BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of AT&T Communications of the Southwest, Inc.'s Petition For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company.	)	**CASE NO. TO-97-40**
Petition of MCI Telecommunications Corporation and its Affiliates, Including MCIMetro Access Transmission Services, Inc., for Arbitration and Mediation Under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues With Southwestern Bell Telephone Company.	)	**CASE NO. TO-97-67**

ARBITRATION ORDER REGARDING, MOTIONS FOR CLARIFICATION AND RECONSIDERATION and JOINT MOTION FOR EXPEDITED RESOLUTION OF ISSUES

Issue Date: October 2, 1997

Effective Date: October 2, 1997

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 2nd day of October, 1997.

In the Matter of AT&T Communications of the Southwest, Inc.'s Petition For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company.	)	**CASE NO. TO-97-40**
Petition of MCI Telecommunications Corporation and its Affiliates, Including MCIMetro Access Transmission Services, Inc., for Arbitration and Mediation Under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues With Southwestern Bell Telephone Company.	)	**CASE NO. TO-97-67**

ARBITRATION ORDER REGARDING MOTIONS FOR CLARIFICATION AND RECONSIDERATION and JOINT MOTION FOR EXPEDITED RESOLUTION OF ISSUES

I. Procedural History

On July 31, 1997, the Commission issued its Final Arbitration Order in this case. The Commission lengthened its normal ten day deadline for the filing of requests for reconsideration or clarification to twenty days from the date of the Order. Requests for reconsideration or clarification were filed by MCI Telecommunications Corp., MCIMetro Access Transmission Services, Inc and Affiliates ("MCI"), Southwestern Bell Telephone Company ("SWBT"), the Office of the Public Counsel ("OPC"), and AT&T Communications of the Southwest, Inc. ("AT&T"). After that, MCI and SWBT each filed two

additional responsive pleadings.

After reviewing the pleadings relating to the Final Arbitration Order, the Commission hereby grants the requests for clarification and modification where appropriate. The Commission also approves the Joint Motion for Expedited Resolution of Issues as set out herein. All other Motions for Rehearing, Clarification, and/or Reconsideration are hereby denied unless specifically granted within this Order.

II. ISSUES NOT PROPERLY BEFORE THE COMMISSION FOR DETERMINATION

This proceeding was conducted pursuant to 47 U.S.C.A. § 252. That section requires the state Commission to arbitrate any open issues. Further, Section 252 specifically states:

> (4) ACTION BY STATE COMMISSION
>
> (A) The state commission **shall limit** its consideration of any petition under paragraph (1)[1] (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3)[2]. (Emphasis added).

The Commission fully dealt with each of the 41 issues delineated by the parties in the Issues Memorandum filed on October 7, 1996. The 42nd issue, which according to MCI should have been determined by this Commission, was nothing more than an attempt to have the Commission weed through more than 95 exhibits and nearly 1800 pages of transcripts and voluminous testimony

---

[1] Section 252, paragraph "(1) Arbitration" is the section of the act which provides authority for a party to file for arbitration.

[2] Section 252, paragraph (3) Opportunity To Respond" is the section under which a non-petitioning party is given 25 days to respond to the petition.

to find answers to many previously unasked questions. MCI wants to be held harmless from it's own failure to specify, in its original Request for Arbitration, each of the terms and conditions that would be necessary to complete an Interconnection Agreement with SWBT.

MCI has raised this identical issue in its Petition at the FCC as the basis for a Section 252(e)(5) challenge[3]. In response to MCI's petition the FCC issued its Memorandum Opinion and Order on September 26 in which it denied MCI's request. In doing so the FCC held that " . . . the language of the Act indicates that a state commission may not be found to have 'failed to act' within the meaning of section 252(e)(5) solely on the basis that the state commission did not arbitrate issues that were never clearly and specifically presented to it." At ¶37.

The Commission finds that it is unreasonable for MCI to assume that the Commission would decide issues not properly before it. This Commission has not "left the parties where it found them," but rather left the parties where they thought they wanted to be.

III. ARBITRATION PROCEDURES

SWBT, OPC, and MCI each raise issues concerning the procedures that were utilized by the Commission in determining the permanent interconnection rates. The parties are confusing this arbitration proceeding with a contested case proceeding. There is no correlation between the two in terms of the procedures used to obtain data, sources of data and use of that data to ascertain a reasonable rate for an interconnection agreement.

---

[3] In the Matter of Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996, CC Docket No. 97-166.

The pleadings filed after the Final Arbitration Order suggested that the Commission was required to permit parties to review the rate schedules recommended by the Arbitration Advisory Staff, hold hearings with cross-examination and presentation of additional evidence and allow oral argument and filing of briefs. These assertions are not supported by the case law relating to the Federal Arbitration Act ("FAA")[4].

Arbitrators may properly refuse to give reasons for their decisions,[5] and are no more obligated to give reasons for an award than is a jury expected to explain a verdict.[6] Further, unless required by statute or the terms under which a case is submitted to the arbitrator, it is not necessary that the award be accompanied by specific findings of fact or conclusions of law.[7] Clearly, these cases indicate that there are no rigid standards that must be employed in making arbitration awards. There are no specific requirements for hearings, discovery, evidence, etc. These cases make it clear that the Commission, sitting as arbitrator, is free to use whatever information it finds useful, from whatever source and is not required to explain the award.

The FAA, as well as the Missouri Arbitration Act ("MAA")[8], provides that awards may be vacated only for very limited reasons such as corruption, fraud, undue influence, evident partiality by an arbitrator, or the arbitrators exceeding their powers. Absent one of these limited

---

[4] See, 9 U.S.C.A. § 10.

[5] Birchtree Financial Serv., Inc. v. Thomas, 821 S.W.2d 120 (Mo. App. W.D. 1991).

[6] Hamilton Metals, Inc. v. Blue Valley Metal Products Co., 763 S.W.2d 225, 227 (Mo.App. W.D. 1988)

[7] *Id.*

[8] See, § 435.405.1 RSMo, (Supp. 1996).

reasons, a court must confirm the arbitrator's award.[9] Even an arbitrator's mistake of fact or mistake of law is insufficient to vacate an award.[10] Given these very minimal standards for vacating or modifying an arbitration award, the Commission finds that the highly structured, contested case type procedures advocated by OPC, SWBT and MCI are inappropriate and unnecessary in a situation where there is mandatory arbitration under the Telecommunications Act of 1996.

IV. ISSUES TO BE CLARIFIED

A. Service Order and Customer Change Charge

The Service Order charge shall apply to all initial orders for service from SWBT. This charge applies for resale conversions, the lease of unbundled elements, and conversions using all unbundled elements. In the case of a resale conversion or a conversion using all of the unbundled elements necessary for the provision of telephone service, no other non-recurring charge shall apply in addition to, or in lieu of, the Service Order charge. In instances where a competitive local exchange company (CLEC) purchases individual network elements to be combined with its own or another CLEC's unbundled elements, the additional non-recurring charges listed in Appendix B of the Final Arbitration Order shall apply.

The Service Order charge ordered by the Commission assumes the use of an electronic ordering system. SWBT stated that some CLECs may choose to use a manual ordering system and therefore, should pay a charge of $25.80 which is based upon a manual ordering process. The same rationale

---

[9] Holman v. Trans World Airlines, Inc., 737 F.Supp. 527, 530 (E.D. Mo. 1989).

[10] Stifel, Nicolous and Co., Inc. v. Francis, 872 S.W.2d 484, 485 (Mo. App. W.D. 1994).

used in setting all other non-recurring charges also applies in this instance. That rational is contained on pages 120- 124 of Appendix C of the Final Arbitration Order. Thus, this non-recurring charge will be $12.90. This is consistent with the decision that all non-recurring charges shall be set at one-half of the rate proposed by SWBT.

Additionally, this rate is only appropriate when a CLEC chooses to use a manual ordering process. If a CLEC chooses to use electronic ordering but SWBT is unable to provide such electronic ordering services, the $5.00 Service Order charge shall apply. Again, no charges shall be applied in addition to, or in lieu of, the proper Service Order charge.

B. Network Interface Device (NID) Costs

The Commission's December 11, 1996 Arbitration Order set forth the following four types of NID interconnection: (1) for single unit and small business locations, CLECs should be allowed direct connections to SWBT's NID where spare slots are available; (2) for single unit and small business locations where spare slots are not available, CLECs should make a NID to NID connection; (3) for large businesses and apartment buildings where the customer's inside wiring is easily accessible outside SWBT's NID, CLECs shall provide their own NID and connect directly to the customer's inside wiring; and (4) for businesses and apartment locations where the customer's inside wiring is not accessible outside the SWBT NID, SWBT should rearrange its NID to allow CLECs access to the inside wiring.

SWBT's cost studies for NID access provided non-recurring charges for first and additional NIDs. With regard to other non-recurring costs, the charges for the four types of NID are set out below.

Type 1 NID interconnection:

First Connection;	$30.67
Each Additional;	$15.34

Type 2 NID interconnection: The CLEC connects its NID to the customers inside wiring via the existing SWBT NID. There shall not be a charge for type (2) NID access.

Type 3 NID interconnection: There should be no charge for a type (3) interconnection, since the CLEC is making a direct connection to the customer's inside wiring.

Type 4 NID interconnection: Where SWBT must rearrange its NID to allow for CLEC access to inside wiring the costs SWBT incurs will depend upon the amount of rearranging necessary to accommodate the CLEC's access. Therefore, for a type (4) interconnection, charges should be developed and applied on an individual case basis.

C. Charges for Dark Fiber

The Dark Fiber rates contained in the Final Arbitration Order are on a per strand, per foot basis.

D. Directory Assistance and Operator Services

SWBT requests reconsideration of the Final Arbitration Order which establishes Operator Services (OS) and Directory Assistance (DA) rates equal to the "lowest existing inter-company compensation arrangement". SWBT asserts that these services are highly competitive and the Commission need not establish particular rates for them because the market will do so.. SWBT also states that if the Commission sets rates for these services, it must do so based upon costs and not upon existing arrangements. SWBT contends that it has entered into contracts years ago which no longer recover the costs of providing these services and, therefore, should not be forced to offer these services at those rates. One such contract dated November 1993 has a five year term.

The Final Arbitration Order required the use of the lowest existing inter-company compensation arrangement as this would allow SWBT to recover

the costs of providing these services and is an appropriate rate. Recognizing the age of SWBT's contracts, the Commission directs SWBT to charge its lowest existing inter-company compensation rates for agreements entered into after the August 28, 1996 effective date of Missouri's Senate Bill 507.

E. Tariff Issues - SWBT

SWBT refers to the Commission's Final Arbitration Order and states its belief that it was appropriate to maintain the restrictions on aggregation of toll services for resale, but to presume all other restrictions do not apply unless the parties identify and ask explicitly for imposition. On February 11, 1997, SWBT submitted a Request for Imposition of Use Limitations and Conditions of Tariffed Services in this docket which identified tariff restrictions and limitations the company contends should apply to CLECs using SWBT resold service. The Commission waited to rule on this request until such time as it had made a final determination on the permanent rates.

While it is true that rates for telecommunications services were designed according to the applicability of certain limitations and restrictions included in SWBT's tariffs, this proceeding is not the appropriate forum to address such tariff issues. The request by SWBT is hereby denied.

F. Prices for Sub-Loop Network Elements

Both OPC and SWBT requested clarification of the prices for sub-loop network elements. In the cost study review process, the Arbitration Advisory Staff discovered that SWBT failed to include investment for poles and conduit in the sub-loop cost studies. In addition, the geographic zones were transposed in the Final Arbitration Order. The prices set out in Attachment "A" for sub-loop elements will correct these problems.

V. IDENTIFIED ISSUES FOR EXPEDITED RESOLUTION

On September 16, 1997 AT&T and SWBT filed a Joint Motion for Expedited Resolution of Issues (hereafter the "Joint Motion" which is attached hereto as Attachment "B") requesting that the Commission select the appropriate proposed language in each of 15 specified issues. The parties to the Motion contemplate that the Commission will select either the proposed language of AT&T, or alternatively the SWBT proposed language as the appropriate language to be included in the September 30, 1997 filing.

Based upon the Commission's review of the Joint Motion the Commission directs the parties to adopt At&T's position on issues 3, 6, 7, 8, 9, 12, 13, and 14. The Commission directs the parties to adopt SWBT's position on issues 1, 2, 4, 5, 10, 11, and 15. In addition, with respect to issue #1 the Commission wants to make it clear that the 90 days or less applies only to initial promotions. If a promotion is extended beyond 90 days, then the pricing is at the greater-than-90-day rate from the 91st day forward.

With respect to issues #4, #10 and #15 the Commission makes no determination as to SWBT's actual costs or to those prices set out in the Appendix Pricing UNE-Schedule of Prices.

VI. ORDERED PARAGRAPHS

IT IS THEREFORE ORDERED:

1. That the Application for Rehearing, Reconsideration & Clarification of MCI Telecommunications Corporation, MCIMetro Access Transmission Service, Inc. and Affiliates, filed August 19, 1997, is denied except as set out herein.

2. That Southwestern Bell Telephone Company's Motion for Clarification, Modification and Application for Rehearing of the Final Arbitration Order, filed August 20, 1997, is denied except as set out herein.

3. That the Office of the Public Counsel's Motion for Reconsideration, filed August 20, 1997, is denied except as set out herein.

4. That the Application for Rehearing or Reconsideration of AT&T Communications of the Southwest, Inc., filed August 20, 1997, is denied except as set out herein.

5. That the Final Arbitration Order, issued on July 31, 1997, shall remain in full force and effect except as specifically modified by this order.

6. That the parties shall prepare and submit to the Commission for approval an interconnection agreement reflecting the modifications embodied in this order and the permanent rates as set forth in Attachments A and B to the Final Arbitration Order, issued July 31, 1997. The interconnection agreement described herein, and previously ordered to be filed not later than September 30, 1997, shall be filed no later than October 14, 1997.

7. That the parties shall comply with the Commission's determinations on each and every issue.

8. That any proposed interconnection agreement previously filed herein is rejected and all pending motions which have not been addressed are denied.

9. That the Joint Motion for Expedited Resolution of Issues is granted as set out herein.

10. That this Order Modifying and Clarifying the Final Arbitration Order shall become effective on October 2, 1997.

BY THE COMMISSION

Cecil I. Wright
Executive Secretary

(S E A L)

Murray, and Drainer, CC., Concur.
Crumpton, C., Concurs with Opinion to Follow.
Lumpe, Ch., Absent.

Roberts, Chief Regulatory Law Judge

Attachment A
Permanent Prices for Unbundled Network Elements

		Tariffed	Mo.P.S.C.		
	Rate	Rate	Ordered	NRCs	
	Zone*	Group	Price	First	Additional
Subloop Unbundling					
	8dB Feeder				
	Zone 1	Group D	$5.56		
	Zone 2	Group B	$7.27		
	Zone 3	Group A	$10.10		
	Zone 4	Group C	$7.01		
		Statewide		ICB	ICB
	BRI Feeder				
	Zone 1	Group D	$20.93		
	Zone 2	Group B	$31.28		
	Zone 3	Group A	$39.33		
	Zone 4	Group C	$32.58		
		Statewide		ICB	ICB
	DS1 Feeder				
	Zone 1	Group D	$67.80		
	Zone 2	Group B	$67.56		
	Zone 3	Group A	$70.99		
	Zone 4	Group C	$67.68		
		Statewide		ICB	ICB
	8dB Distribution				
	Zone 1	Group D	$6.98		
	Zone 2	Group B	$13.35		
	Zone 3	Group A	$23.34		
	Zone 4	Group C	$11.05		
		Statewide		ICB	ICB
	BRI Distribution				
	Zone 1	Group D	$9.92		
	Zone 2	Group B	$16.29		
	Zone 3	Group A	$26.26		
	Zone 4	Group C	$14.00		
		Statewide		ICB	ICB
	DS1 Distribution				
	Zone 1	Group D	$4.97		
	Zone 2	Group B	$10.48		
	Zone 3	Group A	$21.80		
	Zone 4	Group C	$6.60		
		Statewide		ICB	ICB

* The Commission's Final Arbitration order contained 4 rate zones corresponding to SWBT's tariffed rate groups.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company.	)))))	Case No. TO-97-40
In the Matter of Petition of MCI Telecommunications Corporation and its Affiliates, Including MCImetro Access Transmission Services, Inc. for Arbitration and Mediation Under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues with Southwestern Bell Telephone Company.	))))))	Case No. TO-97-67

JOINT MOTION FOR EXPEDITED RESOLUTION OF ISSUES

COME NOW AT&T Communications of the Southwest, Inc. (AT&T) and Southwestern Bell Telephone Company (SWBT) and for their Joint Motion for Expedited Resolution of Issues state as follows:

1. AT&T and SWBT have identified a number of issues for which mutually acceptable implementing language cannot be agreed upon. The parties agree that these issues have been addressed in the Commission's Orders in this docket and should be resolved so that appropriate provisions may be included in the Interconnection Agreement the Commission has directed the parties to file by no later than September 30, 1997.

2. To facilitate resolution of these issues, the parties have set forth the issues and each party's proposed implementing language. It is contemplated that the Commission will select either AT&T's proposed language or SWBT's proposed language and provide direction as to which provision shall be included in the September 30, 1997 filing. The parties request that the Commission issue its decision by no later than

September 24, 1997, so as to ensure there will be sufficient time to incorporate the selected language in the Interconnection Agreement.

3. The other parties to these proceedings, MCI and the Office of Public Counsel, have been apprised of this request and do not object to resolution of the issues as proposed.

ISSUES

Issue No. 1:

Promotions -Resale: Whether promotional offerings of 90 days or less must be made available for Resale at the promotional rates rather than the wholesale discount?

AT&T Proposed Contract Language:

Section 4.X of the Interconnection Agreement should state: "Promotions of Resale services of more than 90 days will be made available to AT&T on terms and conditions no less favorable than those SWBT makes available to its customers and will be made available at the avoided cost discount from the promotional rate. **"For promotions of 90 days or less, SWBT will offer the services to AT&T for resale at the promotional rate without a wholesale discount."**

AT&T's Rationale:

The First Arbitration Order states that there is no rationale for excluding promotions from resale, but perhaps they need not be discounted beyond the promotion. December 11, 1996 Order, p. 46. AT&T's proposed language accurately reflects what it believes is the intent of the Commission in order, i.e. to create a fair playing field for all LSPs, including AT&T.

47 C.F.R. 51.605 and 47 U.S.C. 251(c) (4) requires SWBT to offer for resale at wholesale rates, any service offered by SWBT at retail. The exception contained in 47 C.F.R. 51.613 for promotions of less than 90 days provides that the wholesale discount applies to the ordinary rate rather than the promotion rate. The exception does not extend to restricting resale of the service at the promotional rate. This provision was expressly upheld by the 8th Circuit. Therefore, if SWBT runs a short term promotion at a rate lower than the wholesale discount, SWBT must resell the service at the promotional rate rather than just the wholesale discount.

Without this interpretation, the incumbent LEC is prone to introduce numerous promotions less than 90 days in order to disadvantage the LSP. In order to compete effectively, and offer similar promotions without being disadvantaged in a Resale environment, AT&T must have the ability to resell all promotions, including promotions of 90 days or less.

SWBT's Proposed Contract Language:

Section 4.2 of the Interconnection Agreement should state: "Promotions of Resale services of more than 90 days will be made available to AT&T on terms and conditions no less favorable than those SWBT makes available to its customers and will be made available at the avoided cost discount from the promotional rate. Services offered for promotions of 90 days or less will be available for resale at the retail rate less the established avoided cost discount. (i.e., AT&T may not elect the promotional rate.)"

SWBT's Rationale:

The Missouri PSC's Arbitration Order in this case issued on December 11, 1996 stated that "promotions lasting 90 days or more should be discounted by the established amount or the promotion amount." (See, Issue 40). In an attempt to compromise, SWBT agreed to make service being offered for promotions lasting more than 90 days available to AT&T at the promotional rate less the established avoided cost discount. AT&T has insisted that for services being offered for promotions lasting less than 90 days, SWBT must make the service being promoted available to AT&T at the promotional rate. SWBT believes that the Commission's Order requires SWBT to make the service being promoted for less than 90 days available to AT&T at the retail rate less the established avoided cost discount of 19.2%. For example, if SWBT decides to offer Caller ID for a promotion of 30 days wherein the Caller ID service is offered at a 50% discount from the retail rate to SWBT's end users, AT&T could still purchase Caller ID at the retail rate minus the 19.2% avoided cost discount under SWBT's proposed language. AT&T believes it should be able to obtain the Caller ID service at a 50% discount during the 30 day promotion. If SWBT is required to make short term (i.e., less than 90 days) promotions available for resale at an additional discount, it will chill its ability to compete and deprive customers of one of the chief benefits of competition.

Issue No. 2:

Whether AT&T may aggregate the Plexar family of services, local exchange and intraLATA traffic usage of AT&T customers to qualify for volume discounts on the basis of such aggregated usage. Appendix Services/ Pricing, Section 2.1.2

AT&T Proposed Contract Language:

Section 2.X of the Interconnection Agreement should state: **"AT&T may aggregate the PLEXAR families of services, local exchange and intraLATA traffic usage of AT&T Customers to qualify for volume discounts on the basis of such aggregated usage."**

AT&T's Rationale:

Other than cross class reselling of residential service to non-residential end-users and the cross class reselling of means tested service, all restrictions on resale should be deemed presumptively unreasonable and should not be permitted, as stated in FCC's First Report and Order Section 939. Please refer to the discussion of "Use limitations," issue No. 1, and issue No. 5, below, which concern identical or directly related issues.

The Commission only limited the aggregation of toll, not the aggregation of other local services and volume discounts. AT&T must be able to compete in a resale environment without such restrictions.

To be competitive, AT&T must be allowed to meet customer expectations for End-User Services and Volume Discount Prices while meeting business objectives. AT&T specifically needs the ability to use Plexar to buy calling plans, features, and associated services with appropriate discounts, and serve multiple customers in a single location or area. The ability to aggregate was recognized by the FCC as fundamental to open market competition. Buying Plexar services and being able to resale the product-line regardless of customer/location and provide customized, individualized customer arrangements is fundamental to market differentiation and competition.

SWBT's Proposed Contract Language:

Section 2.X of the Interconnection Agreement should state: "The Parties will maintain restrictions on aggregation of toll services for resale. All other restrictions are presumed not to apply until the Parties identify and ask the Commission explicitly for imposition."

SWBT's Rationale:

The Missouri PSC Order released on December 11, 1996 states that: "The Commission finds it appropriate to maintain the restrictions on aggregation of toll service for resale. Presume all other restrictions not apply until parties identify and ask explicitly for imposition." (Order, p. 46). When Southwestern Bell received this ruling, it combed through its existing tariffs to identify the use limitations and other tariff conditions that apply to its own customers that would also be appropriate to apply to an LSP's customers using Southwestern Bell's service on a resale basis. On February 11, 1997, Southwestern Bell identified these limitations and conditions and asked the Commission to impose them on resale customers.[1] The Commission, however, has not specifically ruled on this Request.

While Southwestern Bell can fully understand how the press of other urgent Commission business may have prevented it from reaching this Request, Southwestern Bell has filed for reconsideration on this issue in the event the Commission intended in its Final Order to deny Southwestern Bell's Request for Imposition of Use Limitations and Conditions of Tariffed Services.

The use limitations and conditions contained in Southwestern Bell's tariffs[2] define the very nature of the particular services being offered and are an essential element of the tariff. They simply reflect the manner in which the services have been designed, costed, priced and how they are currently being provisioned. For example, the various restrictions preventing a customer from aggregating one local service for the use of multiple end users reflect the fact that such service was priced to cover the costs caused by the expected use of a single end user, not multiple users (and potentially hundreds of them). If such multiple use was permitted, a price based on individual use would not be sustainable and would have to be raised. Moreover, the absence of such limitations and conditions would discourage carriers from coming forward with new services because of concerns that aggregation will be permitted which will make them unable to cover the costs of providing the services.

The FTA only requires resale of existing services. Section 251(c)(4)(A) states that an incumbent LEC has the duty "to offer at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers" (emphasis supplied). Permitting an LSP to purchase Southwestern Bell's retail services but ignore the essential tariff conditions defining those services impermissibly expands Section 251(c)(4)(A) to additionally require the resale of services the incumbent LEC does not even offer. As the 8th Circuit made clear in its order vacating portions of the FCC's Interconnection Order, an incumbent LEC is not required to provide superior forms of interconnection.[3]

revised Wholesale Discount, and by explicitly reducing the discount for Operator Services to 13.91% (from the 19.2%), the Commission fully realized that AT&T, in some cases, will be using the Southwestern Bell Telephone Operator Services and Directory Assistance platform; particularly in those situations prior to SWBT's ability to provide customized routing to AT&T's OS/DA platform, or when SWBT's switches are not capable of providing customized routing. (Other Customized Routing issues are discussed separately in this Matrix.)

Essentially, while AT&T is not satisfied that a 13.91% discount is reasonable, it would be per se unreasonable to be penalized further by having SWBT impose additional Operator Services charges through the Interconnection Agreement. SWBT recovers it's full costs through the Wholesale Discount rate as determined by the Missouri Public Service Commission.

b) In its July 31, 1997 Final Arbitration Order, the Commission stated, "Prices for the unbundled network elements include the full functionality of each element. No additional charges for any such element, the functionalities of the element, or the activation of the element or its functionalities shall be permitted." (p. 4).

As AT&T understands the Order, charges for call branding (and, for that matter, for call rating) are included in the UNE charges that AT&T will pay for operator services and directory assistance.

If the Commission does not find that these charges are included, AT&T proposes, as in Issue 10, that SWBT enter into a stipulation with AT&T similar to that agreed to in Texas, that addresses branding costs See Attached Stipulation.

SWBT's Proposed Contract Language:

Section 14.X of the Interconnection Agreement should state: "Attached is Exhibit A, 'List of SWBT's Telecommunications Services Available for Resale', which is a matrix that lists the services offered by SWBT which will be made available to AT&T for resale. AT&T may purchase these services at 19.2% discount from SWBT's retail prices for all services except operator services. The wholesale discount of 13.91% applies to operator services only. Also attached is Exhibit B, 'List of SWBT's Other Services Available for Resale', which is a matrix that lists service offered by SWBT which will be made available to AT&T at retail prices unless otherwise specified. Any rate element incorrectly included in or omitted from either matrix will be corrected as appropriate.

Attachment 6, Section 7.X of the Interconnection Agreement should state: "AT&T will pay charges for Call Branding contained in Appendix Pricing UNE --Schedule of Prices labeled Call Branding (DA/OS) and Service Rate Information (DA/OS). When AT&T uses Call Branding, it will pay the rates and charges ordered by the Missouri Public Service Commission in a subsequent proceeding. In the event that the phraseology for branding OS calls is the same phraseology for branding DA calls, only one charge will apply per initial loading or subsequent change. AT&T will pay the charge as reflected in Appendix Pricing UNE --Schedule of Prices labeled Rate Per Initial Load or Rate Per Subsequent Changes to Brand. AT&T will pay charges for Call Branding contained in Appendix Pricing UNE --Schedule of Prices labeled Call Branding (DA/OS)."

SWBT's Rationale:

SWBT cannot be required to perform branding for AT&T without being compensated. As stated in the Direct Testimony of Richard Keener, SWBT "will install software upgrades in 1997 which will permit branding of reseller's calls without customized routing and a separate trunk group. SWBT will determine an appropriate cost and price for all software upgrade to its operator services switch for branding." (Keener Direct Testimony, pp. 4-6). SWBT has completed those cost studies which include the cost of the software upgrades. In conjunction with this filing, SWBT will submit those cost studies to the PSC so that the PSC may review and rule upon a SWBT proposed rate for branding which does not require customized routing and a separate trunk group for branding resellers' calls. AT&T apparently believes that SWBT should provide branding to AT&T at no charge even though SWBT incurs costs in providing the service. AT&T apparently believes that SWBT should not be allowed to recover any of its costs attributable to the performance of branding AT&T's calls because no rate for branding was listed in the PSC's Final Arbitration Order released on July 31, 1997. But the PSC could not have determined the appropriate rate since the cost study was not completed.

Issue No. 5:

What interfaces should SWBT be required to implement to provide pre-service ordering information and ordering and provisioning for unbundled network elements? (Attachment 7, Section 3.2)

AT&T Proposed Contract Language:

Section 3.X of the Interconnection Agreement should state: "AT&T and SWBT agree to implement the electronic interface, which will be transaction based, to provide the pre-service ordering information for Unbundled Network Elements (i.e., address verification, service and feature availability, telephone number assignment, dispatch requirements, due date, and Customer Service Record information (CSR) in English subject to the conditions as set forth in Attachment Resale) not later than July 1, 1997. SWBT and AT&T also agree to work together to implement an Electronic Data Interface (EDI) for ordering and provisioning specified in the Local Service Ordering Electronic Data Interexchange (EDI) Support Implementation Guide (SIG) dated May 20, 1996, or as otherwise agreed to in writing by the Parties. Both EGI for pre-order and EDI for ordering and provisioning will be available not later than July 1, 1997, for all pre-order and ordering and provisioning order types and functions as outlined in SWBT Exhibit No. 84."

AT&T's Rationale:

Yes, SWBT should provide AT&T all of the functionality for ordering and pre-ordering. Provision of EDI interface would put AT&T at parity with what SWBT provides to itself when offering service to an end user and would allow AT&T to provide UNE based services to its end users at the same quality and timeliness that SWBT provides such service to its end users.

The material difference between AT&T's proposed language and SWBT's is that AT&T's proposal requires the ordering and provisioning interface to support ordering and provisioning for all of the network elements that the MPSC has required SWBT to unbundle, in accordance with the 12/11/96 Commission arbitration award (p. 31: With regard to the UNE issue, SWBT shall implement electronic interfaces by March 1997 for those UNEs which SWBT has proposed.). SWBT would confine the interface to unbundled loops (with and without INP), INP, and unbundled switch ports. There is no justification under the Act or the FCC Order for confining ordering and provisioning interface functionality in this manner. Lack of industry standards is no justification for SWBT refusing to agree to work with AT&T to implement an interface that will provide full ordering and provisioning functionality for UNEs.

SWBT has made several public statements to the effect that it is ready with EDI interfaces; however, in implementation discussions, the Parties are unable to agree on several issues, included the one highlighted here; the types of orders to be used . AT&T believes that this Commission's order requires SWBT to provide interfaces for all UNEs. Exhibit 84 referenced in this issue defines the many ordering requirements needed that AT&T believes were ordered by this Commission. AT&T is not in concurrence that the pre-order, order and provisioning order types and functions are in place. However, the current EDI interface testing in Texas associated with resold business POTS will provide insight that may be utilized for the testing of the EDI interface in UNE. AT&T's proposed Section 3.x should be accepted.

SWBT's Proposed Contract Language:

Section 3.X of the Interconnection Agreement should state: "AT&T and SWBT agree to implement the Electronic Gateway Interface, which will be transaction based, to provide the pre-service ordering information for Unbundled Network Elements (i.e., address verification, service and feature availability, telephone number assignment, and Customer Service Record Information (CSR) in English. SWBT and AT&T also agree to work together to implement an Electronic Data Interface (EDI) for ordering and provisioning of the following elements: unbundled Local Loop, unbundled Local Loop with Interim Number Portability, Interim Number Portability, and unbundled Switch Ports. For these elements the order activity types supported include new connect, change disconnect, inside move, outside move, records change, and conversion with change. Both Electronic Gateway Interface for pre-order and EDI for ordering and provisioning for the above listed elements will be available."

SWBT's Rationale:

AT&T's proposal requires the ordering and provisioning interface to support ordering and provisioning for order types for all unbundled network elements even though the industry forum has yet to develop standards. SWBT would confine the initial interfaces to unbundled loops with and without interim number portability (INP), INP and unbundled switched ports, all of which have been addressed by the national Ordering and Billing Forum (OBF). AT&T alleges that SWBT refuses to address interfaces for other unbundled network elements. This is false. AT&T and SWBT have agreed to pursue specific interface development of all UNEs. The real issue with respect to this paragraph

calls that originate and terminate within a mandatory EAS Area." (Commission Order released December 11, 1997, p. 39). Therefore SWBT agrees that the local rate is applicable for calls between customers in SWBT's metro exchanges that share mandatory calling scopes. Optional calling scopes are not included under the Commission's language. Optional EAS in Missouri is virtually the same as the "optional MCA" discussed by AT&T. Therefore, the rationale discussed under Issue 7 "Optional EAS" is applicable and would allow SWBT to charge a rate different than local for termination of intercompany traffic for optional MCA exchanges.

Issue No. 7:

Whether Optional EAS service should be compensated at the same rate as for local traffic? (Attachment 12: Compensation, Section 5.X)

AT&T Proposed Contract Language:

Section 5.X of the Interconnection Agreement should state: **" Optional Extended Area Service -until a cost-based EAS rate is established for the purposes of compensation for termination of intercompany traffic, the compensation rates for optional EAS will be the same as the rates for local traffic as defined in Section 1.2 of the Attachment. When cost-based interconnection rates for EAS are established by the State Commission, AT&T's traffic in SWBT's EAS areas will be subject to the lesser of the cost-based interconnection rates."**

AT&T's Rationale:

The Missouri Arbitration Order states that the EAS termination rate should be the same as the local termination rate decided in this arbitration case. December 11, 1996

Arbitration Order, p. 40. In addition, the Order states that until a cost based EAS transport rate can be developed, the Interoffice Common Transport rates decided in this arbitration should be used. id. The rates for local traffic in this case equal the local termination rate plus the interoffice common transport rate. Therefore, Optional EAS traffic would also be treated as local traffic until the cost-based rate for EAS transport can be determined, and AT&T's language to that effect should in included. SWBT is proposing an arbitrary rate not justified by the terms of the Order or the cost proceeding.

SWBT's Proposed Contract Language:

Section 5.X of the Interconnection Agreement should state: "For SWBT optional calling areas the compensation for termination of intercompany traffic will be at the rate of $0.0160/MOU. The terminating compensation rate applies to all traffic to and from optional exchanges and the associated metropolitan area. This is independent of any retail service arrangement established by either Party. Upon request, SWBT will provide a list of SWBT optional exchanges. When cost-based interconnection rates for EAS are established by the State Commission, AT&T's traffic in SWBT's EAS areas will be subject to the lesser of the cost-based interconnection rates."

SWBT's Rationale:

Optional EAS in Missouri is virtually the same as optional MCA discussed by AT&T above. AT&T wants local reciprocal compensation to apply to all calls that originate or terminate anywhere in the MCA. According to AT&T, if a call originates and terminates within the Metropolitan Exchange (i.e., mandatory MCA), local reciprocal compensation rates should apply. SWBT believes that a different reciprocal compensation

rate should apply to calls that go between metropolitan exchanges and optional metropolitan exchanges. Calls between optional MCA and the metropolitan exchange would generally have a longer length of haul. The PSC held that "the EAS transport rate should be different from the local transport rate since EAS calls will typically travel a longer distance." SWBT's proposed rate of $.016/MOU reflects the expense incurred for transporting the call a longer distance. The PSC has approved other interconnection agreements which contain this rate, e.g., Brooks Fiber.

Issue No. 8:

Whether the cost for the route indexing solutions will be based on TELRIC cost studies? (Attachment 14:INP, Section 6.X)

AT&T Proposed Contract Language:

Section 6.X of the Interconnection Agreement should state: **"The cost for the route index INP solutions will be based on TELRIC cost studies."**

AT&T's Rationale:

AT&T's language was taken directly from the Order. SWBT's language is altered from the Missouri Arbitration Order. The cost methodology should be based on forward looking TELRIC cost studies.

SWBT's Proposed Contract Language:

Section 6.X of the Interconnection Agreement should state: "The cost for the route index INP solutions will be based on TELRIC costing principles."

SWBT's Rationale:

SWBT's wording is consistent with the wording of the Commission's December 11, 1996 Order. If AT&T requests Route Indexing -INP and the parties cannot agree on a price, the matter will be brought to the Commission for resolution.

Issue No. 9:

May SWBT continue to collect intrastate CCL access charges from AT&T when it purchases UNEs? (Attachment 6: UNE, Section 2.X)

AT&T Proposed Contract Language:

Section 2.X of the Interconnection Agreement should state: **"SWBT will not collect intrastate or interstate access charges from AT&T when it purchases unbundled network elements."**

AT&T's Rationale:

No. The FCC has confirmed that interstate access charges do not apply to CLECs purchasing unbundled network elements, and the same result should now be confirmed for intrastate access charges. The time has come to terminate the transitional allowance of CCLC in the UNE environment. The contract should confirm that SWBT may not charge AT&T access charges (or surrogates) for intrastate or interstate calls originated or terminated over UNE switching. The contract should confirm that SWBT may not bill any IXC originating or terminating access charges for such calls, because that prerogative now falls to AT&T as the (UNE) switching provider.

Section 251(c)(3) of the Act permits requesting telecommunications carriers to purchase UNEs for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange

services to consumers. For that reason, telecommunications carriers purchasing UNEs to provide interexchange services or access services should not be required to pay federal or state exchange access charges. Payment of access charges in addition to UNE charges would violate the cost-based pricing standard for UNEs under the Act.

In its very recent *Access Charge Reform Order* (May 16, 1997), the FCC confirmed its conclusion that access charges do not apply to telecommunications carriers purchasing unbundled network elements. FCC Access Change Reform Order at paragraph 337. As a transitional mechanism to the implementation of fully cost-based rates, the FCC had allowed ILECs to charge the CCLC for a limited time, as an additional charge for traffic traversing the unbundled network elements. The FCC's recent order confirmed that, on the interstate level, this transitional mechanism expires June 30, 1997. FCC Access Charge Reform Order at paragraphs 338-339.

In keeping with this construction of the Act, AT&T has proposed contract language that prohibits SWBT from collecting intrastate or interstate access charges from AT&T when AT&T purchases UNEs. AT&T's language provides contractual recognition to the FCC's recent order confirming that interstate access charges will not apply henceforth when AT&T purchases unbundled network elements to provide exchange access services or interexchange services.

AT&T's proposed language should be adopted based on the FCC's recent Access Charge Reform Order.

SWBT's Proposed Contract Language:

Section 2.X of the Interconnection Agreement should state: "When AT&T purchases an unbundled local switching element and uses it to originate an intrastate interLATA call SWBT will charge AT&T an amount equal to the CCL (as CCL may change from time to time) for all intrastate interLATA (or intrastate intraLATA effective with dialing parity) whole minutes of AT&T customer traffic traversing that unbundled Local Switching element."

SWBT's Rationale:

The language proposed by SWBT is consistent with the PSC's Order issued on December 11, 1997 on pages 43-44 where the Commission stated that "it is appropriate for SWBT to continue to recover CCL until the Court determines otherwise." The Court has not determined otherwise. SWBT believes the Commission does not have the authority to determine the applicability of interstate access charges as requested by AT&T, since that issue is in the purview of the FCC which has issued its own rules. With regard to intrastate access charges, SWBT believes the PSC should not and did not through its Order in this case impact the level or application of these rates in this proceeding. Any attempt to change tariffed intrastate access rates is not appropriate in this proceeding in that numerous carriers and customers, not parties to this arbitration, would be directly affected by the change of such tariffed rates. SWBT has agreed to limit its collection to CCL charges when unbundled local switching is purchased, as provided in the Commission's Order.

Issue No. 10:

May SWBT charge for establishing customized routing in addition to the resale discount or the UNE element costs?

AT&T Proposed Contract Language:

Attachment 6, Section 5 should contain the following language: **"When AT&T requests customized routing in connection with a purchase of unbundled Local Switching, AT&T will pay the applicable charges from Appendix Pricing UNE -Schedule of Prices for local switching** and, if AT&T chooses to purchase associated dedicated transport from SWBT, to pay for **dedicated transport used to provide such routing."**

AT&T's Rationale:

AT&T has proposed that for the purchase of unbundled Local Switching, it will pay applicable dedicated transport and, when AT&T purchases UNE switching, local switching costs required for customized routing. For customized routing associated with Resale services, AT&T proposes that it will pay applicable dedicated transport charges in addition to the discount for Resale services. In it's July 31, 1997 order, the Commission stated *Prices for the unbundled network elements include the full functionality of each* element. No additional charges for any such element, the functionalities of the element, or the activation of the element or its functionalities shall be permitted (p. 4). Without further clarification from the Commission, AT&T understands this to mean that the unbundled local switching costs ordered by the Commission to contain a weighted average cost for customized routing setup. Similarly, for resold services, without an additional cost

awarded for customized routing, and due to the fact that it was clearly identified as a pricing issue in the Missouri contract filed 4/28/97, AT&T believes the Commission to have a position for customized routing in connection with resold services consistent with its UNE position, i.e., there is no additional price.

If the Commission rules that this was not its intent, AT&T respectfully submits that SWBT adopt the same stipulation that it agreed to in Texas for AIN based customized routing in Missouri.

SWBT's Proposed Contract Language:

Attachment 6, Section 5 should contain the following language: "The establishment of customized routing in a SWBT end office will be subject to the rates and conditions specified on an individual case base as reflected in Appendix Pricing UNE -Schedule of Prices labeled as "Customized Routing"."

SWBT's Rationale:

The costs to establish customized routing are not recovered in the unbundled local switching (ULS) rate or Dedicated Transport elements that are needed in conjunction with Customized Routing (CR). Both the Line Class Code (LCC) and AIN methods of establishing CR in a given end office require substantial work and development. SWBT is entitled to recover its cost for this effort. The current proposed contract language provides for customized routing to be done on an individual case basis (ICB) since SWBT does not know AT&T's exact requirements and this is the first time this capability is being established in SWBT's network. As Mr. Keener stated in his direct testimony filed in this arbitration, SWBT will establish a price based upon all details after AT&T's requirements

are finalized. SWBT should not be required to perform customized routing for AT&T without compensation. AT&T believes that since no rate was listed in the Commission's July 31, 1997 Order that SWBT should perform customized routing free. The cost for customized routing is dependent upon the request of the LSP. At the time of the arbitration, SWBT could not have proposed rates for AT&T since AT&T had not informed SWBT of any of the parameters and requirements for its customized routing request. SWBT will incur costs for the provision of customized routing and is entitled to compensation.

Issue No. 11:

What should the intervals be for customized routing?

AT&T Proposed Contract Language:

The Interconnection Agreement should include this language: "If AT&T is required to pay for Customized Routing on an ICB basis, SWBT will provide a price quote within 10 **calendar** days of the receipt of the Customized Routing forms. Upon AT&T acceptance of the price quote the 30 **calendar** day interval for fulfilling orders will begin. Where it is not technically feasible to meet AT&T's requests through available SWBT network resources, SWBT will advise AT&T within 15 working days after order receipt.

In order to accommodate start up needs for Customized Routing requests issued by AT&T prior to October 1, 1997, the 10 **calendar** day price quote and 30 **calendar** day order fulfillment period referred to above will be 20 **calendar** days and 60 **calendar** days respectively."

AT&T's Rationale:

SWBT has agreed that, when AT&T purchases unbundled local switching, SWBT will provide customized routing upon request in order for the switch to route operator services and directory assistance calls from AT&T local customers to AT&T's operator services and directory assistance platforms. *See* Attachment 6, section 5.2.3 of the agreement filed 4/25/97. SWBT was obligated to do so; FCC regulations under the Act require ILECs to provide all "technically feasible customized routing functions provided by the switch." 47 C.F.R. § 51.319(c)(1)(I)(C)(2). *See also* FCC Order ¶ 418.

Customized routing of OS/DA calls is an important part of opening the marketplace to competition. Utilizing proprietary OS/DA platforms that they already have developed will offer CLECs an early opportunity to differentiate their prices and services from the ILEC.

Customized routing must be requested and implemented on an end-office by end-office basis. Customized routing has been implemented elsewhere; this is not novel or untried technology. Accordingly, implementation of customized routing should proceed reasonably promptly under the SWBT/AT&T interconnection agreement, if AT&T is to receive the full local switching functionality, on nondiscriminatory terms, that the Act requires. Some definition of a schedule for implementing customized routing is necessary to provide minimal predictability for developing and executing a business plan. Above all, implementation of customized routing, which necessarily rests in the hands of the ILEC, must not become a means for delaying or negating AT&T's entry into the local Missouri marketplace.

For all these reasons, the contract should contain reasonable time frames for implementation of customized routing. The language proposed by AT&T recognized that additional time may be required to fill initial orders, which may involve multiple switches across the state. The proposed AT&T language allows SWBT 60 days to fulfill orders for customized routing issued by AT&T prior to October 1, 1997. If customized routing is to be priced on an individual case basis (which AT&T opposes, *see* UNE Pricing - customized routing and the general UNE pricing issues discussed above), SWBT would be required to provide a price quote for an end office within 20 days of receiving a request. Under this hypothesis, SWBT's 60 day period to implement customized routing would not begin to run until AT&T accepted the price quote.

SWBT does not disagree in concept. Rather, it has asserted that it should be permitted 90 days to fill customized routing during this initial period and that the price quote period, if applicable, should be 30 days. AT&T submits that these periods would unnecessarily delay its use of its own OS/DA platforms to provide service to Missouri customers.

After the initial phase of customized routing orders (until October 1, 1997) or another date mutually agreed to by the Parties, AT&T proposes that the more occasional orders for now should be filled in 30 calendars days. Price quotes, if applicable, should be provided in 10 calendar days.

AT&T's proposed language should be accepted to provide reasonable time frames for customized routing implementation, which is necessary in order to implement the Commission's order to unbundle local switching and to meet the Act's requirement of

unbundled access to the full functionality of local switching on terms that are just, reasonable and nondiscriminatory

SWBT Proposed Contract Language:

The Interconnection Agreement should include this language: "If AT&T is required to pay for Customized Routing on an ICB basis, SWBT will provide a price quote within 10 **work** days of the receipt of the Customized Routing forms. Upon AT&T acceptance of the price quote the 30 **work** day interval for fulfilling orders will begin. Where it is not technically feasible to meet AT&T's requests through available SWBT network resources, SWBT will advise AT&T within 15 working days after order receipt.

In order to accommodate start up needs for Customized Routing requests issued by AT&T prior to October 1, 1997, the 10 **work** day price quote and 30 **work** day order fulfillment period referred to above will be 30 calendar days and 90 calendar days respectively."

SWBT's Rationale:

SWBT requires the working days that SWBT has indicated. If a holiday or nonworking day falls within the very quick time frame to which SWBT has agreed, SWBT may not be able to meet AT&T's demanded schedule. Viewing the time period intervals as work days rather than calendar days allows SWBT the ability to calculate the exact number of work days allowed to perform the service requested by AT&T. Increasing the days from 20 to 30 and 60 to 90 respectively for all customized routing requests issued by AT&T prior to October 1, 1997 is appropriate to accommodate the start-up needs.

ISSUE NO. 12:

What additional terms, if any, should be included in the Interconnection Agreement to address the purchase of dedicated transport between an AT&T office and a SWBT office? (*footnote* ** *at p. 3 of the July 31, 1997 Final Arbitration Order*)

AT&T's Proposed Contract Language:

Section 8.X of the Interconnection Agreement should state: **"When AT&T orders Unbundled dedicated transport between an AT&T office and a SWBT office, and the facilities used between those offices are of a higher TELRIC cost than facilities between two SWBT offices, AT&T will pay TELRIC cost-based entrance facility rates.**

AT&T's Rationale:

SWBT has proposed to AT&T that it pay a separate, higher set of entrance facility' charges for dedicated transport between SWBT office and an AT&T switch than the interoffice transport charges that would apply for dedicated transport between two SWBT offices. AT&T does not believe that the proposed entrance facility charges can meet the cost-based standard for UNE pricing required under the Act, particularly when the AT&T switch location is included as a node on the ring architecture, as is the case today for facilities that AT&T leases as part of its access network.

For example, AT&T has a contract with SWBT to provide access facilities in St. Louis. That contract states that AT&T derives facilities from three nodes on the SONET ring. The first two nodes belong to SWBT and are named, in Common Language Location Identifier (CLLI) nomenclature, STLSMO01 and STLSMO05. The third node,

STLSMO09, is physically located in AT&T's point of presence location in downtown St. Louis. There is no cost-based reason, therefore, for traffic on the ring between two SWBT locations (STLSMO01 and STLSMO05) to be priced differently than traffic between a SWBT location and an AT&T location (STLSMO01 and STLSMO09).

SWBT has stated in negotiations that the entrance facility rate is justified when a customer location is served, not by the ring architecture itself, but as a lower level of transmission offshoot from the ring. In this example, assume that one of the nodes serves a customer located one mile from the node. Here, SWBT served that customer with a lower transmission rate facility, and, more often in the past, with a copper facility. In this case, the per-unit cost could be higher because you are carrying fewer DS-1s or DS-3s but having to pay the same conduit and right-of-way charges.

AT&T believes that the Commission's footnote on page 3 of Attachment B - Permanent Pricing for Unbundled Network Elements which states; "The rate for an entrance facility should only apply when this element is actually utilized". applies in the latter example only. When the AT&T location (as in the example of STLSMO09) is a node on SWBT's fiber ring, there is no TELRIC cost based reason for paying the higher entrance facility rate. Instead, AT&T should pay dedicated transport rates. A SWBT proposal that has recently been made public demonstrates that SWBT does not charge "entrance facility" rates when it bids on provision of facilities in a competitive environment. Rather, it charges the same rate for facilities that connect SWBT offices as it does for facilities that connect SWBT offices to AT&T offices, regardless of whether switched or dedicated traffic is carried over the facilities. (See *Direct Case of SWBT in*

the Matter of SWBT Tariff FCC Number 73, CC Docket Number 97-158, Transmittal Number 2633, August 13, 1997, at 12.) SWBT offers in that Docket a DS-3 price of approximately $700 dollars, including mileage, which is even less than the rate awarded by the Missouri Commission for dedicated transport.

The Missouri Commission should act to clarify its intent in the July 31, 1997 Order and prevent SWBT from creating artificially high UNE prices that it does not offer in a competitive environment.

SWBT's Proposed Contract Language:

Section 8.X of the Interconnection Agreement should state: "The price for dedicated transport between SWBT wire centers is contained in Appendix Pricing -UNE Schedule of Prices labeled Dedicated Transport (Interoffice Transport). The price for Dedicated Transport between a SWBT wire center and an AT&T location or a location of a third party acting on behalf of AT&T is contained in Appendix Pricing -UNE -Schedule of Prices labeled "Dedicated Transport (Entrance Facility)."

SWBT's Rationale:

The rate structure SWBT is proposing for dedicated transport is identical to the rate structure in SWBT's intrastate access tariffs. The cost of facilities between a SWBT end office and (entrance facility) are different than the cost of facilities between two SWBT end offices and therefore the rates are different. SWBT submitted cost studies to the Commission in April, 1997 and incorporated the Missouri Commission Staff's recommendation into cost studies completed in June, 1997 for these entrance facilities and

these studies are the appropriate basis for pricing. The Commission should accept the cost studies proposed by SWBT in determining the appropriate rate.

Issue No. 13:

Should the definition of "eligible structures" include private rights of way?

AT&T's Proposed Contract Language:

Attachment 13: 2.1 of the Interconnection Agreement should state: "Eligible Structures," as used herein, include all SWBT central offices, tandem offices and serving wire centers and all buildings and similar structures owned or leased by SWBT that house SWBT network facilities and all structures that house SWBT facilities on public or **private** rights-of-way, controlled environmental vaults (CEVs), huts, and cabinets.

AT&T's Rationale:

AT&T's proposed language would require SWBT to allow in all structures that house SWBT facilities on private rights-of-way, AT&T's proposed language that includes "all structures that house SWBT facilities on private rights-of-way" is necessary and reasonable; otherwise, AT&T would not be empowered to collocate in SWBT structures on private rights-of-way, such as university campuses, and AT&T would consequently be prevented from competition effectively with SWBT in markets served by those structures and the end-user customers in those structures would be denied the benefits of competition.

AT&T believes that consistent with the Missouri Public Service Arbitration Order on page 26 which states "SWBT shall provide non-discriminatory access to poles,

ducts, conduit systems, without regard to whether the site is located on public or private property" that AT&T's proposed language should therefore be included.

SWBT's proposed language does not include the use of the word "private" in the context of right-of-way. SWBT is unambiguously required by law to allow collocation at all buildings and similar structures owned or leased by it that house SWBT network facilities, see FCC Order, ¶ 573; accordingly, SWBT's language serves no purpose. SWBT's proposed language should therefore be excluded.

The 12/16/96 Missouri Order outlined a three-step process for the Parties to use to obtain private rights-of-way (page 26):

(1) The LSP shall first attempt to obtain right-of-way directly from the property owner.

(2) Where SWBT has the authority to permit access to a third party right-of-way, SWBT will not restrict the LSP's use of the right-of-way.

(3) Where the LSP is not able to gain access to the right-of-way under (1) or (2) above, SWBT agrees to act as the LSP's agent at the LSP's expense in any condemnation proceedings to the extent such a proceeding is required. In addition, SWBT shall make available to the LSP for immediate occupancy any duct, conduit, or pole space that is not currently assigned to an LSP or other entity.

The Commission clearly ruled on the issue private right-of-way as part of the definition of "eligible structures". The Commission should rule in favor of AT&T's language.

SWBT's Proposed Contract Language:

Attachment 13: 2.1 "Eligible Structures," as used herein, include all SWBT central offices, tandem offices and serving wire centers and all buildings and similar structures owned or leased by SWBT that house SWBT network facilities and all structures that house SWBT facilities on public rights-of-way, controlled environment vaults (CEVs), huts, and cabinets.

SWBT's Rationale:

The definition of eligible structures is important in determining the allocation of collocated space in SWBT's facilities. SWBT's proposed definition excludes rights-of-way controlled by third parties because SWBT cannot guarantee AT&T access to private rights-of-way controlled by third parties. Though SWBT will not attempt to prevent AT&T's access to private rights-of-way, SWBT cannot guarantee such access.

Issue No. 14:

How should the PSC's ruling concerning UNE pricing and element functionality be implemented in the Interconnection Agreement?

AT&T's Proposed Contract Language:

Prices for the unbundled network elements, as shown on Appendix Pricing UNE -Schedule of Prices, include the full functionality of each element. No additional charges for any such element, the functionalities of the element, or the

activation of the element or its functionalities will be permitted. (Source: Mo. PSC Final Arbitration Order, issued 7/31/97, at p. 4)

(Use of this language presumes that Appendix Pricing UNE -Schedule of Prices is revised to include the rates shown on Attachment B of the Missouri Commission's 7/31/97 Order and any rates that were submitted to the Commission as agreed rates, e.g., MDF to switch port cross connects at $0.00 are included.)

AT&T's Rationale:

The contract should explicitly incorporate the Commission's ruling that the permanent UNE prices include the full functionality of each element and that no additional charges are permitted for any such element, the functionalities of the element, or the activation of the element or its functionalities. The pricing process has been completed for all the elements that the Commission has ordered SWBT to unbundle. A new entrant must know the prices of the unbundled network elements in order to offer and deliver UNE-based service to Missouri customers. AT&T sought comprehensive pricing for the unbundled network elements in the cost proceeding, and the Commission has ruled that additional charges for these elements are not permitted. Nevertheless, SWBT continues to assert a right to unilaterally identify additional rate elements associated with the elements that this Commission has ordered it to unbundle and to demand that AT&T pay additional charges for those rate elements. The contract should be clear that additional charges for UNEs are not permitted, except by agreement of the Parties or for the out-of-the-ordinary requests that the contract refers to a special request process.

In its July 31, 1997 Final Arbitration Order established permanent prices for unbundled network elements. 8/20/97 Order at p. 4. The Commission specifically found as follows: Prices for the unbundled network elements include the full functionality of each element. No additional charges for any such element, the functionalities of the element, or the activation of the element or its functionalities shall be permitted. Id.

With that finding, the process of establishing the prices that will apply to AT&T's purchases of unbundled elements under its Interconnection Agreement with SWBT came to a conclusion. AT&T is entitled to purchase the full functionality of the UNEs recognized by this Commission at the rates and charges set in this Commission's July 31 Order.

SWBT has taken the position that, notwithstanding the July 31 Order, there are additional rate elements associated with AT&T's prospective use of UNEs. SWBT asserts the right to impose additional charges for these rate elements and maintains that pricing for these rate elements was not arbitrated in the previous AT&T arbitration or the related cost docket. SWBT's position is directly contrary to the July 31 Order and to the Act's cost-based pricing requirements. SWBT's position must be squarely rejected, lest it undermine the availability of cost-based access to unbundled elements promised by the July 31 Order.

The prior arbitration proceedings left no room for SWBT to continue to unilaterally assert the right to collect additional UNE rates and charges. On the contrary, that process provided SWBT with full and fair notice and opportunity to present any and

all proposed rates and charges associated with the elements that the Commission had recognized.

To begin with, the Commission in its December 11, 1996 Arbitration Order required SWBT to make available to AT&T eight unbundled network elements, without restriction: local loops; loop cross-connect; NID; local and tandem switching; interoffice transmission facilities; signaling and call related databases; operations support systems functions; and operator services and directory assistance facilities. December 11, 1996 Arbitration Order at p8. The Commission also ordered SWBT to provided unbundled access to three subloop elements loop distribution plant, loop concentrator/multiplexer, and loop feeder and to dark fiber. Id. at 9-12.

The Commission deferred the establishment of permanent pricing for these unbundled network elements. Id. at 32. The Commission established a schedule and procedure for setting those permanent rates. See July 31, 1997 Order at 2. That procedure offered all parties the opportunity to present their views, and supporting data, on the rate structure that should apply to the unbundled elements and on the rate quantities themselves.

Well before that procedure had concluded, the parties submitted to the Commission proposed contracts that included complete sets of competing UNE rates and charges. AT&T challenged several of the rate elements proposed by SWBT, such as switching feature activation charges and LIDB and CNAM query transport charges. The Commission adopted the UNE rate schedule set out in Attachment B to the July 31 Order,

and it found , as quoted above, that there should be no additional charges for any of these elements.

The schedule of UNE prices ordered by the Commission omitted several of the rate elements SWBT had proposed (again, for example, feature activation and LIDB and CNAM query transport charges do not appear on Attachment B to the July 31 Order). Based on the Commission's finding that its UNE prices include full functionality of the elements and that no additional charges are permitted, AT&T understands that the exclusion of SWBT's proposed additional rate elements from the Attachment B UNE price schedule was deliberate, That is, the Commission determined that the rates it approved will provide SWBT full cost-based compensation for unbundled network elements, and that the additional rate elements proposed by SWBT were unnecessary or inappropriate. SWBT has had to opportunity to propose its additional rate elements, it did so, they were considered during the cost proceedings, and they were rejected.

Nevertheless, SWBT has continued to take the position that AT&T must agree to pay additional rates and charges for the network elements that it was ordered to unbundle in the December 1996 Arbitration Order. During negotiations to prepare a contract that would implement both the December 1996 and July 1997 Orders, SWBT has insisted that several of its proposed rate elements were not arbitrated. It has asserted that position, despite the fact that SWBT's proposed charge for that rate element had been tendered to the Commission, that the Commission had omitted SWBT's proposed rate or charge from its UNE price schedule (Attachment B), and that the Commission had prohibited additional charges for unbundled network elements.

SWBT recognizes that some of its proposed charges, such as feature activation charges, were rejected. In other instances, however, listed in the specific sub-issues that follow, SWBT persists in asserting its additional UNE charges. SWBT's position is untenable.

For example, signaling and call-related databases were recognized as an unbundled element in the December 1996 Arbitration Order. The pricing of AT&T's use of the SWBT LIDB database was addressed by the Commission in the prior proceedings; the Commission's Attachment B includes a per query rate and a non-recurring charge for AT&T's use of the SWBT Line Information Database (LIDB). July 31 Order, Attachment B, p. 4. Yet SWBT now asserts the right to collect a separate Query Transport charge for every LIDB query, over and above the query charge approved by the Commission. It does so despite the fact that SWBT's proposed Query Transport charge of $0.0045, and AT&T's opposition to that charge, had been tendered to the Commission as a disputed charge. See AT&T proposed Missouri Interconnection Agreement, Attachment 6, Appendix Pricing UNE Schedule of Prices at 10. SWBT's Query Transport charge was excluded from the approved list of UNE rates and charges on Attachment B, and SWBT may not attempt to resurrect it now.

The same analysis holds true for any other rate elements that SWBT may propose (and there are several that it has indicated that it will propose). Accordingly, AT&T requests that the Commission order that the Interconnection Agreement include the language that AT&T has proposed here for sections 1.3 and 1.4 of Appendix Pricing UNE. This proposed language will incorporate into the contract the Commission's ruling

that the approved UNE rates include all the functionality of the elements and that further charges for those functionalities, or activation of those functionalities, are prohibited. This language should foreclose future disputes between the parties of the type that it presented here.

In AT&T's 9/10/97 filing requesting arbitration by this Commission, there are many pricing issues in addition to those listed here that SWBT will not agree were "arbitrated" and thus do not appear in this filing.

SWBT's proposed language leaves open the door to "negotiation" over additional rate elements that it may choose to introduce in order for AT&T to access the full functionality of UNE elements. The MPSC should make it clear to SWBT that further "gaming" of the process will not be tolerated. The fact that SWBT objects to simply including award language in the contract demonstrates their unwillingness to offer UNEs at the prices ordered by the Commission.

The MPSC should order the Parties to include AT&T language that quotes the Order in the contract.

SWBT's Proposed Contract Language:

Attachment B of the Missouri Commission's July 31, 1997 Order and Appendix Pricing UNE include prices for UNEs, rate elements applicable to UNEs or ancillary items or capabilities to be used in conjunction with UNEs. However, prices for certain rate elements applicable to UNEs or ancillary items or capabilities to be used in conjunction with UNEs are not contained on Appendix B or Appendix Pricing UNE. If AT&T requests items not on Attachment B or Appendix Pricing UNE, then AT&T may elect to

utilize the special request process referenced in Section 2 of Attachment 6 or may elect to negotiate a price with SWBT or may pursue any other lawful course.

SWBT's Rationale:

AT&T's position is that if a price is not listed on Attachment B for any item, then AT&T should receive the item at no charge. For example, AT&T believes that it should receive customized routing, branding and rating, entrance facilities, standalone multiplexing, digital cross-connect systems (DCS), and access to SWBT's operational support systems (OSS) free. All of these items have costs associated with their provision that are not included in any UNE. In no case has the Commission required SWBT to give the item to AT&T at no charge. SWBT is entitled to recover, at a minimum, its costs for any UNE, rate element applicable to UNE or ancillary items or capabilities to be used in conjunction with UNE. The special request process in Section 2 of attachment 6 is the appropriate method to handle such requests, and would give AT&T the opportunity to raise the issue with the Commission if it wishes to claim that the cost is already in an existing UNE rate. AT&T is not entitled to demand these items at no charge.

Issue No. 15:

How should the PSC ruling concerning UNE pricing and element functionality be implemented in the Interconnection Agreement for the SS7 cross connect?

AT&T's Proposed Contract Language:

Section 9.X of the Interconnection Agreement should state: "When AT&T establishes new links, where AT&T will use existing transport to an existing SPOI, but will order a new cross-connect and port at SWBT's STP, AT&T will pay applicable rates labeled "STP Port Rate" in Appendix Pricing -UNE -Schedule of Prices. **The price of the "SS7 Links Cross Connect" is included in the unbundled element cost for the STP port.** If either Party believes new links as described in this paragraph would be mutually beneficial, each Party agrees to negotiate at the request of the other Party. If, pursuant to the negotiations, the parties mutually agree that the new cross-connect and port is needed, SWBT will charge AT&T the applicable rates and charges established herein and AT&T will charge SWBT the lesser of AT&T's tariff rates, if any, or an amount equal to the applicable charges established herein. If SWBT does not agree that a new link as described in this paragraph is mutually beneficial, then SWBT will not use the new link and SWBT acknowledges that AT&T may block SWBT's usage of the new link."

AT&T's Rationale:

Prices for the unbundled network elements, as shown on Appendix Pricing UNE - Schedule of Prices, include the full functionality of each element. No additional charges for any such element, the functionalities of the element, or the activation of the element or its functionalities will be permitted. (Source: Mo. PSC Final Arbitration Order, effective 8/20/97, at p. 4)

Here again, SWBT seeks to impose a cross connect charge not ordered by the Commission, over and above the rates awarded for UNEs.

The Commission should approve AT&T's language as representative of the intent of the Order.

SWBT's Proposed Contract Language:

Section 9.X of the Interconnection Agreement should state: "When AT&T establishes new links, where AT&T will use existing transport to an existing SPOI, but will order a new cross-connect and port at SWBT's STP, AT&T will pay applicable rates labeled **"SS7 Links Cross Connect" and** "STP Port Rate" in Appendix Pricing -UNE -Schedule of Prices. If either Party believes new links as described in this paragraph would be mutually beneficial, each Party agrees to negotiate at the request of the other Party. If, pursuant to the negotiations, the parties mutually agree that the new cross-connect and port is needed, SWBT will charge AT&T the applicable rates and charges established herein and AT&T will charge SWBT the lesser of AT&T's tariff rates, if any, or an amount equal to the applicable charges established herein. If SWBT does not agree that a new link as described in this paragraph is mutually beneficial, then SWBT will not use the new link and SWBT acknowledges that AT&T may block SWBT's usage of the new link.

SWBT's Rationale:

Just as SWBT stated under Issue 14, AT&T is not entitled to receive cross connects for free. SWBT has provided cost support for these elements and these costs should be recovered through appropriate rates.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By _____

PAUL G. LANE	#27011
DIANA J. HARTER	#31424
LEO J. BUB	#34326
ANTHONY K CONROY	#35199

Attorneys for Southwestern Bell Telephone Company
100 N. Tucker, Room 630
St. Louis, Missouri 63101-1976
(314) 247-8280 (Telephone)
(314) 247-0881 (Facsimile)

_____

Paul S. DeFord #29509
LATHROP & GAGE L.C.
2345 Grand Boulevard
Kansas City, Missouri 64108
(816) 292-2000 FAX: (816) 292-2001

Mark Witcher
AT&T Communications
Suite 1500, 919 Congress
Austin, Texas 78701
(512) 370-2010 FAX: (512) 370-2096

Attorneys for AT&T Communications of the Southwest, Inc.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by first-class postage prepaid, U.S. Mail on September 16, 1997.

Paul G. Lane