 252(d)(1) of the 1996 Act. The collocation arrangements available from SWBT are unreasonably restrictive and overly burdensome. Specifically, the traditional physical collocation offered by SWBT imposes huge and unnecessary costs on competing carriers, assuming of course that there is sufficient space available in SWBT's central offices. This may not always be the case, as many central offices ultimately reach exhaust status. Similarly, although there are several variations on physical collocation that may be useful to competing carriers – and which have been proposed by many CLECs in this proceeding, including Intermedia – SWBT has adamantly refused to provide these options. Such

collocation options include, but are not necessarily limited to, shared-cage collocation, cageless collocation, and unrestricted use of virtual collocation.

Finally, to the extent to which SWBT restricts cross-connections between collocated CLEC equipment, the Commission should not find SWBT in compliance with its interconnection obligations. Specifically, Intermedia believes that CLECs should be allowed to cross-connect their collocated equipment with other CLECs without, for example, being forced to purchase tariffed services from SWBT. In any event, general prohibitions against cross-connections cannot be justified under the 1996 Act.

MCI: SWBT has failed to establish compliance with this checklist item. SWBT has failed to provide interconnection to CLECs in a just, reasonable and nondiscriminatory manner and at a level of quality at parity with the interconnection it provides in support of its own retail operations. SWBT has repeatedly failed to load its switches with the NXX codes of one or more of the MCIW Companies. This failure has resulted in telephone numbers assigned by one or more of the MCIW Companies to its customers inoperable, in whole or in part. (See Martinez Rebuttal, pp. 8-11). [Also applicable to checklist item (ix)]. Additionally, SWBT has failed to timely deploy sufficient inbound interconnection trunks to the switches of or more of the MCIW Companies, resulting in blockage of incoming traffic from SWBT. (See Gaul Rebuttal, pp. 6-7).

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT has not provided interconnection in accordance with Section 251(c)(2) and 252(d)(1). SWBT has not provided Sprint interconnection equal in quality to that it provides itself and has not provided interconnection on rates and terms that are just and non-discriminatory. SWBT denied Sprint's collocation requests in 3 offices without supplying sufficient documentation substantiating its claims. (Wescott Rebuttal, pp. 10-11). SWBT's pricing of collocation on an individual case basis, insistence on placement of a point of termination bay in Sprint's collocation

space, and policy of restricting the number of collocation requests also violates 251(c)(2). (Wescott Rebuttal, pp. 11-15).

3. Has SWBT provided nondiscriminatory access to unbundled network elements?

SWBT: Yes. SWBT currently provides such access to all of the specific network elements the FCC has identified on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory. These network elements are: (1) local loops; (2) network interface devices; (3) local switching; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) OSS; and (7) operator services and directory assistance. In compliance with the requirement from the FCC's Second Louisiana Order ¶ 163, that a BOC must "demonstrate that, as a legal and practical matter, it could make access to unbundled network elements available in a manner that allows competing carriers to combine them," SWBT provides CLECs access to piece-parts of its network in several fashions:

First, SWBT offers a Network Component Service ("NCS") that enables CLECs to obtain UNEs in pre-assembled combinations. (Auinbauh Direct, pp. 29-30). In addition, the AT&T Agreement arbitrated by the Commission obligates SWBT to provide UNEs on a pre-combined basis upon request, at the UNE rates set by the Commission pursuant to 47 U.S.C. § 252(d). (See Bailey Direct, pp.; AT&T Agreement Attach. 6, § 2.4). Second, in addition to traditional collocation, SWBT offers five alternative methods that CLECs may use to access and combine UNEs (the first four of which do not require the CLEC to own or operate any equipment of their own to make use of SWBT's UNEs). SWBT will extend UNEs ordered from it: (1) to a CLEC's physical collocation point of termination frame; (2) to a CLEC UNE frame located in a collocation common area; (3) to a CLEC's UNE frame located in a common area room space (rather than a collocation common area) within the central office building; (4) to an external point of presence, such as a cabinet located outside the central office building, provided by SWBT on SWBT property;

or (5) to a building controlled by a party other than SWBT via cabling provided by the CLEC. While the first two methods are available only to physically collocated CLECs, the latter three are available to CLECs without regard to whether they have completed a collocation arrangement with SWBT. (See Bailey Direct, pp. 19-20; Deere Direct, pp. 31-36; and Sch. 2). Third, CLECs may request other technically feasible methods of access that are consistent with the provisions of the 1996 Act and other governing statutes and judicial and regulatory decisions. (Auinbauh Direct, p. 26).

The standard methods of access offered by SWBT entail provision of cross-connects, which are simply wires, fibers, or equipment that connect one piece of equipment to another. But using cross-connects does not limit a CLECs' practical ability to combine UNEs. The methods of UNE access offered by SWBT can be used to combine any UNEs the CLEC wishes to combine. And in all cases, connections are established for CLECs using the same tested materials and procedures, and the same technicians that SWBT uses in serving its own retail customers. (Id. at 62). In fact, SWBT currently uses these proven methods of cross-connection in its own operations as a collocated CLEC in GTE's territory. (Id. at 59).

Staff: SWBT does not meet this checklist item. SWBT's proposed methods of combining unbundled network elements contemplate some form of hardware connectivity that is different from the hardware connectivity currently used to serve SWBT's own end-user customers. Staff's position is that the Special Master's report in TO-98-115 does not contemplate the need for additional hardware.

OPC: SWBT has not demonstrated compliance with this checklist item. SWBT has attempted to show compliance with performance standards. However, there is insufficient data to test the measures of performance in many areas and where data is available SWBT fails to demonstrate parity or achievement of target performance levels. Noncompliance extends to provisioning of

unbundled elements and services with a focus on loops, interim number portability, resold services and especially Operational Support Systems. (Meisenheimer Rebuttal, pp.25-49).

AT&T: SWBT must demonstrate that it is providing access to network elements in accordance with sections 251(c)(3) and 251(d)(1) of the Act. Section 251(c)(3) requires SWBT to provide "nondiscriminatory access to network elements" on an unbundled basis "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. SWBT must provide unbundled network elements ("UNEs"), and access to UNEs, that are "at least equal in quality to that which the incumbent provides to itself," on terms and conditions that are "no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself."¹⁰ The terms and conditions of UNE access that SWBT offers also must "provide an efficient competitor with a meaningful opportunity to compete."¹¹

The testimony of Mark Witcher addresses one of the significant respects in which SWBT has failed to meet its statutory obligation to provide "nondiscriminatory access to network elements," § 251(c)(3). Specifically, SWBT claims that the intellectual property of numerous third-party vendors is or may be embedded within many of its network elements, and has taken the position that new entrants may not purchase access to those network elements unless and until the entrant either secures from those vendors any necessary license or other agreement permitting such access. This position has been adopted by the Commission over AT&T's objection and incorporated into AT&T's interconnection agreement. SWBT thus refuses to contact its vendors directly and to negotiate with them any modifications to its existing agreements that might be necessary to enable SWBT to fulfill its statutory duties, or, in the case of future agreements with its

¹⁰ FCC Rules 51.311(b), 51.313(b). The Eighth Circuit has upheld these nondiscrimination rules. See Iowa Utilities Board v. FCC, 120 F.3d 753, 819 n. 39 (8th Cir. 1997), cert. granted, ___ U.S. ___, 118 S.Ct. 879 (1998) (specifying particular portions of FCC First Report and Order to be vacated and rejecting request to vacate the remainder).

vendors, to ensure that those agreements permit such access. Indeed, this position was advanced by SWBT, and expressly rejected by the Federal Communications Commission (FCC), in closely-related circumstances in the FCC's Infrastructure Sharing Order. SWBT's refusal will pose a substantial barrier to entry in Missouri, will significantly delay the time it will take new entrants actually to obtain, and then compete on the basis of, network elements, and will, even after such time, secure to SWBT a permanent and potentially insurmountable cost advantage as compared to its competitors -- and is thus unlawfully discriminatory.

The nondiscriminatory access to UNEs required under section 251(c)(3) includes the requirement that SWBT provide UNEs "in a manner that allows requesting carriers to combine such elements in order to provide [a] telecommunications service." A CLEC is entitled under the Act to combine UNEs to provide a finished telecommunications service without itself owning or controlling any portion of a telecommunications network.¹² A 271 applicant must demonstrate that it can and will make available, as a legal and practical matter, access to UNEs in a manner that allows competing carriers to combine them.¹³ In order to show checklist compliance, access to UNEs for combining must be offered on terms that and conditions that are specific and concrete, not left largely to future negotiations.¹⁴

As is discussed in the testimony of Robert Falcone, SWBT has failed to demonstrate that it can and will make available, as a legal and practical matter, access to UNEs in a manner that allows competing carriers to combine them in order to provide a telecommunications service and in a manner that will allow competitors to meet both current and projected demand for UNEs and

¹¹ FCC First Report and Order ¶ 315; Ameritech Michigan 271 Order ¶ 141.

¹² Iowa Utilities Board, *supra*, 120 F.3d at 814.

¹³ BellSouth South Carolina 271 Order ¶ 197.

¹⁴ Id. at ¶ 204.

combinations of UNEs. Thus its application suffers from one of the same flaws cited by the FCC in rejecting the recent applications of BellSouth for 271 relief in the states of Louisiana and South Carolina.¹⁵ This single issue is a critical one. The Department of Justice has correctly observed that “the most economically efficient means for CLECs to serve a large segment of customers in the foreseeable future may be through the use of combinations of unbundled elements, with or without use of some of the competitive local exchange carriers’ (“CLECs”) own facilities.”¹⁶ The Justice Department has forewarned, in the wake of the Eighth Circuit decisions in Iowa Utilities Board v. FCC,¹⁷ that if the costs of combining elements are large, “many customers – especially residential customers – may not have any facilities-based competitive alternative for local service for a considerably longer period of time.” DOJ BellSouth South Carolina Evaluation at 20. According to the FCC, SWBT must demonstrate that it provides access to network elements “in a timely and reliable manner that would allow new entrants to recombine network elements to meet reasonable foreseeable demand.” BellSouth Second Louisiana Order ¶ 165. SWBT has not and cannot.

SWBT offers CLECs access for combining only by using CLEC facilities installed in physical collocation areas, at collocation-like “points of appearance,” or at CLEC-arranged locations off SWBT premises. SWBT’s requirements – that CLECs perform manual combining activities at CLEC facilities in either SWBT central offices or remote locations – will not permit CLECs to assemble UNE-based service on competitive terms. SWBT’s proposed methods of access

¹⁵ BellSouth Second Louisiana Order at ¶ 164; see In the Matter of Application of Bell South Corporation, CC Docket No. 97-208, Memorandum Opinion and Order ¶ 197 (December 24, 1997) (hereafter “BellSouth South Carolina 271 Order”).

¹⁶ In the Matter of Application by BellSouth Corporation, et al. For Provision of In-Region, InterLATA Services in South Carolina, Federal Communications Commission, CC Docket No. 97-208, Evaluation of the United States Department of Justice at 20 (Nov. 4, 1997) (hereafter “BellSouth South Carolina DOJ Evaluation”).

¹² 120 F.3d 753 (8th Cir. 1997), cert. granted, 118 S.Ct. 879 (1998). The Eighth Circuit vacated FCC rules requiring ILECs to combine elements for new entrants and barring ILECs from separating elements that were already combined in the ILECs’ networks. The Supreme Court granted review of these rulings and others, which have been argued before the Court and remain pending for decision.

pose insurmountable obstacles to any practical use in a competitive environment. These problems are common to any method of access to UNEs that requires physical connection of the elements in a collocation area or other location remote from the main distribution frame ("MDF").

SWBT's plans for implementing its five-method proposal make an impossible situation worse. Any remote manual combining option will foreclose competitive use of UNE combinations, even if implemented on the most favorable terms to the CLEC (allowing as much pre-wiring of CLEC facilities as possible and providing maximum coordination between ILEC and CLEC between order and cutover). The terms offered by SWBT, to the extent they are known, will aggravate the situation. In the first place, SWBT's plans are undeveloped. The only methods and procedures developed to date for implementing SWBT's proposed terms of access are the terms described in the Technical Publication attached as Schedule No. 1 to the Deere Testimony and in the interconnection agreements referenced by Mr. Deere. (See Deere Test. at 35). These documents do not provide significant implementation detail and do not commit SWBT to any coordination requirements to minimize service interruption or influence the gating factor its methods will impose on conversions. Beyond those documents, SWBT has acknowledged that it has no plans for implementing these methods of access and does not know when it will: "Exact procedures for ordering and provisioning [under the terms of access] are being developed. A time frame for completion of these has not been established. These methods have not currently been ordered by any CLEC in any of the states served by SWBT." OCC No. PUD 970000560, SWBT Responses to AT&T's Requests For Information, Data Request No. 1.23 (3/02/98).¹⁸ While SWBT's

¹⁸ See also OCC No. PUD 970000560, SWBT Responses to AT&T's Requests For Information, Data Request No. 1.7 (3/2/98) ("At this time there is no plan to develop a new OSS to coordinate the loop and port uncombining and combining. However, in the future if a new OSS is developed, SWBT will provide appropriate performance measurements"). These responses are included as Attachment RVF-1. SWBT has not identified any further development of methods or procedures for ordering and provisioning elements using its five proposed methods of access, beyond the Technical Publication attached to Mr. Deere's testimony, during subsequent 271 proceedings, including the pending Texas collaborative process in which those methods have been under very recent and close scrutiny.

implementation plans are undeveloped and incomplete, the disclosures that SWBT has made confirm that its proposed methods of access will be implemented in a way that exacerbates the problems inherent in any remote manual combining method.

UNEs also must be provided to CLECs at prices that meet the cost-based pricing standards of section 251(d)(1). The testimony of Robert Flappan demonstrates that SWBT has not complied with the cost-based pricing requirements:

- SWBT offers many unbundled network elements (“UNE”) on an unjust and unreasonable ICB basis;
- SWBT’s UNE rates are not cost based because they use SWBT’s existing exchanges as the basis for deaveraging instead of using a cost basis for deaveraging;
- SWBT’s UNE rates are not reasonable and in conformance with the Act because the depreciation lives upon which the rates are based are unduly short for an incumbent local exchange carrier;
- SWBT’s UNE rates for switching are not reasonable and do not satisfy SWBT’s obligations under the Act because the switch discounts used to determine the rates are totally growth discounts and should reflect the higher replacement discounts which SWBT receives from its vendors;
- SWBT’s UNE rates are not reasonable and do not satisfy SWBT’s obligations under the Act because there are many instances in the underlying SWBT cost studies where SWBT double counts its expenses causing new entrants to pay unjustly high rates;
- SWBT’s Directory Assistance and Operator Services rates are not cost based and are discriminatory;
- Many of SWBT’s UNE rates are still not permanently established. Some of the major elements that will control the onset of competition, (e.g., the cost of converting a

customer from SWBT to a new entrant) have yet to be permanently determined through the arbitration process;

- SWBT's non-recurring rates are not cost based. They were established by simply applying a 50% adjustment factor to the SWBT cost studies – studies which did not reflect forward looking efficient processes as is required by the Act;
- SWBT's rates for T/T&T are not cost based in conformance with the requirements of the Act;
- SWBT's proposed Network Configuration Service ("NCS") rates are not cost based as defined by the Act.

See also OSS discussion, below.

Birch Telecom: SWBT does not provide nondiscriminatory access to unbundled network elements. SWBT has supplied an unbundled loop to Birch using inferior equipment and wiring, and unacceptable engineering practices. Such actions by SWBT limit Birch's ability to test its network and provide reliable service to its customers.

e.spire: SWBT fails to meet checklist item (ii) in that SWBT does not provide nondiscriminatory access to network elements. SWBT's proposals make it virtually impossible and very expensive for e.spire to combine UNEs, and SWBT makes an additional charge to CLECs for such combinations, calling it "access to UNEs." (Kaufman Rebuttal, pp. 10-17).

Intermedia Communications: For the same reasons SWBT fails to comply with its interconnection obligations, the Commission should not find that SWBT satisfies its obligation to provide access to UNEs. Specifically, although SWBT asserts that it makes six different methods by which CLECs can combine UNEs, all of these methods impose unnecessary and excessive costs, or impose unreasonable restrictions on CLECs. For example, the enormous cost of physically collocating at every SWBT end office and tandem within a service area makes it cost-prohibitive to

CLECs to serve any but the largest-volume customers, and effectively prevents these CLECs from using UNEs to provide ubiquitous service to the mass market. A SWBT-imposed requirement to physically collocate the obtain access to critical UNEs effectively denies CLECs access to those UNEs in contravention of the market-opening mandates of the 1996 Act.

The Enhanced Extended Link ("EEL") proposed by Intermedia's witness Strow provides a technically feasible and reasonable alternative to physical collocation. Under the EEL, SWBT will provide the unbundled loop in conjunction with central office multiplexing and transport to a CLEC's collocation node in another central office or to another point of presence. This option is available as a tariffed service in New York now, and likely will be made available in Texas based on the Texas PUC Staff's recent recommendation that SWBT provide it in order to receive a favorable Section 271 recommendation.

Unless SWBT agrees to provide cost-effective, efficient, and less-restrictive collocation alternatives – such as the EEL proposed by Intermedia – the Commission should not find that SWBT is providing nondiscriminatory access to UNEs as mandated by the 1996 Act.

MCI: SWBT has failed to demonstrate compliance with this checklist item. SWBT has failed to provide access to network elements to CLECs in a just, reasonable and nondiscriminatory manner and at a level of quality which is at parity with the quality of service it provides in support of its own retail operations. SWBT has refused to provide its Directory Assistance listing databases in bulk to one or more of the MCIW Companies. (See Martinez Rebuttal, pp. 11-16). [Also applicable to checklist items (vii)(II) and (xii)]. Additionally, SWBT has failed to provide consistent, high quality, non-discriminatory service in the performance of service cut-overs – in converting end-users' dial-tone from its service to one or more of the MCIW Companies' service (including in the provision of unbundled loops). (See Gaul Rebuttal, pp. 3-6, and 8). [Also in part applicable to checklist items (iv) and (xi)].

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT refuses to provide access to UNE's on a non-discriminatory basis. The OSS UNE will be discussed separately below. SWBT does not provide access to DSL UNE loops on a non-discriminatory basis. SWBT's pricing and terms regarding DSL is discriminatory. SWBT is unwilling to provide cost support documentation for DSL UNE loops. (Wescott Rebuttal, pp. 16-17). SWBT also discriminatorily insists upon providing DSL loops based only using its proprietary technical publications rather than on industry standards. (*Id.* at 18). SWBT's discriminatory collocation policies also adversely affect Sprint's ability to obtain DSL loops. SWBT's policies requiring collocation for CLECs to obtain combinations of UNEs also violates the non-discriminatory access for interconnection requirements for this checklist item.

4. Has SWBT provided nondiscriminatory access to poles, ducts, conduits, and rights-of-way?

SWBT: Section 271(c)(2)(B)(iii) requires BOCs to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224." (47 U.S.C. § 271(c)(2)(B)(iii)). SWBT provides this nondiscriminatory access.

SWBT currently is furnishing telecommunications carriers (including CLECs, interexchange carriers, cable companies, and other competitors) access to approximately 68,627 duct-feet (13 miles) of conduit space and 185,026 poles in Missouri. (Auinbauh Direct, Sch. 3; Hearst Direct, p. 5). There have been no denials of access. (Hearst Direct, p. 4). More than 1.1 million feet of conduit space and more than 3,400 pole attachments have been furnished to CLECs in SWBT's five states. (Auinbauh Direct, Sch. 3). Such access is therefore "business as usual." (*See*, Hearst Direct, p. 2 (practices and procedures in place for 20 years)). The procedures and methods by which SWBT provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way are

found in, among other places, Section VII of the Brooks Agreement. SWBT also has established performance measurements – Percent of Requests Processed within 35 Days and Average Days to Process a Request – that allow CLECs to monitor SWBT’s compliance with this checklist item. (Dysart Direct, p. 40).

Evaluation of Facilities Requests. SWBT has established nondiscriminatory procedures for evaluating facilities requests pursuant to section 224 of the Act. (See generally, Hearst Direct). SWBT has developed a Master Agreement for access to poles, ducts, conduits, and rights-of-way that has been incorporated into SWBT’s interconnection agreements and contains the rates, terms, and conditions of access. (Id. at 3-4). The standards that SWBT applies to CLEC applications for access – capacity, safety, reliability, and engineering – are the same standards SWBT applies to its own proposed use of pole, duct, conduit, and right-of-way space. (Id. at 8).

Access to Facilities Information. Pursuant to the Master Agreement, SWBT provides CLECs nondiscriminatory access to information concerning SWBT’s facilities.

Choice of Workforce. SWBT permits carriers to use qualified workers of their choice to perform any work necessary for attaching their facilities. (Id. at 11-12). SWBT does, however, reserve the right to perform intrusive work that involves active lines serving SWBT retail customers. (Id. at 12).

Rates. The general pricing rules governing access to SWBT’s poles, ducts, conduits, and rights-of-way were established by the FCC. The rules require LECs to charge rates determined under the FCC’s formula, established by the relevant state authority, or set through negotiations with cable operators. (See, Hearst Direct, pp. 14-15, 16-19 (discussing rates)). In accordance with these permitted procedures, SWBT’s state-approved interconnection agreements incorporate rates that were negotiated with cable operators and comply with the rate methodology set out in 47 U.S.C. § 224(d)(1). (See, Hearst Direct, pp. 16-19).

Staff: SWBT meets the requirements of this item.

OPC: It appears that SWBT is in compliance with this checklist item. This position is subject to review and revision based the evidence adduced at the hearing.

AT&T: Section 271(c)(2)(B)(iii) of the Federal Act directs SWBT to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way that SWBT owns or controls at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934. Congress passed the Pole Attachment Act in 1978. The Federal Act modified the Pole Attachment Act, giving the FCC jurisdiction to regulate the rates and terms and conditions of attachments by telecommunications carriers as well as cable television operators, and requiring nondiscriminatory access. Paragraphs 1119-1240 of the FCC's First Interconnection Order, CC Docket No. 96-98 (Aug. 8, 1996) pertain to poles, ducts, conduits, and rights-of-way. The FCC has explained that the requirements of section 224 of the Communications Act, as incorporated in sections 271(c)(2)(B)(iii) and 251(b)(4), "seek to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields." First Interconnection Order, ¶ 1123.

Birch Telecom: Birch Telecom takes no position on this issue at this time.

MCI: The MCIW Companies take no position with respect to this issue.

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: Sprint takes no position on this item at this time.

5. Has SWBT provided nondiscriminatory access to unbundled local loops?

SWBT: Yes. SWBT makes the following standard unbundled local loops available under Commission-approved interconnection agreements: 2-wire analog loops with 8db or 5db loss, 4-wire analog loops, 2-wire ISDN digital grade lines, and 4-wire S-1 digital grade line. SWBT also

is willing to provide CLECs with unbundled loops capable of supporting asymmetric digital subscriber line ("ADSL") technologies and currently is negotiating with CLECs the terms, conditions, and prices for access to ADSL-conditioned loops, pursuant to the BFR process. Requests for other technically feasible loop types and conditioning likewise will be considered under the BFR process. (Deere Direct, pp. 20-22).

In addition to loops themselves, CLECs are able to obtain and use SWBT Network Interface Device (NID) at the customer's premise under terms and conditions established by the Commission. (Deere Direct, pp. 18-19). SWBT offers 2-wire and 4-wire cross-connections for use with unbundled loops, which are matched to the loop type and arrangement selected by the CLEC. (Deere Direct, pp. 56-62). SWBT also has established nondiscriminatory procedures for extending unbundled loops to CLEC collocation cages and has shown its ability to perform these procedures. (Deere Direct, pp. 23-24, 39-40, 42-43, 57-60).

By virtue of these practices, local loops are available in practice to any CLEC that wishes to order them. SWBT has provisioned 8,377 unbundled loops in its five-state region. (Auinbauh Direct, Sch. 3). 1,770 of these loops have been provisioned in Missouri, a number that has quadrupled in the last nine months. (Id. at 30). Prices for unbundled local loops were set by the Commission after review of SWBT's forward-looking economic cost studies. (Bailey Direct, pp. 26-27).

Staff: The supporting data for the performance measures for unbundled loops is incomplete. As Staff cannot make a complete analysis of this checklist item, Staff must recommend that SWBT does not meet this requirement. While there is progress in providing access to unbundled loops (a majority of those provided established in 1998), additional steps may be required to allow competitors to provide advanced services.

OPC: SWBT has not demonstrated compliance with this checklist item. Based on the record from the Texas and Kansas hearings on SWBT's Sec. 271 application, it appears that SWBT has not met this item. (Meisenheimer Rebuttal, p. 51).

AT&T: This checklist item requires SWBT to make available local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.¹⁹ Like other unbundled network elements, unbundled loops must be provided on terms and conditions that are nondiscriminatory, just, and reasonable, as discussed above in connection with checklist item ii. See FCC First Report and Order ¶ 387.

The testimony of Larry Barnes demonstrates that SWBT has failed to establish that it is providing nondiscriminatory access to unbundled local loops in Missouri, and therefore cannot satisfy competitive checklist item four, because SWBT has failed to offer specific rates, terms, and conditions for DSL-capable loops in this state and because positions taken by SWBT in pending 271 proceedings in Texas make clear that SWBT will not provide DSL-capable loops on terms that are nondiscriminatory and adequate to support competition.

As is discussed in the TCG Surrebuttal Testimony of Robert Schmersahl, a very recent experience in Missouri demonstrates that SWBT is not providing access to unbundled network elements in general (checklist item two), or to unbundled local loops in particular (checklist item four), on terms that are nondiscriminatory, just and reasonable. As Mr. Schmersahl chronicles, service was to be installed for a TCG customer, General Mills, by December 1, 1998. At TCG's request, SWBT configured a DS1 loop for TCG that ran from a TCG collocation cage at a SWBT central office to General Mills' premises. Between December 3 and December 10, 1998, General Mills was out of service three separate times. After the first outage, TCG requested that Southwestern Bell go to the customer's premises to test SWBT equipment that TCG's technician

¹⁹ 47 U.S.C. § 271(c)(2)(B)(iv).

suspected might be the cause of the problem. Although SWBT tested remotely, the remote testing was incomplete. It was not until after the third outage that a SWBT technician went to the customer premises and replaced the defective SWBT equipment, and service was no longer interrupted. In late January, the Director of Telecommunications for General Mills informed TCG that TCG's service would be removed from the General Mills St. Louis field location and would be replaced by lines installed by SWBT. According to General Mills, the reason for this decision was that General Mills did not want to risk further potential service problems. Its business had been adversely affected because customers had not been able to get through during the downtime experienced when TCG was providing local service. TCG has lost an important business customer because of SWBT's nonresponsiveness to requests for maintenance. This loss affected other local sales in other AT&T cities to General Mills and its subsidiaries as well. That customer now has returned to SWBT. This real life experience certainly does not demonstrate SWBT's compliance with the competitive checklist. In specific, it demonstrates that CLECs are at a distinct competitive disadvantage so long as SWBT discriminates in providing quality access to network elements, including the local loop. See also discussion of mechanized loop testing access under local switching, below.

Birch Telecom: SWBT does not provide nondiscriminatory access to unbundled network elements. SWBT has supplied an unbundled loop to Birch using inferior equipment and wiring, and unacceptable engineering practices. Such actions by SWBT limit Birch's ability to test its network and provide reliable service to its customers.

MCI: SWBT has failed to demonstrate compliance with this checklist item. SWBT has failed to provide consistent, high quality, non-discriminatory service in the performance of service cut-overs – in converting end-users' dial-tone from its service to one or more of the MCIW Companies'

service (including in the provision of unbundled loops). (See, Gaul Rebuttal, pp. 3-6, and 8). [Also in part applicable to checklist items (ii) and (xi)].

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT has not met this checklist item in that it is not providing XDSL loops to CLECs in a reasonable timeframe and without a minimum disruption of service. SWBT's collocation policies described in checklist items 1 and 2 prevent Sprint from obtaining non-discriminatory access to local loops. SWBT has failed to take affirmative steps to condition existing loops to allow Sprint to provide XDSL service using SWBT's loops. SWBT's pricing and terms on XDSL UNE loops are not reasonable. SWBT has not provided Sprint with cost studies supporting the quoted prices. (Wescott Rebuttal, p. 16). SWBT's provision of XDSL loops according to its technical specifications rather than industry specifications and its unilateral implementation of spectrum management are further examples of discrimination against CLEC competitors. (Id. at 17-18).

6. Has SWBT provided nondiscriminatory access to unbundled local transport?

SWBT: Yes, SWBT's shared and dedicated transport offerings in Missouri satisfy this checklist item. SWBT makes available shared transport between SWBT central office switches, between a SWBT tandem switch and a SWBT central office switch, and between tandem switches in accordance with the "shared transport" requirements of the FCC's Third Reconsideration Order in Docket No. 96-98. (Deere Direct, pp. 25-26). Dedicated transport is available at various transmission speeds between a SWBT tandem or end office and a CLEC tandem or end office. (Deere Direct, pp. 25-26). Cross-connections also are available from SWBT for use with unbundled dedicated transport. (Deere Direct, pp. 27, 60-62). In addition, SWBT offers use of its Digital Cross-Connect System ("DCS") in conjunction with dedicated transport with the same functionality that SWBT provides interexchange carriers. CLECs may request other forms of dedicated transport requiring higher levels of capacity through the BFR process. SWBT also permits CLECs to use

dark fiber to provide their own dedicated transport. (Deere Direct, p. 27).²⁰ Cost-based prices for unbundled transport were set in the AT&T arbitration. (Bailey Direct, pp. 28-30; See, AT&T Agreement Attach. 6, App. Pricing - UNE).

Staff: SWBT has not substantiated that it has met the requirements to provide unbundled local transport.

OPC: It appears that SWBT is in compliance with this checklist item. This position is subject to review and revision based the evidence adduced at the hearing. (Meisenheimer Rebuttal, p. 52).

AT&T: This checklist item requires SWBT to provide local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services. "[A]n incumbent LEC may not limit the facilities to which such interoffice facilities are connected, provided such interconnection is technically feasible, or the use of such facilities. In general, this means that incumbent LECs must provide interoffice facilities between wire centers owned by incumbent LECs or requesting carriers, or between switches owned by incumbent LECs or requesting carriers." FCC First Report and Order ¶ 440.

Birch Telecom: Birch Telecom takes no position on this issue at this time.

e.spire: It is e.spire's position that SWBT has not met checklist item (v) because it does not provide local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services. (See Kaufman Rebuttal, pp. 12-17).

MCI: The MC IW Companies take no position with respect to this issue.

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT's failure to provide non-discriminatory access to OSS for the ordering and provisioning of shared and dedicated transport causes it to fail on this checklist item. (Wescott

²⁰ This service allows CLECs to exchange signals between high-speed digital circuits without returning all of the circuits to analog electrical signals. Moore Direct, p. 27.

Rebuttal, pp. 19-35). Also, SWBT's UNE combination and collocation policies with respect to unbundled local transport violate this checklist item.

7. Has SWBT provided nondiscriminatory access to unbundled local switching?

SWBT: Yes. SWBT provides requesting carriers access to line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch (including, among other things, the connection between a loop termination and a switch line card, the connection between a trunk termination and the trunk card, analog and ISDN basic and primary rate interface trunk ports, all vertical features of the switch, and any technically feasible routing features, such as the ability to route calls to a CLEC's own DA and operator services facilities over CLEC-designated trunks where technically feasible). (Deere Direct, pp. 28-30).

SWBT allows CLECs to designate the features and functions that are to be activated on a particular unbundled switch port, provided that such features and functions are available in the software of that switch. These features are ordered by CLECs using the same order process that SWBT uses. Where possible, SWBT will use a customized routing method for CLECs using unbundled local switching that is based on its Advanced Intelligent Network (AIN) architecture. Where AIN cannot be used (such as hotel/motel services, certain coin services, and ports using voice-activated dialing), SWBT will employ line class codes to customize-route CLEC calls. SWBT provides CLECs access to trunk ports on a shared basis, with access to routing tables resident in SWBT's switch. Unbundled tandem switching is available as well. SWBT provides CLECs using unbundled switching actual usage information for originating access and has negotiated with CLECs a surrogate for terminating access and 800-number usage information. (Deere Direct, pp. 29-31). CLECs have begun to make use of SWBT's unbundled switching facilities. As of September 30, 1998, SWBT was furnishing CLECs with 462 unbundled switch ports in its five-state region. (Aubinbaur Direct, Sch. 3).

Staff: SWBT does not provide unbundled local switching in a manner consistent with the FCC's requirements. SWBT has not demonstrated any past performance that would show compliance with this requirement, nor have they submitted any evidence to substantiate that SWBT will comply with this requirement.

OPC: Due to a lack of specific information, Public Counsel takes no position on compliance with this checklist item and reserves its right to take a position based on the evidence adduced at the hearing. (Meisenheimer Rebuttal, p. 52).

AT&T: To satisfy this checklist item, SWBT must provide local switching unbundled from transport, local loop transmission, or other services.²¹ The local switching element includes line-side and trunk-side facilities plus the features, functions and capabilities of the switch.²² "Features, functions, and capabilities" of the local switch include the basic switching functions of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. They include the same basic capabilities that are available to SWBT's customers. And they include all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.²³ "Thus, when a requesting carrier purchases the unbundled local switching element, it obtains all switching features in a single element on a per-line basis."²⁴

As is discussed in the testimony of Robert Falcone, SWBT's refusal to allow CLECs to use the recent change capability of the local switch to combine loops and switching in an automated fashion represents a discriminatory restriction on CLEC access to unbundled local switching itself. Similarly, limiting CLEC access to Mechanized Loop Testing (MLT) when CLECs use the

²¹ 47 U.S.C. § 271(c)(2)(B)(vi).

²² FCC First Report and Order ¶ 412.

²³ Id.

²⁴ Id.

elements in combination may properly be seen as a failure to provide CLECs with access on nondiscriminatory terms to the unbundled local switching elements that perform the testing and the unbundled local loops that are the subject of the testing. In addition, SWBT's inability to provide the recording capability to deliver to CLECs the records necessary to allow the CLEC to bill access charges to interexchange carriers is discriminatory, leaving SWBT unable to comply with its statutory obligation to provide full local switching functionality to CLECs.

Birch Telecom: Birch Telecom takes no position on this issue at this time.

MCI: SWBT has failed to demonstrate compliance with this checklist item. SWBT has failed to provide one or more of MCIW Companies with various customized call routing features associated with unbundled switching at just, reasonable, non-discriminatory, cost-based rates. (See, Martinez Rebuttal, pp.19-21).

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT's failure to provide non-discriminatory access to OSS for billing causes it to fail on this checklist item. (Wescott Rebuttal, pp. 19-35). Sprint reserves the ability to question SWBT on whether it makes all switching vertical features and customized routing available to CLECs on a non-discriminatory basis.

8. Has SWBT provided nondiscriminatory access to 911 and E911 Services, Directory Assistance, and Operator Call Completion Services?

SWBT: SWBT satisfies as well the requirements of checklist item (vii), 47 U.S.C. § 271(c)(2)(B)(vii). Again, SWBT's emergency, directory assistance ("DA"), and operator call completion services are ready, well-tested, and waiting for CLECs that want them. (See, Deere Direct at 63-71; see generally, Weckel Direct).

911 and E911 Service. SWBT provides CLEC customers and its own retail customers access to the type of 911 service selected by the appropriate government officials in an identical

manner. (Deere Direct, p. 63; see, e.g., Brooks & e.spire Agreements App. 911; AT&T Agreement Attach. 15). CLECs may sell the governmental body access to SWBT's 911 service, or they may interconnect to SWBT's existing service arrangement at the government's request. (Deere Direct, p. 63).

For E911 service, SWBT maintains dedicated E911 circuits. (Id. at 64). SWBT has installed 16 E911 trunks to serve CLECs in Missouri and has furnished a total of 270 E911 trunks on behalf of CLECs in its five-state region. (Auinbauh Direct, Sch. 3). CLECs are free to establish any E911 trunking arrangement they wish with the local governmental authority. Deere Direct at 70. Because SWBT does not have access to calling and blockage data on CLEC trunks, however, CLECs must determine the number of E911 trunks they require. (Id. at 64). In cases where the CLEC has agreed to combine its E911 traffic with SWBT's, the CLEC routes its calls to a tandem via dedicated trunks, where the traffic is combined with SWBT's. (Id. at 71).

Customer data for 911 services are stored in several databases known collectively as the "911 database." These are the Master Street Address Guide, the Selective Routing database, and the Automatic Location Identifier database. (Id. at 65-66). SWBT has procedures in place that protect the confidentiality of the customer-specific information in the 911 database. (Id. at 68-69). SWBT furnishes all necessary street address information for the exchanges or communities where the CLECs operate and provides the CLECs with all documentation needed to operate the E911 system and download and maintain their own end-user records. (Id. at 64). Although it is the CLEC's responsibility to verify the accuracy of the data it provides to SWBT for inclusion in the 911 database, (Id. at 70-71), SWBT uses the same procedures and personnel to detect and correct errors in the 911 database whether the error relates to a SWBT end-user customer or a CLEC customer. (Id. at 67-68, 71; see Dysart Direct, pp. 36-39). A software upgrade is scheduled for the first quarter of 1999, which will allow SWBT to measure the time it takes to correct an error in the

E911 database once it is detected in the processing of the E911 file. (Dysart Direct at 39). CLECs in Missouri have the ability to enter customer data into the 911 database and to receive SWBT's reports on database accuracy. (Id. at 40).

Directory Assistance/Operator Services. SWBT's directory assistance offerings allow CLECs (including facilities-based carriers as well as resellers) to obtain nondiscriminatory access to DA, DA call completion, call branding, and call rating services. (See, Weckel Direct, pp. 7-8). Twenty-five CLECs in Missouri, including seven carriers whose contracts enable them to operate on a facilities-basis, currently are utilizing SWBT's DA offerings. (Id. at 7). SWBT provides access to its DA services through prevailing dialing arrangements, so there is not an unreasonable dialing delay. (Id. at 7). In addition, SWBT allows CLECs to obtain listing information by searching the same DA database that SWBT's DA operators use. (Id. at 9). In order to provide this direct access, SWBT has ordered, purchased, and installed upgrades to its system, at a cost of approximately \$2 million. (Id. at 9).

If a CLEC chooses to provide its own DA service, SWBT will negotiate a reciprocal licensing agreement that will allow the CLEC and SWBT to exchange listing information so that end users can access any listed number on a nondiscriminatory basis, regardless of the identity of the customer's local service provider. (Id. at 10). SWBT has entered into reciprocal licensing agreements for DA listings with 13 CLECs. (Id.). The listings provided by SWBT include the directory assistance information for other ILECs and CLECs who have acceded to SWBT's request for permission to provide this customer information to other telecommunications providers. (Id. at 11). In light of the FCC's position regarding provision of listing information in the Second Louisiana Order, ¶ 249, moreover, SWBT will again contact all ILECs that have not granted SWBT permission to provide this information, and will advise them of the FCC's views, as well as SWBT's intention to comply with that federal mandate. (Weckel Direct, p. 12).

SWBT's operator call completion services include fully automated call processing, semi-automated call processing, station-to-station operator handled calls, line status verification, busy line interrupt, operator transfer, call branding, and call rating and reference information. (Id. at 17-18; see Brooks & e.spire Agreements App. OS; AT&T Agreement Attach. 1 App. OS-Resale, Attach. 23). SWBT provides nondiscriminatory access to each of these services. (Weckel Direct, pp. 18-19). Calls from SWBT's retail operations and calls from CLECs are processed by the same operator services system in the order in which they are received. (Id. at 19). CLEC customers therefore receive the same answer performance as SWBT retail customers. (Id.). CLECs are billed cost-based rates for operator-assisted calls on an operator work second basis and for fully automated calls on a completed call basis. (Id.). For resale customers, the rates are SWBT's retail operator services rates less the resale discount. (Id.).

In 1997, SWBT upgraded its operator services switches to provide branding capability for DA and operator call completion services to any requesting CLEC in Missouri, regardless of whether the carrier uses dedicated trunks to deliver its traffic to SWBT's operator services switch. (Id. at 20-21). Pricing for branding is cost-based, as determined by the Commission. (Id. at 22).

Staff: SWBT meets the requirements of this item.

OPC: SWBT has not demonstrated compliance with this checklist item. Based on the record of the SWBT Sec. 271 proceedings in Texas and Kansas, it appears that there are a number of unresolved issues prior to SWBT meeting this item. Public Counsel supports the development of performance standards for showing compliance with this item. (Meisenheimer, pp.53-54).

AT&T: (a) 911 and E911

Section 271(c)(2)(B)(vii)(I) of the competitive checklist requires SWBT to provide "nondiscriminatory access to . . . 911 and E911 services." The FCC has concluded that the nondiscrimination requirement obligates Bell operation companies "to maintain the 911 database

entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers. Ameritech Michigan Order ¶ 256. This duty includes populating the 911 database with competitors' end user data and performing error correction for competitors on a nondiscriminatory basis. Id.

As is discussed in the testimony of Nancy Dalton, SWBT has not demonstrated the willingness to leave intact existing 911/E911 customer information database records when a customer converts from SWBT to a CLEC, insisting instead on the regeneration of the records. In addition, SWBT has announced that it will not be able to provide nondiscriminatory access to permit CLECs to verify the accuracy of customer information in the 911/E911 databases until the end of the second quarter of 1999. For these critical reasons, SWBT should not be found to be in compliance with its obligations to provide nondiscriminatory access to 911 and E911.

(b) Directory assistance

FCC Rule 51.217(c)(3)(i) states: "A LEC shall permit competing providers to have access to its directory assistance services so that any customer of a competing provider can obtain directory listings . . . on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the provider for the customer whose listing is requested." Section 47 U.S.C. § 222(e) states that "a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled bases, under nondiscriminatory and reasonable rates, terms, and conditions, as to any person upon request for the purpose of publishing directories in any format." The FCC has concluded that section 251(b)(3) of the Federal act "requires LECs to share subscriber listing information with their competitors, in 'readily accessible' tape or electronic formats, and that such data be provided in a timely fashion upon request." FCC Second Report and

Order, ¶ 141. Also, FCC Rule 51.217(c)(3)(ii) provides that “A LEC also must permit competing providers to have access to and read the information in the LEC’s directory assistance databases.”

As is discussed in the testimony of Nancy Dalton, SWBT has not implemented a proven fix to the problem in its back-end system processing that is causing CLEC customer listing information to disappear (among other potential consequences) during the processing of a UNE customer conversion order. In addition, SWBT has not demonstrated an ability or willingness to leave intact (rather than recreate) a customer’s directory listing information on a resale or UNE conversion order. Each of these problems impacts the presence and integrity of directory information for CLEC customers. Until a fully tested solution is in place, SWBT cannot be found to be in compliance with its directory assistance obligations.

(c) Operator call completion services

As outlined in the FCC’s Second Report and Order (¶ 102), SWBT has a duty to provide “nondiscriminatory access” to operator services, directory assistance and directory listings to competing providers that is at least equal in quality to the access that SWBT provides itself. Operator Call Completion Services refer to a variety of call services that are obtained by dialing “0-“ (dialing only the digit 0),)+ a local number, or 0+ a toll number. These services include access to alternate billing services (i.e. billing to a telephone calling card, credit card, third number or collect), assistance in dialing a call which is billed to the originating line (i.e., customer has encountered trouble dialing a 1+ call or customer wishes to place a person-to-person call), busy line verification (BLV) and emergency interrupt (EI). See 47 C.F. R. §51.217(a)(2).

Birch Telecom: SWBT is not providing reliable directory listings to Birch customers. Many Birch customers have been dropped from the white pages directory, which raises the distinct possibility that those customers have also disappeared from the DA database. SWBT has not met its obligation to provide reliable DA.

MCI: Non-discriminatory access to –
(I) 911 and E911 services;

SWBT has failed to establish compliance with this checklist item, and has failed to provide non-discriminatory access to 911 and E911 services. SWBT has failed to implement, and demonstrate satisfactory operation of, a procedure to permit CLECs to verify the accuracy of their customers' address information in the 911/E911 databases. (See, Martinez Rebuttal, pp. 18-19).

(II) directory assistance services to allow the other carrier's customers to obtain telephone numbers;

SWBT has failed to demonstrate compliance with this checklist item, and has failed to provide non-discriminatory access to its directory assistance services. SWBT has refused to provide its Directory Assistance listing databases in bulk to one or more of the MCIW Companies. (See, Martinez Rebuttal, pp. 11-16). [Also applicable to checklist items (ii) and (xii)].

(III) operator call completion services;

The MCIW Companies take no position with respect to this issue.

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: Sprint takes no position on this item at this time.

9. Has SWBT provided nondiscriminatory access to white pages directory listings?

SWBT: Having signed up local customers, a competitor may want those customers to be listed in the same White Pages directory as SWBT's customers. CLECs can obtain this service under SWBT's Commission-approved agreements. In making this service available, SWBT satisfies checklist item (viii).

Nondiscriminatory Appearance and Integration of White Pages Listings. SWBT makes available White Pages listings for the end users of both resellers and facilities-based carriers. (Weckel Direct, p. 27; see also, Brooks & e.spire Agreements App. WP; AT&T Agreement Attach. 1 App. WP - Resale, Attach. 19). These listings are maintained in SWBT's White Pages database in

the same manner as listings for SWBT's retail customers. (Weckel Direct, p. 28). Facilities-based CLECs may choose to have their customers' names interspersed with those of SWBT's customers in White Pages directories, or listed in a separate section for that CLEC. (Id. at 29). Starting in February 1999, this option will be available to resale CLECs as well. (Id.).

The listing options available to CLECs include primary, additional, and foreign listings, as well as enhanced residential listings. (Id. at 30). SWBT will also transmit facilities-based CLECs' listings to third-party directory publishers upon request of the CLEC. (Weckel Direct, pp. 32-33).

CLECs themselves may choose to be included on an informational page listing carrier-specific contact information. (Id. at 31-32). SWBT will deliver White Page directories to customers of facilities-based CLECs, or in bulk to a single address designated by the CLEC. (Id. at 27). Resale customers receive direct delivery of directories in just the same manner as SWBT's retail customers. (Id.).

Staff: SWBT meets the requirements of this item.

OPC: SWBT has not demonstrated compliance with this checklist item. Based on the record of the SWBT Sec. 271 proceedings in Texas and Kansas, it appears that there are a number of unresolved issues prior to SWBT meeting this item. (Meisenheimer Rebuttal, p. 54).

AT&T: Section 271(c)(2)(B)(viii) of the Federal Act requires SWBT to provide "[W]hite pages directory listings for customers of the other carrier's telephone exchange service." The systems development (ALPSS/LIRA) that SWBT expects will provide CLECs the ability to verify white pages information prior to publication, and that SWBT previously committed to implement by January 1, 1999, was delayed until February 1999 (and has not been tested with CLECs), meaning that today CLECs do not have proven nondiscriminatory access to verify customer listing information in advance of publication.

Birch Telecom: Birch has experienced the dropping of customers from the SWBT white pages directory listing. SWBT has failed to respond promptly and effectively to Birch's complaints concerning this issue.

MCI: SWBT has failed to establish compliance with this checklist item, and has failed to provide White pages directory listings in a just, reasonable and non-discriminatory manner to CLECs. SWBT has failed to implement, and demonstrate satisfactory operation of, a procedure to permit CLECs to verify the accuracy of White pages listings for their customers prior to the publishing of the directories. (See, Martinez Rebuttal, pp. 17-18).

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT does not provide non-discriminatory access to its white page listings. SWBT did not provide Sprint the opportunity to proof SWBT's white page listings for its beta local service customer in Missouri. (Wescott Rebuttal, pp. 9-10). This is in violation of the requirement that BOCs have procedures in place to minimize the potential for errors in white page listings.

10. Has SWBT provided nondiscriminatory access to telephone numbers?

SWBT: Yes. As Code Administrator, SWBT has followed industry-established guidelines published by the Industry Numbering Committee and has assigned 12 CLECs in Missouri a total of 170 NXX codes, representing 1.7 million telephone numbers that can be used to provide facilities-based service. SWBT utilizes identical standards and procedures for processing all number requests, regardless of the requesting party, and charges no fees for activating CO codes. SWBT has not turned down any requests for NPA/NXX code assignments in Missouri, other than as necessary to implement an industry and PSC developed jeopardy plans for number conservation. Neither SWBT nor the Commission has received any complaints about SWBT's implementation of jeopardy plans. (Adair Direct, pp. 3-8).

In January 1999, Lockheed Martin assumed CO code administration responsibilities. Until the transition to Lockheed Martin is complete, SWBT will continue to work with Lockheed Martin to facilitate the transfer of code administration responsibilities. Thereafter, SWBT will adhere to the industry's CO code administration guidelines and relevant FCC rules, including those provisions requiring accurate reporting of data to the Code Administrator. (Adair Direct, p. 8).

Staff: SWBT meets the requirements of this item.

OPC: It appears that SWBT is in compliance with this checklist item. This position is subject to review and revision based the evidence adduced at the hearing. (Meisenheimer Rebuttal, p. 55).

AT&T: Section 271(c)(2)(B)(ix) of the Federal Act requires that SWBT provide "[u]ntil the data by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers." The FCC's rules, in turn, require that a LEC permit competing providers to have access to telephone numbers that is identical to the access the LEC provides itself. 47 CFR § 51.217(e)(i). "Number administration" refers to the administration and assignment of central office codes to requesting facilities-based telecommunications providers. The regional Central Office Code Administrator – traditionally the incumbent LEC – makes assignment of central office codes.

Birch Telecom: Birch Telecom takes no position on this issue at this time.

MCI: SWBT has failed to demonstrate compliance with this checklist item, and has failed to provide non-discriminatory access to telephone numbers. SWBT has repeatedly failed to load its switches with the NXX codes of one or more of the MCIW Companies. This failure has resulted in telephone numbers assigned by one or more of the MCIW Companies to its customers inoperable, in whole or in part. (See, Martinez Rebuttal, pp. 8-11). [Also applicable to checklist item (i)].

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: Sprint takes no position on this item at this time.

11. Has SWBT provided nondiscriminatory access to databases and associated signaling for call routing and completion?

SWBT: SWBT also satisfies the checklist's requirements for affording CLECs access to signaling and call-related databases. (See, 47 U.S.C. § 271(c)(2)(B)(x)).

Signaling Networks. When a CLEC purchases unbundled switching from SWBT, it automatically obtains the same access to SWBT's signaling network as SWBT provides itself. (Deere Direct, p. 72). SWBT also makes available as a separate offering access to its SS7 signaling links (dedicated transmission paths carrying signaling messages between switches and signaling networks) and signal transfer points (signaling message switches that interconnect signaling links to route signaling messages between switches and databases). (Id. at 72-73).

Nondiscriminatory Access to Signaling and Databases. SWBT's Commission-approved agreements offer CLECs the ability to obtain nondiscriminatory access to a variety of call-related databases. This access enables the CLEC to provide the types of sophisticated calling capabilities customers have come to expect from SWBT, without having to duplicate SWBT's investment in these technologies. Specifically, SWBT provides access to line-information databases, toll-free databases, and AIN. SWBT's Line Information Database ("LIDB") enables CLECs to store CLEC line and billing records in the LIDB on the same basis as SWBT. (Id. at 73-74). Nondiscriminatory access to SWBT's Calling Name Delivery Database ("CNAM") allows CLECs to offer their customers caller ID services. (Id. at 74-75). For completion of toll free calls, the approved agreements afford CLECs unbundled access to SWBT's Toll Free Calling (800 and 888) Database, plus optional translation, call validation, and call routing features. (Id. at 75-76). AIN services

allow CLECs to create their own AIN applications on SWBT's Integrated Service Control Point and then place them on SWBT's network. (Id. at 76-77).

Since they will be using switches that SWBT itself uses, CLECs that purchase unbundled local switching will interconnect with SWBT's signaling network and will access all call-related databases in exactly the same manner as SWBT. (Id. at 73-76). CLECs with their own switches that interconnect with SWBT's SS7 network will access the databases in the same fashion as SWBT. (Id. at 73). All CLECs accessing these databases, whether over their own networks or using unbundled local switching, will have access to all the same features and functions of each database as SWBT. (See, Id. at 74 (LIDB); Id. at 74-75 (CNAM database); Id. at 75-76 (toll-free calling database); Id. at 76 (AIN)).

SMS. SWBT offers nondiscriminatory access to its service management systems ("SMS"), which are used to create, modify, or update information in call-related databases that are necessary for call routing and completion. (47 CFR § 51.319(e)(3); Deere Direct, p. 76). Requesting carriers are provided the relevant information they need to enter and/or format for entry the input into the appropriate databases. (Deere Direct, p. 76).

All data in the databases are maintained by SWBT in accordance with the confidentiality requirements of 47 U.S.C. § 222. (Id. at 74, 77). Four CLECs in Missouri are accessing SWBT's call-related databases. (Id. at 73).

Staff: SWBT meets the requirements of this item.

OPC: Due to a lack of information, Public Counsel takes no position on compliance with this checklist item and reserves the right to take a position based on the evidence adduced at hearing. (Meisenheimer Rebuttal, p. 55).

AT&T: The FCC Rules recite that an ILEC has an obligation to provide nondiscriminatory access to signaling networks and call-related databases. 47 C.F.R. § 51.319(e). SWBT must provide

nondiscriminatory access to its signaling links and Signal Transfer Points ("STPs") on an unbundled basis. 47 C.F.R. § 51.319(e)(1)(i). CLECs must be able to use SWBT's SS7 signaling network for signaling between their switches, between their switches and SWBT's switches, and between their switches and the networks of other parties connected to the SWBT SS7 network. 47 C.F.R. § 51.319(e)(1)(iii). The FCC Rules identify certain call-related databases to which nondiscriminatory access must be given. 47 C.F.R. § 51.319(e)(2)(ii). The FCC defined "call related databases" as "databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of a telecommunications service." 47 C.F.R. 51.319(e)(2)(i). SWBT's call-related databases include Line Information Database ("LIDB"), 800 Service Database, Calling Name Delivery Database ("CNAM"), and Advanced Intelligent Services Feature Database ("AIN").

SWBT is not permitting those CLECs serving customers over UNEs to leave in place or to update a customer's LIDB information using the service order Local Service Request ("LSR") process, requiring instead that CLECs access, claim, and update the LIDB record through a separate interface 24 hours after a service order completion notice has been returned to the CLEC. In addition to violating parity requirements, SWBT's policy position on LIDB is contrary to this Commission's ruling in the arbitration of interconnection terms between SWBT and AT&T.

Birch Telecom: Birch Telecom takes no position on this issue at this time.

MCI: The MCIW Companies take no position with respect to this issue.

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: Sprint takes no position on this item at this time.

12. Has SWBT implemented local number portability?

SWBT: Yes. SWBT's INP offerings enable customers of facilities-based carriers to retain their existing telephone number even after they no longer subscribe to SWBT's service. In accordance

with the Commission's orders, SWBT makes available RCF or DID, at the CLEC's option. (Deere Direct, pp. 78-82; see also, Brooks & c.spire Agreements App. PORT § ILE; AT&T Agreement Attach. 14 §§ 3-5). Pursuant to the Commission's order in the AT&T arbitration, route indexing forms of INP are available as well, provided that the CLEC pays the associated costs. As an alternative to INP, SWBT also will reassign NXX codes where all numbers covered by the code are served by the same CLEC. (Deere Direct, p. 82). The success of this approach is demonstrated by SWBT's successful porting of 2,373 of its own telephone numbers in Missouri to CLECs. (Auinbauh Direct, Sch. 3; Kramer Direct, p. 5). Each such transfer represents direct loss of at least one (and possibly many more) SWBT line(s) to a facilities-based competitor. (Tebeau Direct, Sch. 7).

SWBT has also implemented long-term number portability in Missouri using the Location Routing Number ("LRN") method. The LRN method satisfies the FCC's performance criteria for long-term number portability. (Fleming Direct, pp. 4-7 and Table 1). SWBT deployed LNP in the St. Louis and Kansas City (the two Missouri MSAs covered by the FCC's implementation schedule) on July 27, 1998 and June 26, 1998 based on the carriers' switch selections under the switch request process established by the FCC and the Commission. SWBT initiated live commercial porting in St. Louis and Kansas City on December 14, 1998, prior to the FCC's deadline. Although SWBT has not received any requests for deployment of LNP in additional switches in Missouri, SWBT has established procedures and schedules for processing and filling such requests. (Fleming Direct, pp. 7-8, Schs. 2, 8).

Staff: Staff cannot take the position that SWBT has provided number portability according to FCC regulations. While SWBT has made extensive efforts in this area, Staff is concerned with reports of various outages as a result of number portability. And until these outages are explained to Staff's satisfaction, Staff cannot state that SWBT is in compliance with this requirement.

OPC: Due to a lack of information, Public Counsel takes no position on compliance with this checklist item and reserves its right to take a position based on the evidence adduced at hearing. (Meisenheimer Rebuttal, pp. 56-57).

AT&T: The Federal Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. § 153(30). Sections 251(b)(2) and 271(c)(2)(B)(xi) of the Federal Act authorize the FCC to prescribe requirements for number portability. 47 U.S.C. §§ 251(b)(2), 271(c)(2)(B)(xi).²⁵ Congress and the FCC have recognized that local number portability is essential to meaningful competition in the provision of local exchange services. E.g., In the Matter of Telephone Number Portability, 11 FCC Rcd 8352, 8354-55 & nn. 7-8, 8411 (1996) (¶¶ 2, 28-31, 113).

Pending implementation of long term or permanent number portability, interim number portability allows customers who convert to service provided by switch-based CLECs to continue to be reached at their old SWBT phone number even though, in most instances, those end-users are assigned a new, CLEC phone number.

Birch Telecom: Birch Telecom takes no position on this issue at this time.

e.spire: e.spire Communications, Inc. takes the position that SWBT has not met checklist item (xi) requiring interim telecommunications number portability through a variety of arrangements with as little impairment of functioning, quality, reliability, and convenience as possible. SWBT's failure to

²⁵ Section 251(b)(2) provides that SWBT and every other local exchange carrier has "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." "Until the date by which the Commission issues regulations pursuant to Section 251 to require number portability, [SWBT and the other Bell operating companies must provide] interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, [the Bell operating companies must be in] full compliance with such regulations." 47 U.S.C. § 271(c)(2)(B)(xi).

provide this has resulted in an unreasonable degradation of in-service quality and network reliability, resulting in a loss by e.spire by over 50% of its new customers back to SWBT. e.spire received numerous complaints from e.spire customers who were unable to receive calls from customers of United Telephone Company, Ameritech, Sprint, and from e.spire customers who were unable to make or receive calls from other numbers. (See Dunaye Rebuttal, pp. 3-9).

MCI: SWBT has failed to establish compliance with this checklist item. SWBT's has failed to provide interim number portability in a manner which minimizes impairment of functioning, quality, reliability and convenience. SWBT, through its acts and/or omissions, has failed to implement interim number portability in coordinated manner with cut-over of dial-tone to customers of one or more of the MCIW Companies, which has resulted in unnecessary and harmful disruptions of service to CLEC customers. (See, Martinez Rebuttal, pp. 4-8; Gaul Rebuttal, pp. 3-6, and 8).

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: Sprint takes no position on this item at this time.

13. Has SWBT provided nondiscriminatory access to local dialing parity?

SWBT: Yes. SWBT's Commission-approved interconnection agreements provide all CLECs with nondiscriminatory access to services and information that are necessary to allow local dialing parity. This ensures that CLEC customers are able to place calls within a given local calling area by dialing the same number of digits as a SWBT end user. (Deere Direct, pp. 83-84; Brooks Agreement § VI.B.1; e.spire Agreement § 1; AT&T Agreement § 47). Because CLEC central office switches are connected to the trunk side of the SWBT tandem or central office switch in the same manner as SWBT's own central office switches and the switches of other incumbent LECs, CLEC customers do not experience additional dialing delays or requirements. (Deere Direct, pp. 84, 88).

Staff: SWBT does not provide local dialing parity. This is demonstrated by the lack of parity in SWBT's MCA areas for SWBT customers calling other SWBT customers and competitors' customers.

OPC: SWBT has not demonstrated compliance with this checklist item. While the method suggested by the Texas Commission to show intraLATA dialing parity appears reasonable, more work needs to be done in Missouri to show compliance. (Meisenheimer Rebuttal, pp. 57-58).

AT&T: FCC Rules (47 C.F.R. § 51.207) specify that local dialing parity means that telephone exchange service customers within a local calling area may dial the same number of digits to make a local telephone call, regardless of the identity of the customer's or the called party's local service provider. In addition, Section 271(e)(2) of the Federal Act requires a Bell Operating Company to provide intraLATA dialing parity at the time the company is granted approval to offer interLATA toll service.

Birch Telecom: Dialing parity at all levels is necessary for true and effective competition. SWBT must provide dialing parity for local, intraLATA, and interLATA calls before competitive carriers will be able to provide effective competition.

MCI: SWBT has failed to demonstrate compliance with this checklist item, and has failed to provide non-discriminatory access to its directory assistance services. SWBT has refused to provide its Directory Assistance listing databases in bulk to one or more of the MCIW Companies. (See, Martinez Rebuttal, pp. 11-16). [Also applicable to checklist items (ii) and (vii)(II)]. Additionally, SWBT fails to process local calls from extended calling areas in just, reasonable and non-discriminatory manner. Certain calls when placed by SWBT to SWBT customers are treated as local calls, whereas similar calls placed by a SWBT customer to a CLEC customer are billed by SWBT as toll calls to the calling party. (See, Gaul Rebuttal, pp. 7-8).

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: Sprint takes no position on this item at this time.

14. Has SWBT implemented just and reasonable reciprocal compensation arrangements?

SWBT: Yes. SWBT's reciprocal compensation arrangements satisfy checklist item (xiii). Section 271(c)(2)(B)(xiii) requires SWBT to agree, under section 252(d)(2), to just and reasonable terms and conditions that provide for mutual and reciprocal recovery by SWBT and the CLEC of the costs associated with transporting and terminating local calls that originate on the other carrier's network. The geographically deaveraged rates for transport and termination established by the Commission in the AT&T arbitration have been found to satisfy the 1996 Act's requirements. (See, Bailey Direct, p. 26). SWBT's rates for reciprocal compensation are based on forward-looking cost studies adjusted pursuant to the order of the Commission. (Id. at 17; Auinbauh Direct, pp. 33-34; See, also Brooks Agreement § III; e.spire Agreement § 5; AT&T Agreement § 58 & Attach. 12).

SWBT has exchanged more than 988 million minutes of local traffic with CLECs in its five-state region, including more than 53 million minutes in Missouri. (Auinbauh Direct, Sch. 3). This does not include vast amounts of Internet traffic that has been exchanged between SWBT and CLECs. (Auinbauh Direct, p. 38). In Case No. TO-98-278, the Commission decided in a ruling on SWBT's arbitration with Birch Telecom, that pending an FCC decision, the parties should make reciprocal compensation payments to one another for the exchange of Internet traffic, subject to true-up. (See, Bailey Direct, pp. 17-18, 27). Should the Commission make a similar decision concerning other CLECs, SWBT will comply – just as it is complying with the Birch Telecom decision. (Id. at 27).

Staff: SWBT meets the requirements of this item.

OPC: Due to a lack of information, Public Counsel takes no position on compliance with this checklist item and reserves its right to take a position based on the evidence adduced at the hearing. (Meisenheimer Rebuttal, pp.58-59).

AT&T: Reciprocal compensation refers to the billing and payment arrangement that recovers the additional costs incurred for the transport and termination of local calls originating on one carrier's network and terminating on another carrier's network. Section 252(d)(2) of the Federal Act provides that a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless: (1) they provide for mutual and reciprocal recovery by each carrier of costs associated with the transport and termination of traffic on each carrier's facilities; and (2) such costs are determined on the basis of a reasonable approximation of the additional costs of terminating such calls.

The testimony of Robert Flappan demonstrates that SWBT's rates for reciprocal compensation are not just and reasonable. SWBT's rates for the transport and termination of traffic are exactly the same as its UNE rates for local switching, tandem switching and transport. The rates for transport and termination of traffic are not cost-based because they reflect SWBT's failure to comply with its obligations under the Act that are addressed above under issue 2. Because SWBT's transport and termination rates do not comport with the requirements of Section 252(d)(2), it fails to satisfy this element of the competitive checklist. Until proper UNE rates are implemented, SWBT cannot comply with Section 271(c)(2)(B)(xiii) of the competitive checklist.

As is discussed in the surrebuttal testimony of Nancy Dalton, SWBT has not demonstrated the capability to exchange the records that are required for reciprocal compensation, either for CLECs who use unbundled switching or for CLECs using their own switches to provide local service. SWBT will be using the same systems to create reciprocal compensation records in Missouri that it uses in Texas. AT&T's limited experience in Texas indicates that SWBT is not yet producing accurate, reliable records for calls that its customers originate which are terminated to CLECs. In addition, there is an industry-wide issue related to recording calls from third-party carriers that terminate to a SWBT UNE switch port over which a CLEC is providing service to a

local customer; no industry solution to this issue has been reached. An interim compensation mechanism being developed to address this issue in Texas has yet to receive broad acceptance, and there has not yet been discussion of applying that mechanism in Missouri.

As with other checklist items, SWBT should be required to demonstrate its capability to meet its reciprocal compensation obligations in a competitive environment, including the capability to produce the appropriate records to CLECs using their own switches and CLECs using unbundled local switching. Given the schedule of 271 proceedings in Missouri, and the importance of maintaining an incentive to arrive at a permanent solution to this issue, SWBT should be required to demonstrate that it can provide the records that will distinguish SWBT and CLEC terminating switch usage, so that appropriate information can be supplied to third-party carriers and they, in turn, can report their terminating usage to the appropriate local service provider, whether SWBT or CLEC.

Birch Telecom: Although Birch obtained reciprocal compensation for the exchange of local traffic, it did so only after having to arbitrate the matter with SWBT. Birch understands that SWBT has taken the position that its obligation to provide reciprocal compensation is of limited scope. Unless reciprocal compensation is mandated, SWBT will continue to have a huge advantage over all competitors in the local exchange.

e.spire: SWBT has failed to meet checklist item (xiii), requiring that SWBT show reciprocal compensation arrangements that meet the requirements of Section 252(d)(2). To date, SWBT had not paid reciprocal compensation in any significant amount to any CLEC. (See Kaufman Rebuttal, pp. 18-19).

MCI: The MCIW Companies take no position with respect to this issue.

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT has refused to implement reciprocal compensation arrangements in Missouri other than for 1 CLEC, Birch Telecom. Since the Missouri Commission ruled that SWBT must pay Birch reciprocal compensation for local calls made to internet service providers, SWBT must do so with all other CLECs before meeting this checklist item.

15. Has SWBT made available resale services in a nondiscriminatory manner?

SWBT: Section 271(c)(2)(B)(xiv) of the 1996 Act requires SWBT to make its telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3) of the Communications Act. These provisions, in turn, require SWBT to provide its services at wholesale rates, with no unreasonable or discriminatory conditions or limitations. "Wholesale rates" are statutorily defined as the retail rates charged for a service, excluding the portion thereof "attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." (47 U.S.C. § 252(d)(3)).

Availability of Wholesale Rates. SWBT's Commission-approved agreements offer CLECs a wholesale price for any telephone exchange service SWBT offers its retail customers, with the exception of services (such as short-term promotions) that are excluded from resale requirements under FCC regulations. (See, Bailey Direct, p. 30; see also, e.g., Brooks Agreement App. Resale §§ 2-8; e.spire Agreement App. Resale §§ 1.2-1.7; AT&T Agreement Attach. 1 § 1.6).

In the AT&T/MCI arbitration, the Commission established retail discounts pursuant to the 1996 Act. (Bailey Direct, pp. 27-28). SWBT submitted an avoided cost study, prepared in accordance with the FCC's pricing rules, supporting service-specific discounts or an aggregate discount of 13.2 percent. (Moore Direct, p. 20). The PSC ordered modifications to SWBT's cost studies and subsequently set a discount rate of 13.9 percent for operator services and 19.2 percent for all other services. (*Id.* at 21; Bailey Direct, p. 28; see also, AT&T Agreement Attach. 1, App. Services/Pricing, Ex. A).

Resale conditions and limitations. The resale services that SWBT provides CLECs are identical to the services SWBT furnishes its own retail customers, and CLECs are able to sell these services to the same customers as SWBT in the same manner. (Bailey Direct, pp. 29-30). SWBT offers its services for resale in a nondiscriminatory manner and without unreasonable conditions or limitations. (See, e.g. Brooks Agreement App. Resale § 9; e.spire Agreement App. Resale § 1.10; AT&T Agreement Attach. 1 § 1). Beyond the requirements of the Act and the FCC's rules, moreover, SWBT has made available several additional services for resale, including billing and inside wiring products. (Bailey Direct, p. 29).

SWBT also offers for resale at wholesale rates its promotional offerings with durations of greater than 90 days. (Bailey Direct, p. 30). For SWBT retail services that SWBT offers to a limited group of customers (e.g., grandfathered services), SWBT will allow a CLEC to resell those services at wholesale rates to the same group of customers to whom SWBT sells the services, in accordance with 47 C.F.R. § 51.615. (Bailey Direct, p. 30). Customer specific proposals are available for resale to similarly situated customers. (Id. at 29). SWBT will apply an End User Common Line (EUCL) charge to each local exchange line resold to a CLEC. All federal rules and regulations associated with EUCL charges apply, in accordance with 47 C.F.R. § 51.617(a). (Bailey Direct, pp. 30-31).

These resale offerings allow CLECs to enter the local market with virtually no investment or delay – a fact confirmed by SWBT's provisioning of more than 460,000 resold lines in SWBT's five states (using the same procedures and systems employed in Missouri). (See, Kramer Direct, p. 15). Resellers currently serve nearly 30,000 lines in Missouri. (Id. at 28; Auinbauh Direct, Sch. 3-2).

Staff: The supporting data for the performance measures is inadequate to determine if SWBT has met this item.

OPC: Due to a lack of information, Public Counsel takes no position on compliance with this checklist item and reserves its right to take a position based on the evidence adduced at the hearing. (Meisenheimer Rebuttal, pp. 59-60).

AT&T: The Federal Act requires ILECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. It further requires incumbents not to prohibit such resale nor impose unreasonable or discriminatory conditions on resale of such services in accordance with 47 U.S.C. § 251(c)(4). The duty to provide access to OSS functions is included within an incumbent LEC's duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable. Ameritech Michigan Order, ¶ 130, see also FCC Memorandum Opinion and Order, Application of BellSouth – South Carolina Pursuant to Section 271, cc Docket No. 97-208 (12/24/97) (“BellSouth-South Carolina Order”), ¶ 83.

The testimony of Robert Flappan demonstrates that SWBT does not comply with its obligation to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable. SWBT maintains restrictions on aggregation of toll services for resale. SWBT has also argued that all of its retail use limitation and resale restrictions should apply to wholesale resale offerings. Prohibiting the aggregation of end users on a toll service is an unreasonable limitation prohibited by the Act. The aggregation of end users on toll services is a fundamental way to jump-start competition. This is exactly how vigorous competition got started in the interLATA market.

Resale restrictions should be extremely limited and narrowly tailored. The only specific restrictions that should be allowed are those expressly specified by the FCC, including: (1) restrictions which would prevent the cross-class reselling of residential services to business end

users; and (2) limitations on the resale of means-tested services to customers who do not qualify under the means test. An example of a means-tested service is LifeLine service.

SWBT should not be allowed to impose any other arbitrary tariff restrictions on the lawful use and resale of its services available for resale. SWBT should not impose restrictions on the aggregation of traffic from two or more of a new entrant's customers on any service available for resale, nor should it impose continuous property restrictions. It would be highly discriminatory to allow SWBT to enter the interLATA market with aggregation restrictions in place, or even potentially in place, for SWBT's toll services. Because there are so many interexchange carriers offering interLATA services, SWBT can negotiate to buy bulk services from an IXC and then resell them to multiple end users. This must work in both directions. Letting SWBT into the interLATA market prior to these resale/use restrictions being eliminated would guarantee that the restrictions would stay in place for a long time. This would stifle or retard the onset of what otherwise might be vigorous resale competition that would lead to vigorous facilities based competition in the future.

SWBT also fails to make available for resale at the promotional rate promotions of 90 days or less in any of its approved interconnection agreements. The Act plainly requires incumbents "to offer for resale at wholesale prices any telecommunications service that the carrier provides at retail." 251(c)(4). The FCC's regulations make clear that, like all other retail services, short-term promotions lasting 90 days or less must be resold. (Local Competition Order para. 948.) Thus, under the Act and the controlling FCC rules, AT&T is entitled to purchase from SWBT services subject to promotions of 90 days or less either at the promotional price (because a reseller is always entitled to purchase a service at the tariffed price offered by a carrier to other customers, see 251(b)(1)), or at the standard tariffed rate for the service less the wholesale discount. SWBT has been recently using promotions of less than 90 days to gain a discriminatory advantage over new entrants to Missouri markets. See also OSS discussion, below.

Birch Telecom: SWBT has failed to meet its obligations to make its services available for resale, as required by the Telecommunications Act. SWBT refuses to allow Birch to resell customer specific arrangements or contract arrangements at the standard resale discount, even though the FCC has held that such resale is required.

Intermedia Communications: It is too early to tell if SWBT has met its obligation to make telecommunications services available for resale. SWBT has recently introduced a new group of services based on Asynchronous Digital Subscriber Line ("ADSL") technology. Because this service is so new, Intermedia has no experience in reselling it. In order to eliminate any ambiguity over SWBT's resale obligation, the Commission should require SWBT to offer to CLECs, at the wholesale rates prescribed by the Commission, ADSL-based services and other advanced services, and must apply whether SWBT tariffs the service on the state or federal level.

MCI: The MCIW Companies take no position with respect to this issue.

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT does not meet this checklist item. SWBT does not provide non-discriminatory access to OSS for the ordering and provisioning of resale services. (Wescott Rebuttal, pp. 19-35). SWBT's policies on restricting the availability of XDSL service to resale violates section 251(c)(4).

16. Has SWBT complied with the separate affiliate requirements of Section 272?

SWBT: Yes. SWBT has submitted extensive evidence demonstrating that it will comply with the requirements of section 272 when it receives interLATA authorization for Missouri. Indeed, SWBT and SBLD are operating in accordance with section 272's requirements today. More broadly, SBC has established structural separation and nondiscrimination safeguards that will ensure that SBLD does not have any unfair advantage over competitors when it sells in-region, interLATA services.

Separate Affiliate Requirement of Section 272(a). SBC has established Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance (SBLD) which will do business as a separate affiliate to provide in-region, interLATA services in compliance with the structural separation and operational requirements of section 272. (Lube Direct, pp. 5, 6; Rehmer Direct, p. 3). SBLD is a wholly separate entity from SWBT, and neither owns stock of the other. (Lube Direct, pp. 5-6). SBC may reorganize, merge, or otherwise change the form of SBLD or create or acquire additional interexchange subsidiaries. Any such subsidiaries designated as section 272 affiliates, however, will meet all of the requirements of section 272. (See, Rehmer Direct, p. 2).

Structural and Transactional Requirements of Section 272(b). Section 272(b)(1) provides that the required separate affiliate "shall operate independently from the Bell operating company." For as long as SBLD is subject to section 272, it will operate in a manner that satisfies both this statutory requirement and the FCC's implementing regulations. (Lube Direct, pp. 8-9; Rehmer Direct, pp. 3-4). SBLD and SWBT do not jointly own telecommunications transmission or switching facilities, or the land and buildings on which such facilities are located, and will not jointly own such facilities when subject to this restriction under section 272. (Lube Direct, p. 8; Rehmer Direct, p. 4). SBLD will not obtain operation, installation, or maintenance services from SWBT (or any other affiliate that is not operated in accordance with section 272) with respect to switching and transmission facilities SBLD owns or leases from a party other than SWBT, for as long as required by section 272. (Lube Direct, pp. 8-9; Rehmer Direct, pp. 4-5). Likewise, SBLD will not provide operation, installation, or maintenance services with respect to SWBT's transmission and switching facilities, other than sophisticated equipment SWBT may purchase from SBLD in accordance with FCC rules. (Lube Direct, p. 9; Rehmer Direct, p. 5).

Consistent with the FCC's application of section 272(b)(2), SBLD maintains its books, records, and accounts in accordance with Generally Accepted Accounting Principles (GAAP).

(Lube Direct, pp. 10-11). SBLD and SWBT use different accounting codes and separate ledger systems, providing assurance that SBLD's books, accounts, and financial records are separate from SWBT's books and records. (Larkin Direct, pp. 4-5; Lube Direct, p. 11). A regular audit program ensures GAAP compliance and confirms the effectiveness of SBLD's internal controls. (See, Lube Direct, pp. 12-13, 28-29; Larkin Direct, pp. 13-21).

SBLD has separate officers, directors, and employees from SWBT. (47 U.S.C. § 272(b)(3); Lube Direct, pp. 14-16; Rehmer Direct, pp. 6-7).

Creditors of SBLD do not and will not have recourse to the assets of SWBT. In addition, SBLD does not and will not provide creditors indirect recourse to SWBT's assets through a non-section 272 affiliate of SWBT. (47 U.S.C. § 272(b)(4); Lube Direct, pp. 16-17; Rehmer Direct, p. 7).

All transactions between SWBT and SBLD have been reduced to writing and are available for public inspection. (47 U.S.C. § 272(b)(5); Larkin Direct, p. 7; Lube Direct, pp. 18-27). SBLD provides detailed written descriptions of all assets transferred or services provided in a transaction and posts the terms and conditions of new transactions on SBC's homepage, located, at <<http://www.sbc.com>>, within 10 days. (Larkin Direct, pp. 8-12; Lube Direct, pp. 21-27). As indicated on the website, transactions remain posted for one year after their termination. (Lube Direct, p. 27 & Sch. 6). Disclosures include a description of the rates, terms, and conditions of all transactions, as well as the frequency of recurring transactions and the approximate date of completed transactions. (Larkin Direct, pp. 8-12; see also, Lube Direct, pp. 21-27). For asset transfers, the quantity and, if relevant, the quality of the transferred assets are disclosed. (Larkin Direct, p. 11). For transactions involving services, disclosure includes (where relevant) the number and type of personnel assigned to the project, any special equipment used to provide the service, and the length of time required to complete the transaction. (Larkin Direct, pp. 10-12; Lube Direct,

pp. 21-23). Verified copies of these disclosures, including competitively sensitive information that is subject to confidentiality protections and is not posted on the Internet, are available for public inspection during regular business hours at SBC's San Antonio headquarters as well as in San Francisco and Reno, Nevada. (Larkin Direct, p. 7; see also, Lube Direct, pp. 22-23).

Transactions between SBLD and SWBT have been carried out on an arm's-length basis in accordance with the FCC's applicable affiliate transaction and cost-accounting rules. (Larkin Direct, pp. 5-6). Indeed, SWBT has put in place corporate policies, employee training, and compliance programs to ensure ongoing satisfaction of section 272(b)(5)'s "arm's length" requirement as well as the FCC accounting rules incorporated by reference in 47 U.S.C. § 272(c)(2). SWBT and SBLD have extensive training programs through which employees are provided with a detailed analysis of section 272 and the Commission's rules on this section. (Rehmer Direct, pp. 9-10, 18-19; Lube Direct, p. 28 & Sch. 15 (SBLD compliance training policy)). A compliance booklet has been prepared for distribution to all SBC employees. (Rehmer Direct, p. 19 & Sch. 5).

SWBT has a centralized Affiliate Oversight Group that is responsible for ensuring compliance with applicable state and federal accounting safeguards and has established intra-corporate reporting and review requirements to assist in accomplishing that function. (Larkin Direct, pp. 14-18, 21-22). In addition, SBC's 272 Oversight Team meets on a regular basis to review affiliate transactions for consistency with the requirements of section 272. (Rehmer Direct, pp. 1-2). Prior to undertaking a transaction or other joint activity with an existing or planned section 272 affiliate, managers must contact the 272 Oversight Team for review and approval. (Id. at 18).

Nondiscrimination Safeguards of Section 272(c). Section 272(c)(1) prohibits SWBT from discriminating between SBLD and other entities. Subject to the joint marketing authority granted by section 272(g), SWBT makes available to unaffiliated entities any goods, services, facilities, and

information that it provides or will provide to SBLD at the same rates, terms, and conditions. (Rehmer Direct, pp. 8-17). These may include exchange access, interconnection, collocation, unbundled network elements, resold services, access to OSS, and administrative services. (Id. at 8, 10). To the extent that SWBT develops new services for or with SBLD, it also will cooperate with other entities on a nondiscriminatory basis to develop such services, so long as it is required to do so under section 272. (Id. at 11).

SWBT does not and will not, for so long as the requirement applies, discriminate between SBLD and other entities with regard to dissemination of technical information and interconnection standards related to telephone exchange and exchange access services. (Id. at 8-15). SWBT will provide telecommunications services and network elements to SBLD using the same service parameters, interfaces, intervals, standards, and practices used to service other carriers and retail customers. (Id. at 7-9, 12-14). SWBT will not discriminate between SBLD and other carriers in the processing of presubscribed interexchange carrier change orders. (Id. at 13). Nor does SWBT discriminate between SBLD and unaffiliated carriers with regard to protection of confidential network or customer information. (Id. at 9). SWBT will not disclose any unaffiliated carrier's proprietary information without the unaffiliated carrier's consent. (Id.). As noted above, SWBT employees receive appropriate training regarding these obligations and corporate enforcement policies are in place.

To the extent that SWBT provides SBLD with administrative services, these services will be offered to other entities on nondiscriminatory terms and conditions. (Rehmer Direct, pp. 10-11). Service requests by nonaffiliated carriers will be received and filled using the same processes and procedures and in the same period of time as equivalent requests by SBLD. (Rehmer Direct, pp. 12-14).

Review Requirements of Section 272(d). Pursuant to section 272(d) and consistent with the Commission's rules, SWBT will obtain and pay for a biennial, independent federal/state review. (See, Larkin Direct, pp. 13-14; Lube Direct, pp. 28-29). In accordance with section 272(d)(2), the independent auditor will provide the FCC, the Commission, and other involved state commissions with access to working papers and supporting materials relating to the review. (Larkin Direct, pp. 13-14). And, as required by section 272(d)(3), SBC and its affiliates, including SBLD and SWBT, will provide the independent auditor, the FCC, the Commission, and other involved state commissions with access to financial records and accounts necessary to verify compliance with section 272 and the regulations promulgated thereunder, including the separate accounting requirements of section 272(b). (Id., pp. 13-14).

Fulfillment of Requests Pursuant to Section 272(e). Pursuant to section 272(e)(1), SWBT will fulfill, on a nondiscriminatory basis, all requests from unaffiliated entities for telephone exchange and exchange access services within the same intervals as these services are provided to SBLD. (Rehmer Direct, pp. 11-13; see, Deere Direct, p. 85). SBLD's requests are placed and processed using the same OSS as requests from unaffiliated entities. (Id.; see, Deere Direct, p. 85). Unaffiliated carriers are able to obtain information regarding the service intervals within which SWBT provides service to itself and its affiliates. (See, Rehmer Direct, p. 13; Dysart Direct, (performance measurements); Deere Direct, pp. 98-99 (reporting requirements)).

SWBT will comply with section 272(e)(2) by providing any facilities, services, or information concerning its provision of exchange access to SBLD only if such facilities, services, or information are made available to other authorized providers of interLATA services in that market on the same terms and conditions. (Rehmer Direct, pp. 13-15). In accordance with section 272(e)(3), SWBT will charge SBLD rates for telephone exchange service and exchange access that

are no less than the amount SWBT would charge any unaffiliated interexchange carrier for such service. (Id. at 15).

To the extent that SWBT is permitted to provide interLATA or intraLATA facilities or services to SBLD, SWBT will make such services or facilities available to all carriers at the same rates and on the same terms and conditions, in accordance with section 272(e)(4). (Id. at 15-16). SWBT will record any such transactions between SWBT and SBLD in the manner prescribed in the FCC's Accounting Safeguards Order. (See, Larkin Direct, p. 6).

Joint Marketing Provisions of Section 272(g). Pursuant to 272(g)(1), SBLD will not market or sell SWBT's telephone exchange services unless SWBT permits SBLD's competitors (including providers of competing information services if applicable) to market SWBT's telephone exchange services as well. (Lube Direct, pp. 29-30; Rehmer Direct, p. 160).

In accordance with sections 272(g)(2) and (g)(3), SWBT may market SBLD's services during both inbound and outbound calls. In its South Carolina Order, the Commission clarified the relationship between a BOC's joint marketing rights pursuant to section 272(g)(2) and its equal access obligations under section 251(g). The Commission concluded that a BOC may market its long distance affiliate's service during inbound calls as long as it also "offers to read, in random order, the names and, if requested, the telephone numbers of all available interexchange carriers." (South Carolina Order, 13 FCC Rcd, pp. 671-72, ¶ 239). When SWBT is authorized to offer long distance service in Missouri, it will conduct any joint marketing in a manner consistent with the FCC's decision. (Rehmer Direct, pp. 16-17; Lube Direct, pp. 30-31). Moreover, to the extent SWBT is involved in planning, design, and development activities for SBLD that are not themselves joint marketing, SWBT will make these services available to other entities on a nondiscriminatory basis pursuant to section 272(c)(1). (Rehmer Direct, pp. 10-11; see, Lube Direct, pp. 31-32).

Staff: SWBT does not comply with Section 272. As SWBT has not met the requirements of the Section 271 checklist, SWBT does not comply with the requirements of Section 272.

OPC: SBC's policies and practices regarding its Section 272 affiliate are inconsistent with the structural safeguards required by the Federal Telecommunications Act. The Act envisions extensive regulation of a separate subsidiary to conduct SBC's long distance service to prevent the recurrence of antitrust problems which existed prior to divestiture. (Cooper Rebuttal, pp. 41-42; 26)

AT&T: Section 272 bars a Bell Operating Company ("BOC") from providing in-region interLATA service unless it provides such service through a separate affiliate. By imposing a variety of accounting and nonaccounting safeguards, both Section 272 and the implementing orders of the Federal Communications Commission ("FCC") attempt to deter cross subsidization and discrimination by a BOC and detect that conduct if it does occur through transaction posting requirements, reporting requirements and other safeguards. If a 272 affiliate does not operate in accordance with the FTA and its implementing regulations, the result can be both distorted competition in the market for interstate service, and higher prices, as a result of cross-subsidization, for the local telephone customers of this State.

Section 271(d)(3)(B) of the FTA places the burden on SWBT and SBLD to establish that they will comply with the requirements of Section 272. This showing must be made as a condition of obtaining authority to provide in-region interLATA service. SWBT and SBLD cannot meet their burden of establishing compliance with Section 272 by disclosing only a limited amount of information on the Internet. SWBT and SBLD must come forward with specific, tangible evidence showing that:

- all transactions between SWBT and SBLD have been reduced to writing and made available on the Internet within ten days of occurrence and

- methods of valuing transactions between SWBT and SBLD have been fairly and accurately established.

Moreover, SWBT must make it clear that concerns regarding the independence and separation of the SBLD board and officers from SWBT have been addressed.

The Accounting Safeguards Order requires that the section 272 affiliate “provide a detailed written description of the asset or service transferred and the terms and conditions of the transactions” and that such description “should be sufficiently detailed to allow us to evaluate compliance with our accounting rules.” Additionally, the FCC requires the “separate affiliate, at a minimum, to provide a detailed written description of the asset or service transferred and terms and conditions of the transaction on the Internet within ten days of the transaction through the company’s home page. The broad access of the Internet will increase the availability and accessibility of this information to interested parties, while imposing a minimal burden on the BOCs.” Accounting Safeguards Order at ¶122.

The FCC in its BellSouth Second Louisiana Order clarified exactly what was required by this disclosure:

“The final contract price alone is not sufficient for evaluating compliance. Instead, such disclosures should include a description of the rates, terms, and conditions of all transactions, as well as *the frequency of recurring transactions and the approximate date of completed transactions.*” ¶ 337

The FCC also stated that:

“For affiliate transactions involving services, BellSouth should *disclose the number and type of personnel assigned to the project, the level of expertise of such personnel, any special equipment used to provide the service, and the length of time required to complete the transaction.* Besides the number and type of personnel and their associated levels of expertise, *a competitor would also have to know the number of hours required for each labor category as well as the associated rate.*” ¶ 337 & fn.1055

The testimony of Denise Crombie demonstrates that SWBT has not complied with these requirements. SWBT and SBLD take the position (see testimony of John Lube at 19-21) that posting contracts between SWBT and SBLD on the Internet meets the public disclosure requirements for transactions between SWBT and SBLD and that billing information between the telephone company and its long distance affiliate is confidential and may be viewed only under a non-disclosure agreement at SWBT's headquarters locations. Specifically, SWBT maintains that billing information regarding actual quantities and dollar amounts for services provided and assets transferred are confidential. They take this position despite the FCC's specific ruling to the contrary in the Second BellSouth Louisiana Order.

Disclosure subject to a non-disclosure agreement is unacceptable for two reasons. The first is that the data should not be subject to a non-disclosure agreement in the first place. The data should be publicly available. The FCC has made it clear that the very information that SWBT/SBLD wants to label confidential, namely quantities and dollars, is what must be publicly disclosed. The second reason this proposal is inappropriate is that public availability, as defined in Section 272, means, among other things, that SBLD must post the transactions between SWBT and SBLD on the Internet within ten days of occurrence. A trip to SBC premises and a confidentiality agreement should not be required in order to view this transaction information, which the FCC mandates should be publicly disclosed. This approach does nothing to "increase the availability and accessibility of this information to interested parties" as the FCC intended when it mandated Internet posting of transactions. The billing report available in SBC headquarters should be posted on the Internet along with the data currently provided. Accounting Safeguards Order at ¶ 122.

Based on information provided and withheld by SWBT with respect to the management of SBLD, it is not possible to make the necessary "predictive judgment," that SBLD will "operate independently" from SWBT, with truly "separate officers, directors and employees," as required by

Section 272 of the Act. During the collaborative process in Texas, set up by the Texas Commission to address outstanding Section 271 and 272 issues, SWBT provided additional information regarding the relationship between the officers, directors and employees of the 272 affiliate and SWBT. Based on that information, a question regarding the independence of the 272 affiliate was raised because the head of the long distance affiliate reported directly to the head of Southwestern Bell Operations, Inc., a service company that provided, among other things, strategic planning for the telephone company.

To address these concerns, SWBT agreed to change the organizational structure to have the long-distance affiliate report to another corporate officer and director. SWBT emphasized its desire to reorganize only one time, and not once at the state level and once at the FCC. Accordingly, SWBT proposed four criteria that would govern the relationship between the BOC and the long-distance affiliate during the last work session on Section 272 compliance:

First, the officer to whom SBCS reports will not have any day to day operational service or other major responsibilities for any of the BOCs.

Second, that officer to whom SBCS will report will not be a BOC officer, director, or employee.

Third, the officer will not have a BOC officer, director, or employee reporting directly to him or her.

Fourth, that officer will not report to a BOC officer, director, or employee.

SWBT has not implemented these four criteria. SWBT did reorganize the board of SBLD, however, there is no way to verify that the officer to whom SBLD reports will not have day to day operational service or other major responsibilities for any of the BOCs (Bell's first criteria) since no organization structure was provided for the services company, Southwestern Bell Operations, Inc. SWBT asserts that its current reorganization complies with the Non-Accounting Safeguards Order that SBLD and SWBT "have separate sets of officers who make independent operational decisions

for their respective companies," even though it does not comply with all four of the criteria that it proposed itself. When such important operational decisions as strategic planning for SWBT are the responsibility of the officer of an operations company whose top executive was also the person to whom the head of SBLD reported, however, the independence of the operational decisions for the respective companies is questionable at best. There is no justification on the basis of the record presented for concluding that SBLD will operate independently of the BOC; and it is that affirmative, predictive judgment which the law requires.

Birch Telecom: Birch Telecom takes no position on this issue at this time.

MCI: The MCIW Companies take no position with respect to this issue.

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT has not made a prima facie showing of compliance with Section 272.

17. Has SWBT demonstrated that granting it interLATA authority is in the public interest?

SWBT: The only relevant information on the issue of whether the granting of SWBT's application before the FCC is in the public interest is the expected impact SWBT's entry into the interLATA long distance market will have on that market. SWBT has presented the views of several prominent economists, including Alfred E. Kahn. Mr. Kahn is considered one of the foremost regulatory economists and currently serves as the Robert Julius Thorne Professor of Political Economy, Emeritus at Cornell University. These eminent economists have concluded that the interLATA market will benefit from SWBT's entry into that market.

Professors Kahn and Schmalensee/Brandon demonstrate that the long distance market is not currently competitive from a price perspective. The Long Distance market is an oligopoly in which AT&T is a price leader. AT&T has made a practice of increasing prices, particularly for basic residential consumers, even while access charges have decreased, and MCI and Sprint have

followed in lock step. Drs. Schmalensee/Brandon demonstrated that the average residential customer in Missouri would benefit by a price reduction of \$33/year, or \$52 million for all Missouri consumers if SWBT were permitted to enter the market and charge the rates it proposed in Oklahoma. (Schmalensee/Brandon Direct, pp. 47-48).

Southwestern Bell has an affirmative incentive to lower long distance prices in Missouri, because increased interLATA usage will increase usage of SWBT's access services as well. Southwestern Bell has honed its marketing skills as a wireless carrier in Missouri, as well as a provider of other competitive offerings such as exchange access to business customers, Centrex service, customer premises equipment, and directories. (Brandon & Schmalensee Direct, p. 37). These experiences will enable Southwestern Bell to provide better interexchange services to consumers in Missouri and to sell these services effectively. (See, Id. at 33-37). Southwestern Bell also could reduce costs by using existing sales and customer support systems (in compliance with the requirements of section 272). (See, Id. 32-33; Kahn & Tardiff Direct, pp. 28-29).

Unlike smaller resellers currently in the market, Southwestern Bell has the size to negotiate substantial volume discounts from facilities-based interexchange carriers. (Kahn & Tardiff Direct, pp. 26-27). And unlike these smaller resellers, Southwestern Bell has a strong brand name that immediately will make it a real competitor to the three major incumbents. Southwestern Bell's reputation is on par with that of the major incumbent interexchange carriers: better than three out of four customers rated Southwestern Bell as "very good" in the categories of customer service and service reliability/product quality. (Brandon & Schmalensee Direct, p. 35 & Table 5). These factors will give Southwestern Bell lower marketing costs in-region than other potential new entrants, and will allow it to challenge the Big Three for low-usage customers – customers who, although the single largest group served by interexchange carriers, are nevertheless neglected in the competition to serve big businesses. (Id. at 30-32). Indeed, the failure of the Big Three to market

services to this group leads many residential and small business customers to choose AT&T out of inertia, without giving other carriers serious consideration. (See, Id.). If Southwestern Bell (and other BOCs across the country) are allowed to make competitive inroads, AT&T, MCI, and Sprint are likely to respond with new promotions and expanded eligibility for targeted offerings, to the benefit of low-volume callers. (Id. at 27-29).

Likewise, Southwestern Bell will be able to offer bundled service offerings and "one stop shopping." Bundled service packages can "have clear advantages for the public," such as greater convenience and the ability to secure volume discounts by aggregating purchases of different services. (Brandon & Schmalensee Direct, pp. 31-33; Kahn & Tardiff Direct, p. 20).

Approval of Southwestern Bell's application will lead to a faster expansion of the Missouri economy, through the benefits of lower long distance prices and enhanced information technology productivity. (See, Raimondi Direct, p. 5). This expansion will create more than 16,391 new jobs for Missouri consumers over the next ten years, and boost the gross state product by 1.5 billion dollars. (See, Raimondi Direct Schedule 1 (WEFA Report Figs. 5 & 6, Tables 2 & 3) at pp. 23-24)). These estimates are conservative and the benefits to the Missouri economy may well prove to be greater. (See, Raimondi Direct, pp. 4-5).

If the Commission determines that a broader view of the public interest impact is appropriate, this Commission should also consider a most important impact Southwestern Bell's entry into the long distance market will have: it will compel AT&T and the other big carriers to enter the local market in a significant way so that they can joint market and compete with Southwestern Bell's proposed full service offerings. These carriers have preferred not to compete on a broad scale for the local service needs of business and residential customers. But if Southwestern Bell is permitted to enter the long distance market and provide the one-stop shopping that customers desire, those companies will be forced to initiate local competition to compete.

Staff: Until SWBT demonstrates compliance with the 14-point checklist, it is premature to address the public interest aspect of SWBT's application.

OPC: SWBT must not only prove satisfaction of the 14 checklist items, but also must demonstrate that the grant of its application is consistent with the public interest. SWBT has not demonstrated compliance with this requirement of Section 271. Approval of the application and entry of SWBT into the interLATA market in Missouri is premature and would not be in the public interest.

This public interest standard is a broad and overall test that encompasses many factors, including the analysis of the competition in the state to see if it is substantial, meaningful, real, nontrivial and irreversible. Key issues are whether consumers have a realistic choice for their local service provider and whether meaningful competition developed in both the urban and rural areas. In Missouri, effective, substantial local competition sufficient to justify approval of SWBT's application has not emerged. (Meisenheimer Rebuttal, p. 62; Cooper Rebuttal, pp. 26-31; 32-33; 44-49; 9-14; 15-20).

AT&T: Section 271(d)(3) provides that the FCC shall not grant a Bell operating company's application for long distance unless each of the following independent requirements has been met: (1) the competitive checklist has been "fully implemented"; (2) the authorization will be carried out in accordance with the safeguards of Section 272; and (3) "the requested authorization is consistent with the public interest, convenience and necessity." The public interest requirement is an extremely important one. Even if the other requirements of the Act have been met, there may still be independent considerations leading to the conclusion that granting the authority would be contrary to the public interest. (See generally H. Conf. Rpt. 30, 34.) AT&T's analysis of the public interest indicates that it would not be consistent with the public interest, convenience, and necessity for SWBT to be allowed to provide in-region interLATA service at this time.

The most obvious and significant factor in evaluating whether in-region interLATA relief for SWBT would be consistent with the public interest, convenience, and necessity is the viability and extent of local exchange competition. The touchstone for evaluating an application for interLATA relief should be granted is whether the local service market is celebrating "full" and "irreversible" local competition.²⁶ Unfortunately, as described in the testimony of Steven Turner, somewhere between "not hardly at all" and "only tentatively" would more fairly describe the state of this state's local competition. As Mr. Turner demonstrates, local exchange competition in Missouri, particularly for switched services, is virtually nonexistent.

Any complete analysis of the public interest considerations of SWBT's Section 271 application must address the benefits of such entry. SWBT argues that the long distance market is not very competitive, and that its entry will dramatically improve competitive performance. The testimony of John Mayo effectively refutes those arguments. Professor Mayo first provides a framework for assessing the public interest merits of SWBT's re-entry into the interexchange industry. He also reports the results of his inquiry into the extent of competition in the interexchange industry. He concludes that the long-distance market is highly competitive. In support of that conclusion, he points to a set of irrefutable facts regarding long-distance pricing. These include: (1) entry into the long-distance market has created an environment of rivalry among IXCs that is inescapably obvious; (2) this rivalry has led to a raft of new discount calling plans, some of which are available to customers regardless of calling volumes or patterns; (3) the same rivalry has hastened the development of myriad new telecommunications services and/options; and (4) the end result of the emergence of effective competition in long-distance markets is the widespread availability of long-distance prices that have never been lower than they are today.

²⁶

The Department of Justice adopted the "irreversible competition" standard in connection with SBC's First Application for InterLATA relief. See also BellSouth Louisiana Order, ¶ 18 n. 53.

Professor Mayo also addresses the macroeconomic analysis performed by WEFA (and addressed in the testimony of Mr. Raimondi) on behalf of SWBT. He concludes that WEFA's analysis of the economic benefits from immediate re-integration by SBC into the interLATA market is not credible. A sound model of the macroeconomic consequences of BOC re-integration would be sufficiently versatile that it could accurately quantify either benefits or costs of the proposed change to policy. The WEFA analysis is not such an exercise. Instead, the WEFA analysis is merely a quantification of economic benefits **assuming the existence of economic benefits**. Thus, the analysis is considerably closer to a tautology than a serious effort to quantify the economic benefits from re-integration.

Professor Mayo concludes with a discussion of the dangers (namely incentives for monopoly leveraging) associated with SWBT's premature reintegration into the interLATA market before effective competition (i.e., the absence of significant monopoly power) emerges in the local exchange market. Once permitted into the interLATA market, SWBT will cease even the minimal efforts that have been exhibited so far to treat interexchange sellers as customers whose interests they have no incentive to harm. Rather, SWBT will view interexchange firms as competitors that they seek to displace in the market. That desire to displace competitors is an inherent and typically salubrious effect of competition. If, however, SWBT retains a monopoly power base, this incentive to displace rivals is likely to manifest itself in anti-competitive fashion. This anti-competitive behavior includes a host of possible strategies. Most familiar among these are tying arrangements or bundling, vertical price squeezes, price discrimination (an extreme form of which includes predatory pricing), and service quality discrimination. In this situation, then, reintegration by SWBT prior to the eclipse of significant monopoly power in the local exchange industry will **erode** competition in the interLATA market.

The testimony of Joseph Gillan builds on the analysis of Professor Mayo and Mr. Turner. He discusses the growing consensus that the fundamental market force that will shape telecommunications in the future will be the emergence of one-stop shopping. The emergence of one-stop shopping means that local exchange service must become competitive before SWBT is authorized to provide interLATA services or competition in related markets will fail.

Mr. Gillan addresses SWBT's ability to instantly offer one-stop packages combining local and long distance services. As the monopoly local exchange carrier, SWBT's path to becoming one-stop provider requires only that SWBT add long distance service to its established product line. The tools needed by SWBT to provide competitive long distance services -- that is, the long distance equivalent to network elements, interconnection, resale and operational support -- are all very real and readily available to SWBT from multiple suppliers.

In contrast, every other carriers' ability to rapidly offer local exchange services is entirely dependent upon one carrier -- SWBT -- and SWBT's representations that it **will** provide each of the tools required under Section 271 on the same terms and in the same intervals that SWBT enjoys. The full implementation of the Competitive Checklist (and the federal Act's other prerequisites to interLATA authority) is necessary so that the path to one-stop provider for every other carrier -- i.e., a meaningful ability to offer local service on an equally rapid and broad basis -- is sufficiently developed and that the end-point is a **competitive** one-stop market. In making this determination, Mr. Gillan cautions that it is necessary to appreciate the significant changes that will be necessary for a truly competitive local exchange service market to develop and the importance of Section 271 in achieving that end. Section 271 removes the **final** barrier from SWBT offering long distance services. Before this occurs, it must be verified that SWBT has fully implemented each of its obligations that are intended to eliminate (or, at least, greatly reduce) the barriers that today prevent others from offering local exchange services. This conclusion can only be reached with confidence

when viable, broad-scale entry is observed in the local marketplace.

Finally, Mr. Gillan concludes the minimal competitive safeguards included in Section 272 of the Act are no substitute for full-fledged local competition. SWBT's principal economic advantage from premature entry would be its ability to establish a one-stop, full-service, monopoly built upon the foundation of its exchange monopoly. Although SWBT claims that conventional regulatory tools will prevent it from gaining an interLATA advantage from its local monopoly, this bold assertion ignores the fact that the **mere existence** of its local monopoly is the source of its one-stop advantage – and no amount of transactional accounting rules diminishes this basic fact. Because of the growing importance of one-stop shopping, the current lack of local competition in Missouri, and the lack of meaningful regulatory protections, Mr. Gillan concludes that it would not be in the public interest at this time for SWBT to be granted long-distance authority.

The public interest analysis is rounded out with the testimony of Russell Morgan and Matthew Kohly. Mr. Morgan's testimony presents the perspective of what is actually available in the marketplace to Missouri consumers as a result of competition among the numerous long distance service providers and of how those offers are communicated to consumers. Mr. Morgan also provides, under the terms and protection of the confidentiality order, more recent data on Missouri long distance consumers than that provided by SWBT. This "man on the street," real world perspective is almost totally absent from SWBT's submission. This perspective is critical because it undercuts SWBT's theoretical, high level characterizations of competition in the long distance marketplace and the supposed economic benefits that SBC's entry would bring. Mr. Morgan concludes that long distance entry by SWBT's affiliate would bring little, if any, economic benefit to Missouri consumers beyond what already is available to them in the marketplace today.

Mr. Kohly's testimony discusses the impact on long-distance competition generally, and interexchange carriers in particular, if Southwestern Bell Communications Services d/b/a

Southwestern Bell Long Distance ("SBLD") is allowed into the interexchange market prior to the pricing of access charges at cost and the complete implementation of Southwestern Bell Telephone's (SWBT) obligations under the Federal Act. Mr. Kohly demonstrates that as long as access rates are priced well in excess of cost and SWBT's local market is not irreversibly open to competition, SBC will have both the incentive and the ability to engage in anticompetitive behavior through price discrimination and predatory pricing. Mr. Kohly also discusses the opportunity for SBC, the parent company of SBLD and SWBT, will subsidize the competitive services of SBLD with revenues from the monopoly services of SWBT. As a result, Mr. Kohly concludes that it is not in the public interest to grant SWBT's application in this proceeding until SWBT's local market is irreversibly open and access rates are reduced to cost.

Birch Telecom: Birch does not believe that it would be in the public interest to grant Section 271 authority, as SWBT has not yet opened its local network to competitors, in violation of its obligations under the Telecommunications Act.

e.spire: To approve SWBT's application for authorization to provide in-region InterLATA services originating in Missouri is not in the public interest. SWBT has tried to put up every barrier possible to new entrants into competition into local markets. It is one of the most difficult Bell operating companies (BOCs) with whom to try to negotiate terms. It does not even send people to negotiations who have the authority to make agreements. It is evident in its policies and practices that Bell intends to prevent competition in its markets while it is seeking to enter the markets of its competitors. To allow SWBT (SBC) InterLATA authority would only reward it for its misdeeds and completely disregard the intent and meaning of FTA96.

MCI: SWBT entry into the in-region interLATA services markets at this time would not promote, and is not consistent with, the public interest. Vibrant, irreversible local exchange service competition has not yet developed in Missouri, in significant part due to the failures of SWBT to

promptly and fully comply with the competitive checklist. In-region, InterLATA long-distance authority for SWBT at this time would be premature, would impede competition in both the local exchange and interexchange markets, and would not benefit customers.

Show Me Competition: It is premature to grant Bell 271 authority at this time. To do so now is adverse to the public's interest.

The Commission is obligated to maintain traditional safeguards. The leverage of the wholesale monopoly of access service was a big enough concern, that the MFJ contained safeguards to require AT&T to divest itself of its regional operating companies who became the RBOCs. RBOCs were prohibited from providing long distance services in order to avoid the temptation to leverage wholesale in order to gain an unnatural competitive advantage in the retail long distance market. This was done to set up an absolute "wall" concerning the leveraging.

The MFJ set up a criterion that can be applied today. This criterion was established to protect the public interest. As a prerequisite to entering the long distance market, the RBOC was required to relinquish its virtual monopoly over originations and terminations of long distance calls. The danger of any entity having "one foot" in the monopoly access and "one foot" in retail long distance was an unnatural competitive practice that surely would throttle the workings of the competitive process. This safeguard needs to be part of the process of SWB's 271 application, if the public is to continue to be protected from the leveraging process.

SWB still enjoys a virtual monopoly on access service – the originations and terminations needed by all long distance providers in order to offer long distance service.

The cost of access is a significant cost to SWB's "competitors" in the long distance market. It eats 40% to 50% of every sales dollar collected by Bell's competitors.

SWB enjoys an exorbitant profit margin (estimated to range between 450% to 1716%) from the sale of a monopoly service – access. Further, the monopoly service is a vital component of the

alternative service offered by SWB's competitors. SWB continues to have the ability to leverage its wholesale market to gain an unnatural advantage in the retail market.

The Commission should delay SWB's 271 authority until SWB has irreversibly lost its ability to leverage.

SWB's claims of customer benefits by its entry into long distance rings hollow. It has avoided entry (for 3 years) into the long distance market when it lacked unnatural market power. In the out-region areas SWB would be on equal footing with existing long distance providers. SWB is very anxious to enter the long distance market within its own serving region. Apparently, long distance providers are adequately serving the markets within and without SWB's regions and circumstances appear to be such that SWB would find difficulty in breaking into the out-of-region markets. SWB pleads strongly for entry into the market where it will possess the characteristics necessary to make the theory of "leverage" a reality.

If allowed to compete in the in-region long distance market, SWB will leverage the monopoly wholesale market to gain an unnatural competitive advantage in the retail long distance market to the detriment of competition and the public interest.

Sprint: SWBT's application does not meet the public interest requirement. SWBT claims that the long distance market is not competitive and, therefore, contains large profits.²⁷ SWBT's reluctance to enter the long distance market outside of its region to capture those supposed large profits is a powerful testament that SWBT recognizes that the long distance market is indeed very competitive and contains only small profit margins.²⁸ By leveraging its bottleneck control over switched access, SWBT could engage in anti-competitive pricing practices and price long distance service below

²⁷ See Direct Testimony of Alfred E. Kahn and Timothy Tardiff and the Direct Testimony of Paul S. Brandon and Richard L. Schmalensee.

²⁸ Testimony of David E. Stahly, p. 8.

competitor's cost.²⁹ Kahn and Tardiff's speculation that SWBT will not price below imputed switched access cost is greatly outweighed by SWBT's actual pricing behavior in the intraLATA toll market where SWBT offers unlimited toll calling for only \$30 per month.³⁰ From a public interest perspective, Section 271 approval should be deferred until local competition develops on a commercial scale and the Commission is certain that SWBT can not engage in a price squeeze by leveraging its monopoly position in the provisioning of switched access.

Additionally, it is not in the public interest to permit SWBT to provide interLATA services until there is widespread local competition. Sprint's economic model demonstrates that the current regulatory and economic environment will not incite widespread competition with SWBT from the market. SWBT will have no incentive to open its markets to permit competition if allowed to provide interLATA service now. (Frignon Testimony, pp. 1-11).

18. Has SWBT provided nondiscriminatory access to OSS?

SWBT: Section 251(c)(3) of the Act specifies that incumbent Local Exchange Carriers ("LEC") must provide "nondiscriminatory access to network elements on an unbundled basis." On August 8, 1996, the FCC released its First Report and Order in CC Docket No. 96-98 ("First Report and Order") to implement the access and interconnection provisions of the Act. The FCC stated that "... in order to comply fully with section 251(c)(3) an incumbent LEC must provide, upon request, nondiscriminatory access to operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing of unbundled network elements under section 251(c)(3) and resale services under section 251(c)(4).

SWBT meets the requirements of the Act and is in compliance with the FCC's orders in terms of providing CLECs with electronic access to its OSS functions "at least equivalent" to the access that SWB provides "to itself, its customers, or other carriers." SWB has also gone even

²⁹ Ibid. pp. 30 - 34.

further to provide CLECs with choices of interfaces based upon industry guidelines and has negotiated interim interfaces for access to its OSS functions SWB did not provide to itself, its retail customers, or other carriers prior to the Act. (Ham Direct, pp. 5-6).

Additionally, SWBT has undertaken a special effort to encourage CLECs to use electronic interfaces. For instance, SWBT offers CLECs a free 90-day evaluation of its electronic interfaces, in order to allow CLECs to assess and become familiar with them. (Ham Direct, p. 84). For each interface, SWBT provides CLEC representatives with written materials (including business rules) and offers extensive training. (Id. at 88-94 ; see, Auinbauh Direct, pp. 11-13). As a result of these efforts, 48 CLECs currently are using SWBT's electronic OSS interfaces. (Kramer Direct, p. 16).

Pre-Ordering. Although there are no industry-standard interfaces for pre-ordering, SWBT offers CLECs in Missouri a choice of three "real time" electronic interfaces -- Easy Access Sales Environment ("EASE"), Verigate, and DataGate. (See Brooks & e.spire Agreements App. OSS § 2.4; see also, AT&T Agreement Attach. 2 § 1.4.1, Attach. 7 § 2.1; Ham Direct, pp. 13-29). SWBT provides CLECs all necessary technical specifications for each of these interfaces. (Ham Direct, p. 14).

In addition to these three interfaces, SWBT will soon be making two additional interfaces available to CLECs. EDI Version 9, which will incorporate the new national guidelines for pre-ordering, will be available in the first quarter of 1999. (Id. at 16). SWBT will also provide interested CLECs access to SORD, a proprietary system used by SWBT's retail service representatives, for pre-ordering functions. (Id.). Like EASE, Verigate, and DataGate, EDI Version 9 and SORD will provide CLECs with real-time access on a dial-up or direct connection basis. (Id.). Between July 1997 and September 1998, CLECs successfully entered more than 447,000 service orders directly into EASE. (Ham Direct, Sch. 8).

³⁰ Ibid. p. 35.

AT&T, MCI, and Sprint currently use DataGate for various functions at commercial volumes. (Id. at 22-23 & Sch. 6-1). Ample capacity exists for all anticipated CLEC needs. (Ham Direct, p. 24, Thorsen Direct, p. 9).

CLEC pre-ordering capacities are at parity with those of SWBT's retail operations. (Ham Direct, pp. 27-29). For example, CLECs have the same pre-ordering capacities as SWBT's retail operations for consecutive and vanity telephone numbers, as well as reserving telephone numbers. (Id. at 26-27).

Ordering and Provisioning. For ordering and provisioning, SWBT provides CLECs with a choice of four electronic interfaces -- EASE, EDI, LEX, and SORD. (See, Brooks & e.spire Agreements App. OSS §§ 3.2-3.3; AT&T Agreement Attach. 2 § 1.4, Attach. 7 § 3; Ham Direct, pp. 29-60).

Using EASE, CLECs may perform conversions, new orders, change orders, outside moves, and disconnects of residential and most business customers for resale services. (Ham Direct, p. 31). EASE is precisely the same interface used by SWBT's retail service representatives for ordering and provisioning functions involving these same residential and business customers. (Id.).

A supplemental interface, Service Order Retrieval Distribution Supplement ("SORDS"), allows CLECs using EASE to supplement or modify pending service orders electronically. (Id. at 37-40). This capability has been tested successfully by AT&T. (Id. at 38). Through this interface, CLECs have the ability to process partial migration resale orders (i.e., migration of some but not all of the customer's service functions to a new carrier) without manual intervention by SWBT. (Id.) CLECs may also make such requests manually, through the LSC. (Id.).

EDI Gateway is an electronic interface that SWBT offers for ordering and provisioning resold services and UNEs. This interface conforms to the national guidelines established by the Ordering and Billing Forum. (Id. at 39).

The LEX system, another electronic interface available to CLECs, is a graphical user interface, operating on Windows™, that is based upon the national guidelines promulgated by the OBF. (Ham Direct, pp. 48-49). LEX will provide CLECs that do not have EDI capability, but nevertheless wish to use a nationally recognized ordering format, the ability to create and submit service orders electronically. (Id. at 49). Twelve CLECs are currently submitting local service requests electronically using LEX. (Id. at 50-51). From February 1998 to September 1998, CLEC local service requests input directly by CLECs into LEX have resulted in almost 18,000 posted orders. (Id. at 51).

As noted above, SWBT also will make SORD available to CLECs. (Ham Direct, p. 53). SORD can be used by CLECs that have chosen not to use EDI and LEX, but who nevertheless wish to input their own service orders for those types of orders that EASE cannot process. (Id.). These systems -- EASE and SORD -- are the ordering systems that are available to SWBT's retail operations. (Id. at 54).

SWBT additionally accepts electronic orders for local interconnection trunks and dedicated facilities using the Access Services Request ("ASR") process. (Id. at 55). While the majority of such requests have been made by CLECs using manual processes, hundreds of these requests have been successfully submitted electronically. (Id.).

Maintenance and Repair. SWBT provides CLECs a choice of two electronic interfaces for maintenance and repair. These are Trouble Administration ("TA") from the SWBT Toolbar and Electronic Bonding Interface ("EBI"). (See, Brooks & e.spire Agreements App. OSS § 4; Ham Direct, pp. 60-69; AT&T Agreement Attach. 3 § 3, Attach. 8 § 3). Of course, CLECs retain the option of calling the LOC to report any troubles and request maintenance or repairs. (Kramer Direct, pp. 24-26).

TA is a graphical user interface currently used by SWBT's business customers and interexchange carriers for maintenance and repair. (Ham Direct, p. 62). TA has been enhanced to enable CLECs to submit and check on trouble reports, initiate mechanized loop tests, and receive test results for resold POTS lines and POTS-like UNE orders. (Id.). TA also will provide trouble history for POTS lines and UNEs. (Id.).

The second electronic maintenance/repair interface offered to CLECs is EBI, which conforms to national standards and, like TA, enables CLECs to submit trouble reports and receive trouble status updates and closure information without any manual intervention. (Id. at 64-65). While AT&T, MCI WorldCom, and Sprint have repeatedly delayed deploying EBI capability for local services, (Id. at 66-69) a number of carriers are successfully using EBI for exchange access. (Id. at 64-65). Through September 1988, almost 26,000 trouble reports (corresponding to over 377,000 transactions) have been processed using EBI, which has been successfully stress-tested to a volume of 4000 trouble reports per day. (Id.)

Billing. SWBT offers CLECs a choice of five different electronic interfaces for billing. (See, Brooks & e.spire Agreements App. OSS § 5; AT&T Agreement Attach. 4 §§ 4-5, Attach. 9 §§ 4-5; Ham Direct, pp. 69-76). Using these interfaces, CLECs may obtain the information necessary to bill their customers, process claims and adjustments, and view SWBT's bill for services provided to CLECs. (Ham Direct, pp. 70-71).

The first billing interface, Bill Plus™, electronically provides CLECs all the information contained in their paper bills, as well as a variety of options for manipulating the data that would appear on a paper bill. (Id. at 70-71). Approximately 79 CLECs currently are receiving their bills via Bill Plus™. (Id. at 71).

The second billing interface, EDI, allows CLECs to receive billing data for resold services electronically, in an industry-standard format. (Id. at 71). SWBT maintains a team of EDI billing specialists that are available to help CLECs use the EDI billing data. (Id.).

For UNE billing, SWBT provides an industry-standard Customer Access Billing System ("CABS"), Billing Output Specifications ("BOS") format that allows CLECs to obtain data from SWBT's CABS database using a live connection or the CLEC's choice of data media. (Id. at 72-73). This system has been used successfully by interexchange carriers for years. (Id.). MCI and AT&T are currently using a Bill Data Tape for CABS generated local exchange billing (for UNEs). (Id.).

The fourth billing interface offered by SWBT is the Bill Information graphical user interface from the SWBT Toolbar. This interface provides CLECs with real-time access to SWBT's back office OSS, which allows a CLEC to view billing data and other information regarding the CLEC's resale services or UNEs. (Id. at 73). Information that can be viewed using the Bill Information interface includes sections of the bill, payments and adjustments, subscription reports, and the customer service record. (Id.).

The final billing interface, Usage Extract Feed, provides CLECs daily information on usage-sensitive resold services and UNEs in a format that conforms to the national Exchange Message Interface ("EMI") standard. (Id. at 74-75). Twenty-three CLECs are currently using this interface. (Id. at 74). CLECs may also use the Usage Extract Feed to obtain access usage for originating traffic associated with unbundled switching or POTS-like bundles. (Id. at 76).

SWBT's systems currently do not provide the capacity to extract the terminating access usage from UNE switch ports. (Locus Direct, p. 9). SWBT is building a new adjunct processing system to identify these calls, which will be operational in April 1999. (Id.). Until that time, SWBT has reached agreement on an interim solution with AT&T and MCI. (Id.). Furthermore,

while SWBT does not yet have the capacity to provide usage records for flat-rated, resold services (for which SWBT does not record usage for its own service offerings), SWBT does provide usage-sensitive items on the daily usage extract feed that subsequently can be included on monthly bills. (Id. at 8). If a CLEC submits a bona fide request to receive usage records on flat-rated, resold services, SWBT will consider the request. (Id. at 8).

SWBT performs bill audits to ensure that the billing systems for CLEC resale and UNE bills are functioning properly, and toll audits to ensure that toll and associated charges are correct on residence and business bills. (Dysart Direct, pp. 22-25).

Since industry standards for some interfaces are in the process of being developed, SWBT has negotiated with CLECS to provide interim arrangements. (Ham Direct, p. 7). Such arrangements must be coordinated with CLECs, and SWBT has established an EDI/LEX change control process to assist in this coordination. (Id. at 78-79). The EDI/LEX change control process was established with input from AT&T and MCI, and has been available to CLECs since June 1998. (Id. at 77).

An independent audit by Coopers & Lybrand (now PricewaterhouseCoopers) concluded that SWBT's OSS systems operate as designed, and that the capacity of these systems easily satisfies CLECs' requirements. (See generally, Thorsen Direct). For example, through the use of its LEX and EDI interfaces, SWBT can process 439,690 orders per month electronically – a capacity almost 9 times greater than actual demand in September 1998. (Id. at 3, 25; Auinbauh Sch. 3). SWBT also has the capacity to process electronically more than 1,000,000 CLEC transactions per month using the EASE interface. (Thorsen Direct, pp. 3, 19). In addition, SWBT is able to process manually more than 400,000 orders per month, which yielded a spare capacity of approximately 41 percent in September 1998. (Thorsen Direct, p. 3; Auinbauh Sch. 3). Not only is the tested capacity of SWBT's OSS vastly greater than reasonably foreseeable CLEC demand, but these systems are

scaleable to meet increasing demand. (Id. at 19, 28). In fact, based on CLEC order forecast information SWBT received from CLECs in proceedings before the Texas PUC, SWBT's current ordering interfaces have ample capacity to handle the CLECs' forecasted demands through the year 2000. (Ham Direct, p. 80).

SWBT's provision of OSS access to its competitors meets or exceeds all requirements of the 1996 Act and the Commission's implementing regulations. Just as important, it amply serves the underlying purpose of OSS access -- opening the local market to widespread competition.

Staff: Staff contends that there are insufficient commercial volumes of OSS activity in Missouri to make a determination on this issue. This inhibits the ability to properly use performance measures to ensure that OSS is provided to CLECs in parity to what SWBT provides itself.

OPC: SWBT has not demonstrated sufficient parity of its OSS system and therefore does not comply with the requirements of Section 271. (Meisenheimer Rebuttal, pp. 43-49; Cooper Rebuttal, pp. 38-40). In addition, the complaints from CLECs demonstrate that parity does not yet exist. (Meisenheimer Surrebuttal, pp. 3-8)

AT&T: AT&T witness Nancy Dalton refutes SWBT's assertion that it has met the requirements of Sections 251 and 271 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), with respect to OSS. The evidence provided by SWBT to date regarding its OSS capabilities does not support a finding of nondiscriminatory access or commercial readiness. Known limitations concerning SWBT's OSS capability and capacity negatively impact the ability of SWBT's OSS to handle competitive volumes. The confidence level in SWBT's OSS offerings needs to be raised significantly before broad based local service competition can advance. Inadequacies in an incumbent's OSS can cause a CLEC's new customer to encounter, for example, unnecessarily protracted negotiation sessions with service representatives, service installation delays and missed due dates, loss of service, inaccurate or missing customer white page listings,

directory listings, and 911/E911 database information, inferior trouble shooting and line testing capability, and double or inaccurate end user billing.

SWBT is obligated to provide competitive local exchange carriers ("CLECs") with at least equivalent access to its OSS.³¹ This means that SWBT must provide OSS access to CLECs at least "the same" as,³² or "equal to,"³³ the OSS access that SWBT provides to its own customer service representatives for all key OSS functions (i.e., pre-ordering, ordering, provisioning, repair and maintenance, and billing) "under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete" using any of the three modes of entry established by the Act (i.e., interconnection, UNEs, or resale.)³⁴

The duty to provide access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory, just and reasonable, and its duty under section 251(c)(4) to offer resale services

³¹ Direct Testimony of Elizabeth A. Ham, Missouri Public Service Commission, Case No. TO-99-227 (11/20/98) p. 3, quoting Second Order on Reconsideration, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (released December 13, 1996) ("Second Order on Recon."), ¶ 9.

³² First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (released August 8, 1996) ("Local Competition Order"), ¶ 523 ("the incumbent must provide the same access to competing providers" that it provides to its own customer service representatives); ¶ 316 ("the incumbent must provide access to [OSS] functions under the same terms and conditions that they provide services to themselves or their customers"); ¶ 518 (competing providers must be provided with the ability "to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself") (emphasis added).

³³ See Id., ¶ 519 (generally relying upon state commission orders "ordering incumbent LECs to provide interfaces for [OSS] access equal to that the incumbent provides itself"); ¶ 315 (access must be provided on terms that are "equal to the terms and conditions under which the incumbent LEC provisions such elements to itself"); Second Order on Recon., ¶ 9 (OSS access must be "at least equivalent" or "equal to" the access that the incumbent LEC provides to itself) (emphasis added).

³⁴ Local Competition Order, ¶¶ 514 & nn.1244-47, 519, 523, 315-16; Second Order on Reconsideration, ¶ 9; FCC Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271, cc Docket No. 97-137 (8/19/97) ("Ameritech Michigan Order") ¶¶ 55, 128, 130, 132, 133, 137, 141, 143, 158, 166, 179.

without imposing any limitations or conditions that are discriminatory or unreasonable.³⁵ Also, to the extent OSS issues impact a CLEC's ability to gain nondiscriminatory access to particular network elements or other checklist requirements, a deficiency in OSS accessibility can result in failed compliance with checklist items other than access to unbundled network elements and resale. The Eighth Circuit affirmed the FCC's determination that OSS are network elements that must be provided pursuant to section 251(c)(3) of the Act.³⁶

Determining whether SWBT meets the parity access standard requires a two-part inquiry. "First, the Commission must determine whether [SWBT] has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether [SWBT] is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them" (e.g., providing specifications needed for systems design or modification, formatting and processing information needed for quick and efficient flow-through, and internal "business rules," including USOCs, FIDs, and other ordering codes).³⁷ "Second, the Commission must determine whether the OSS functions that [SWBT] has deployed are operationally ready, as a practical matter."³⁸ Under this second part of the inquiry, performance measurements and other evidence of commercial readiness are examined.³⁹

As is discussed in detail in Ms. Dalton's testimony in connection with each OSS function (pre-order, ordering and provisioning, maintenance and repair, and billing), the systems SWBT has deployed today for CLECs to access are not sufficient because they do not provide the same

³⁵ Ameritech Michigan Order, ¶ 130, see also FCC Memorandum Opinion and Order, Application of BellSouth--South Carolina Pursuant to Section 271, cc Docket No. 97-208 (12/24/97) ("BellSouth-South Carolina Order"), ¶ 83.

³⁶ Iowa Utilities Bd. v. FCC, 120 F.3d 753, 808-09 (8th Cir. 1997).

³⁷ Ameritech Michigan Order, ¶¶ 136-37.

³⁸ Ameritech Michigan Order, ¶ 136.