Paul G. Lane
General Counsel-
Missouri

Southwestern Bell Telephone
One Bell Center, Room 3520
St. Louis, Missouri 63101
Phone 314 235-4300
Fax 314 247-0014

Southwestern Bell

November 20, 1998

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

Re: Case No. TO-99-227

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's (SWBT's) Application 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 (Application). Please note that SWBT's Application also includes a request that the Commission issue its standard protective order in this new case, and for such other relief as described therein.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Paul G. Lane

Paul G. Lane

Enclosure

cc: Mr. Dan Joyce
Ms. Martha Hogerty

FILED
NOV 20 1998
Missouri Public Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE 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

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 AND <u>REQUEST FOR PROTECTIVE ORDER AND OTHER RELIEF</u>

COMES NOW Southwestern Bell Telephone Company (SWBT) and notifies the Missouri Public Service Commission (Commission) of its and certain of its affiliates' intent to file an Application to Provide In-Region, InterLATA Services in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996[1] (Act) with the Federal Communications Commission (FCC). In connection with this application, SWBT also requests that the Commission adopt its standard protective order and take such further actions as described below.

Under Section 271(d)(2)(B) of the Act, the FCC is required to "consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).[2] In Case No. TO-97-56[3], the

[1]47 U.S.C. § 271.

[2]Subsection (c)(1) defines the requirements for Track A or Track B entry, and subsection (c)(2) contains the "competitive checklist."

[3]<u>In the Matter of the Petition of MCI Telecommunications Corporation for an Investigation Under Section 271 of the Telecommunications Act of 1996</u>, Case No. TO-97-56,

Commission ordered SWBT to provide one hundred twenty (120) days' advance notification of its intent to file an application with the FCC pursuant to Section 271 of the Act for authority to provide in-region, interLATA services in Missouri. Consistent with the Commission's Order in Case No. TO-97-56, Attachment 1 to this Application is a draft of the brief in support of the Section 271 Application SWBT and its affiliates intend to file with the FCC to demonstrate its compliance with the Act.

In addition, as directed by the Commission in its Order in Case No. TO-97-56, the witnesses who will submit affidavits in support of SWBT's and its affiliates' Section 271 application with the FCC have, for purposes of this notification pleading, converted their respective affidavits into direct testimony, which is contained in Attachment 2 to this Application. SWBT has redacted a small amount of highly confidential and proprietary information from the direct testimony included in Attachment 2. SWBT respectfully requests that the Commission issue its standard protective order in this new proceeding at its earliest convenience, so that SWBT can file the highly confidential and proprietary testimony supporting its Section 271 application, which has been redacted from the direct testimony included in Attachment 2.

SWBT reserves the right to revise its application, brief in support, and any other supporting documentation before filing such information with the FCC including, for instance, to present the most current facts available at that time or to address new issues raised in this proceeding.

In SWBT's Response to MCI's Motion for an Order Requiring Advance Notice in Case No. TO-97-56, SWBT proposed that the Commission gather information from competitive local

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Order Granting MCI's Motion for Advance Notice (Order) (September 25, 1997).

exchange carriers (CLECs) designed to permit the Commission to determine whether and when each CLEC plans to provide both facilities-based and resold residential and business services in Missouri, and to permit the Commission to assess the status of local competition in Missouri. SWBT attached a sample implementation schedule and a set of questions to be completed by each CLEC, which SWBT proposed be sent to each CLEC certificated to provide basic local telecommunications service in Missouri as well as any CLECs which have applied for such certification. In its Order in Case No. TO-98-397, the Commission stated that "at least some of the information that SWBT has requested be provided by new entrants should be required." The Commission took SWBT's request under advisement, however, to "thoroughly review SWBT's request in light of the FCC's Ameritech Michigan Order, and to add any additional information requests the Commission finds useful in developing a record." The implementation schedule and questions previously supplied to the Commission by SWBT are attached hereto as Attachment 3. SWBT hereby requests that the Commission forthwith require every CLEC which has either received basic local certification or which has applied for such certification to complete an implementation schedule and answer the questions contained in Attachment 3 together with such additional questions as the Commission deems appropriate.

In addition, in its Order in Case No. TO-97-56, the Commission indicated its intent to conduct an evidentiary hearing in this matter. (Order at pp. 3-4). Given the number of witnesses for SWBT (22) and the likelihood that opposing parties will also have a substantial number of witnesses, it will be important for the Commission to establish a procedural schedule as early as possible in order to complete the process within the 120 day period previously directed. The Commission may choose to set a schedule after receiving recommendations from the parties following an early prehearing conference, or the Commission may now choose to establish appropriate dates for prefiling of rebuttal and surrebuttal testimony and an evidentiary hearing without scheduling a prehearing conference. SWBT believes the Commission has discretion with regard to the type of hearing it conducts, since the Commission's role is simply to make a recommendation to the FCC, while it is the FCC which must make the determination that will be subject to judicial review. SWBT believes the Commission should permit at least some cross-examination of witnesses, and may wish to consider panels of witnesses to address questions posed by the Commission.

Pursuant to the Commission's Order in Case No. TO-97-56, SWBT respectfully requests that the Commission take the following steps in this new proceeding in order to facilitate the Commission's review of SWBT's Application and provide a recommendation to the FCC which is based on an appropriate record:

1. Enter an Order adopting its standard protective order in this case;

2. Enter an Order making every entity which has been certificated, or applied for certification to provide basic local telecommunications service in Missouri a party to this case;

3. Require each CLEC to complete the implementation schedule and answer the questions SWBT previously submitted to the Commission, which are contained in Attachment 3 to this Application, and any other information the Commission deems appropriate;

4. Schedule an early prehearing conference in order to permit the parties to propose an appropriate procedural schedule, or, in the alternative, issue a scheduling order establishing dates for filing of rebuttal and surrebuttal testimony and for an appropriate hearing.

By filing this notice of intent to file an application with the FCC for authorization to provide in-region, interLATA services in Missouri pursuant to Section 271 of the Act, SWBT does not waive any of its arguments with respect to the constitutionality of Section 271 and other sections of the Act, including those which have been raised in *SBC Communications, Inc. v. Federal Communications Commission*, 981 F.Supp. 996 (N.A. Tex. 1996), rev'd, 154 F.3d 226 (5th Cir. 1998), petitions for cert. pending, Nos. 98-652 and 98-653 (filed October 19, 1998 and October 20, 1998, respectively).

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Paul G. Lane

PAUL G. LANE	#27011
LEO J. BUB	#34326
ANTHONY K. CONROY	#35199
KATHERINE C. SWALLER	#34271

Attorneys for Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, Missouri 63101
(314) 235-4300 (Telephone)
(314) 247-0014 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by hand-delivery on November 20, 1998.

Paul G. Lane

DAN JOYCE
MISSOURI PUBLIC SERVICE COMMISSION
301 W. HIGH STREET, SUITE 530
JEFFERSON CITY, MO 65101

MARTHA HOGERTY
OFFICE OF THE PUBLIC COUNSEL
301 W. HIGH STREET, SUITE 250
JEFFERSON CITY, MO 65101

<u>Draft — November 20, 1998</u>

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Missouri	CC Docket No. ________

To: The Commission

BRIEF IN SUPPORT OF APPLICATION BY SOUTHWESTERN BELL FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN MISSOURI

JAMES D. ELLIS
ROBERT M. LYNCH
MARTIN E. GRAMBOW
PATRICK J. PASCARELLA
175 E. Houston
San Antonio, Texas 78205
(210) 351-3449
Counsel for SBC Communications Inc.

ROBERT M. LYNCH
DURWARD D. DUPRE
MICHAEL J. ZPEVAK
One Bell Plaza
Dallas, Texas 75202
(214) 464-4244
PAUL G. LANE
One Bell Center
Room 3520
St. Louis, Missouri 63101
Counsel for Southwestern Bell Telephone Company

MICHAEL K. KELLOGG
AUSTIN C. SCHLICK
WILLIAM B. PETERSEN
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
1301 K Street, N.W.
Suite 1000 West
Washington, DC 20005
(202) 326-7900
Counsel for SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Long Distance

______________, 1999

EXECUTIVE SUMMARY

During congressional deliberations on the Telecommunications Act of 1996, the incumbent interexchange carriers argued – as they still contend – that Bell companies should be prohibited from competing in long distance until they lose a certain percentage of their local customers. Congress rejected this so-called "metric test." It instead determined that the Bell companies should be able to provide long distance in their regions once they take affirmative steps to open their local markets. In particular, a Bell company's satisfaction of a fourteen-point "competitive checklist" would demonstrate that local markets are indeed open and allow competition to go forward across all telecommunications markets.

Southwestern Bell manifestly has satisfied its checklist responsibilities and the other congressional prerequisites for interLATA entry. This statutory compliance, together with actual, growing local competition in Missouri, leaves no doubt that the local exchange market in the State is open to any carrier that wants to compete.

Potential local entrants, on the other hand, have attached a low priority to offering broad-based service in Missouri. These carriers instead target their services at the most profitable niche markets and larger states. For this reason, the success of Southwestern Bell's efforts to open local markets in Missouri can best be judged by looking at competitive entry across all five states where Southwestern Bell Telephone Company ("SWBT") operates and offers new entrants local facilities and services on similar terms.

- SWBT has lost at least 580,000 local access lines to resellers and facilities-based competitors in Missouri, Arkansas, Oklahoma, Kansas, and Texas, more than 35,000 of them in Missouri alone.
- SWBT has entered into 53 interconnection and/or resale contracts with competitors in Missouri, only four of which required arbitration (and of these four, only two

involved multiple issues). The Public Service Commission of Missouri ("Missouri PSC") has approved 43 of the agreements. Each of the voluntarily negotiated contracts gives a new entrant everything that entrant says it needs to compete successfully in Missouri.

- SWBT's operations support systems ("OSS") have received and processed orders from 25 different local carriers in Missouri during 1998. The OSS Southwestern Bell uses to serve competitors in its five-state region have processed a total of nearly 2.2 million orders for competitors, including 102,000 orders specifically for Missouri, all without any backlog.

- Provisioning of facilities and services on behalf of SWBT's competitors is routine. For example, SWBT has successfully delivered to competing local carriers more than 161,000 one- and two-way interconnection trunks (including nearly 18,000 in Missouri); more than 8,300 unbundled local loops (including approximately 1,800 loops in Missouri); 262 physical and 120 virtual collocation arrangements (including 29 physical and 8 virtual collocations in 15 different Missouri wire centers); space in hundreds of miles of SWBT conduit (including 61,000 feet in Missouri); attachments to approximately 3,400 poles (more than 10 percent of them in Missouri); and 11.6 million telephone numbers (1.5 million in Missouri) for assignment to its competitors' customers.

- Since January 1997, SWBT has exchanged 988 million minutes of local traffic with competing networks, 53 million of them in Missouri. SWBT is exchanging millions of minutes of Internet traffic with other local carriers as well.

This application demonstrates in detail what the above numbers suggest: Southwestern Bell has met its duties under the 1996 Act. The local exchange in Missouri is fully open to any new entrant, and carriers of all types are competing. Missourians therefore are entitled to a fully competitive long distance market, as the 1996 Act has long promised.

Specifically, Southwestern Bell is eligible to receive interLATA relief in Missouri under so-called Track A, 47 U.S.C. § 271(c)(1)(A). Wireline competitive local exchange carriers

("CLECs") are serving customers on a facilities basis in the urban business areas they have targeted. Brooks Fiber Communications, e.spire, Intermedia, MCI WorldCom, and AT&T/TCG all provide facilities-based service to business customers in Missouri. Collectively, these carriers serve at least of 5,600 local business lines (and a small number of residential lines) on a facilities basis.

Resellers in Missouri serve a total of 13,700 business and 16,000 residential lines. When the residential resale of a CLEC such as Omniplex or Preferred Carrier Services is combined with the facilities-based service described above, the resulting service constitutes predominantly facilities-based service to business and residential customers in satisfaction of Track A. Of course, SWBT's competitors could serve large numbers of residential customers on a facilities basis if they desired to do so, as their facilities-based service to business customers shows.

The terms available to new entrants in Missouri satisfy section 271's competitive checklist. Competitors have a choice of obtaining access to all checklist items by negotiating a custom-tailored agreement with SWBT or opting into an existing agreement approved by the Missouri PSC, including the arbitrated agreement with AT&T. The facilities and services offered through these agreements have been proven through extensive commercial provisioning, further demonstrating that all avenues of competition are open. Indeed, SWBT has collected performance data that confirms it is providing CLECs nondiscriminatory access to local facilities and services in accordance with the terms of its Missouri PSC-approved agreements.

When it offers interLATA services in Missouri, Southwestern Bell will abide by the structural separation requirements and other safeguards of section 272. To illustrate this future compliance, SWBT and its long distance affiliate are conducting their operations consistent with section 272 and the FCC's implementing regulations.

Finally, and most importantly, Southwestern Bell's entry into interLATA services in Missouri will benefit the public. After the revolution in local exchange operations brought about by the 1996 Act, local monopoly "bottlenecks" no longer exist. The federal Act and Missouri law also have rendered obsolete the old concerns about discrimination and cross-subsidy that were used to justify excluding Bell companies from offering long distance during the 1980s.

The benefits of freeing Southwestern Bell to compete can be shown through direct evidence. Long distance markets are substantially more competitive in areas (such as SNET's local service territory in Connecticut) where they are open to the incumbent LEC. Where incumbent LECs have been forbidden to compete, however, most consumers have no realistic alternative to paying the rates of AT&T, MCI WorldCom, and Sprint. AT&T has raised its residential interstate rates by 85 percent from 1991 to 1998, notwithstanding sharp cost reductions from new technologies and falling access charges. The long distance carriers' discount plans offer limited relief from price hikes, for discounts have not kept pace with falling costs. In any event, while the major long distance carriers have made sure that regulators are told about the best available prices, most residential consumers in Missouri continue to pay basic, undiscounted rates.

Virtually everyone, save the major incumbent long distance carriers themselves, agrees that Southwestern Bell's entry into in-region, interLATA services would benefit residential long distance customers. Economist Richard Schmalensee calculates that Missouri consumers would benefit by nearly $52 million per year if Southwestern Bell offered in Missouri the interLATA rates it has proposed in Oklahoma. Based on conservative assumptions, the economic boost from immediate interLATA entry by Southwestern Bell in Missouri would result in the creation of an additional 16,000 jobs and an increase of $1.5 billion in the gross state product over the next ten years.

Consistent with the 1996 Act, Southwestern Bell has done its part to open local markets in Missouri. Now the Missouri PSC and the FCC should do their part to implement the congressional design. They should endorse this application because local markets in Missouri are fully open, because Southwestern Bell has satisfied all the requirements for interLATA entry, and because doing so will bring consumers in Missouri significant savings on their telephone bills and the full benefits of competition.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Missouri	CC Docket No. _________

To: The Commission

BRIEF IN SUPPORT OF APPLICATION BY SOUTHWESTERN BELL FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN MISSOURI

Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, § 151(a), 110 Stat. 89 ("1996 Act" or "Act"), SBC Communications Inc. ("SBC") and its subsidiaries Southwestern Bell Telephone Company ("SWBT") and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance ("SBLD") – collectively, "Southwestern Bell" – seek authority for SBLD to provide in-region, interLATA services (including services treated as such under 47 U.S.C. § 271(j)) in the State of Missouri.

As holders of exclusive franchises, incumbent LECs historically enjoyed freedom from local exchange service competition and the opportunity to obtain a reasonable return on their investment. In exchange, regulators determined the incumbent LECs' ability to offer services and the prices they charged, requiring these LECs to provide low-priced local service to all residential customers within their service areas. The 1996 Act, however, established a new deregulatory compact, based on the principle that competition across all markets, not regulation, best serves the public interest. Congress required the states to allow local service competition. 47 U.S.C. § 253(a). Then it addressed economic and technical barriers to entry by ordering incumbent LECs affirmatively to assist competitors through interconnection, access to unbundled network elements ("UNEs"), and the offering of retail services for resale. Id. §§ 251-252. At the same time, Congress authorized opening the interLATA market to full competition on a state-by-state basis, through section 271.[1]

Southwestern Bell satisfies all of Congress's criteria for interLATA entry. As explained in Part I of this Brief, facilities-based competitors in Missouri are providing local service over self-constructed networks and by using UNEs obtained from SWBT. The practical availability of every item facilities-based CLECs may need to enter the local market in Missouri has been demonstrated. Indeed, additional CLECs can offer facilities-based service as soon as their own business plans dictate. Augmenting this facilities-based competition, CLECs serve approximately 29,700 access lines on a resale basis. This diverse, actual competition in Missouri satisfies the requirements of Track A.

[1] By filing this application pursuant to section 271, Southwestern Bell acknowledges that it will abide by the requirements of these provisions for as long as they remain in force — not that these provisions are constitutional. See SBC Communications Inc. v. FCC, 981 F. Supp. 996 (N.D. Tex. 1997) (holding that section 271 and companion provisions of 1996 Act constitute an unconstitutional bill of attainder), rev'd, 154 F.3d 226 (5th Cir. 1998), pets. for cert. pending, Nos. 98-652 & 98-653 (filed Oct. 19, 1998 (SBC) and Oct. 20, 1998 (Bell Atlantic)).

FIGURE 1: CLEC ACTIVITY IN MISSOURI

RESALE		FACILITIES-BASED					CLEC Orders Processed by SWBT
Business Lines	Residential Lines	Network Miles	Interconnection Trunks	Unbundled Loops	E911 Listings	Ported Numbers	
13,663	16,027	>918	17,918	1,770	5,633	2,629	102,457

Sources: Auinbauh Test. Sched. 3; Tebeau Test. Scheds. 2, 7.

As further proof that all methods of entering the local market are open to any interested CLEC, Part II of this Brief discusses SWBT's checklist offerings in detail. SWBT's provisioning of checklist items as of September 30, 1998 also is quantified in Figure 1, above, and in Schedule 3 to the Testimony of Michael C. Auinbauh. CLECs are ordering and receiving on a daily basis interconnection trunks, virtual and physical collocation, UNEs, database access, space on SWBT's poles and in its conduits, 911 services, white pages listings, reciprocal compensation payments, services for resale, and other facilities and services they may need to enter the local telephone business.

CLECs are placing orders with SWBT through OSS interfaces that are the most advanced in the industry. CLECs may use the same electronic systems as SWBT retail service personnel, or other electronic or manual systems that have been developed specifically to meet the CLECs' needs. See generally Ham Test. SWBT has processed nearly 2.2 million electronic and manual service orders from CLECs since passage of the 1996 Act, without any backlogs. Auinbauh Test. Sched. 3; see Kramer Test. at 4, 16.

Finally, Southwestern Bell has negotiated with AT&T, MCI WorldCom, and the United States Department of Justice, and has incorporated into its approved interconnection agreement with AT&T, performance measurements that confirm SWBT's provisioning of local facilities and services in Missouri on a nondiscriminatory basis. See generally Dysart Test. (providing data). These measurements are backed by self-executing penalty provisions, whereby CLECs will be compensated for deficiencies in Southwestern Bell's performance if they occur, without having to seek relief from regulators or the courts.

Part III of this Brief confirms that Southwestern Bell will abide by the structural and non-structural safeguards of section 272, as well as the FCC's implementing regulations, when it provides interLATA services in Missouri.

Part IV demonstrates that approving Southwestern Bell's application is consistent with the public interest, convenience, and necessity. Indeed, approval of this application is the only way to bring long distance customers in Missouri the full benefits of both local and long distance competition.[2]

DISCUSSION

I. SOUTHWESTERN BELL IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(c)(1)(A)

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 Figure 1 (resale lines plus E911 listings). A more realistic estimate, based on comparisons of the Missouri CLECs' operations to the operations of other CLECs whose actual

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[2] **[To be included in federal filing:** The Anti-Drug Abuse Act certifications required under 47 C.F.R. § 1.2002 are provided as Exhibit 1 to this Brief. Southwestern Bell has, in addition, complied with the FCC's pre-filing consultation requirements. All parties had an opportunity to comment upon a draft of this application during proceedings conducted by the Missouri PSC. Southwestern Bell has consistently attempted in those proceedings, in its interconnection negotiations, and elsewhere, to resolve disputed issues pertaining to the competitive checklist and other relevant matters.**]**

customer bases are known, is that these carriers serve approximately 64,000 lines. Tebeau Test. at 8. Facilities-based CLECs are operating networks in Kansas City, St. Louis, and Springfield. Id. at 7. In addition, 16 CLECs are reselling SWBT's local retail services. Id. at 17-18 & Sched. 2. SWBT has entered into 53 interconnection and/or resale agreements with CLECs, 43 of which have been approved by the Missouri PSC. Bailey Test. at 10-11 & Sched. 2. Figure 2 illustrates the diversity of local wireline competition in Missouri.

FIGURE 2: WIRELINE CLECS OPERATING IN MISSOURI

CLEC	Facilities-Based		Resale	
	Business	Residential	Business	Residential
Ameritech				√
Birch Telecom			√	√
Brooks Fiber Comm.	√	√	√	
Comm South				√
Dial US			√	√
e.spire (formerly ACSI)	√		√	
Fast Connections				√
Frontier Telemgmt.			√	√
Intermedia	√	√	√	
Max-Tel			√	√
MCI WorldCom/MFS	√		√	
Midwestern Servs. L.D.			√	√
New Telco (Sprint)			√	
Omniplex Comm. Group			√	√
Preferred Carrier Servs.				√
Sterling International				√
TCG/KC FiberNet (AT&T)	√			

Source: Tebeau Test. Scheds. 2, 7.

For purposes of satisfying section 271(c)(1)(A), Southwestern Bell 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.[3] Individually and collectively, these carriers provide "an actual commercial alternative" to Southwestern Bell.[4]

Brooks provides local service to business customers and a handful of residential customers over its own network. See Tebeau Test. Sched. 7. Brooks operates a Lucent 5ESS switch and a 78 route-mile fiber-optic network serving Kansas City and Springfield. Id. at 10-12 & Scheds. 4, 7, 5-3 (network maps). Brooks has interconnection arrangements with SWBT, under which Brooks has established working physical collocations and received a substantial

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[3] In order to support this Track A application, Southwestern Bell 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, Southwestern Bell 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.

[4] 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").

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 & Sched. 7. Brooks and Southwestern Bell have exchanged millions of minutes of traffic between their networks in Missouri. Id. Sched. 7.

Brooks's network in Kansas City passes within 1,000 feet of one out of every four switched business access lines in Kansas City. Id. Sched. 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. Sched. 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. Scheds. 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 & Sched. 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 & Sched. 7. e.spire has reserved 120,000 phone numbers for customers served over its network. Id. at 12. The hard data available to Southwestern Bell shows that e.spire serves more business lines over its own facilities than through resale, id. & Sched. 7; given that Southwestern Bell 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 Southwestern Bell's records show.

The Testimony of David Tebeau provides details concerning the local operations of Missouri's other facilities-based CLECs.

Whereas Brooks and e.spire resell Southwestern Bell's local service to supplement their facilities-based service, other carriers are pure resellers. Figure 2 shows that most resellers in Missouri offer service to residential customers. See also Tebeau Test. Sched. 2. 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.[5]

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

[5] 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).

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."[6] 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 Southwestern Bell 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 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

[6] 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").

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.[7] 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 Southwestern Bell has done for decades.

II. SOUTHWESTERN BELL MAKES INTERCONNECTION AND ACCESS AVAILABLE IN COMPLIANCE WITH THE COMPETITIVE CHECKLIST

The "competitive checklist" of section 271(c)(2)(B) establishes whether "all pro-competitive entry strategies" contemplated by Congress are available to new competitors in the local market.[8] Because the checklist incorporates substantive requirements of section 251, it allows the FCC to verify, through the specific checklist criteria, that all "three paths of entry into the local market – the construction of new networks, the use of unbundled elements of the incumbent's network, and resale" – are available in practice.[9]

SWBT's offerings to local competitors in Missouri satisfy this requirement. As explained below, any CLEC can get from SWBT in a timely and efficient manner the facilities and services

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[7] Any different interpretation of section 271 would penalize Southwestern Bell 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.

[8] Memorandum Opinion and Order, Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina, 13 FCC Rcd 539, 545-46, ¶¶ 10-11 (1997) ("South Carolina Order").

[9] Id.

it needs to provide local service, no matter what statutorily authorized mode of entry the CLEC selects. In ensuring that this is so, Southwestern Bell has incurred "a concrete and specific legal obligation to furnish [each checklist] item upon request" and has done what is necessary to supply those items "in the quantities that competitors may reasonably demand and at an acceptable level of quality." Michigan Order, 12 FCC Rcd at 20601-02, ¶ 110.

Southwestern Bell is legally obligated under its Missouri PSC-approved interconnection agreements to afford CLECs access to all checklist items. If an item was not included in the terms originally sought by a particular CLEC during negotiations, the CLEC may, pursuant to any "most-favored nation" ("MFN") provision in its agreement, obtain that item from another PSC-approved agreement such as the arbitrated AT&T Agreement. See, e.g., Brooks Agreement § XXIV (allowing Brooks to opt-in to designated sections of other approved agreements); e.spire Agreement § 30.15 (same). Or, the CLEC may opt into the entirety of another Missouri PSC-approved agreement pursuant to its MFN provision and 47 U.S.C. § 252(i). See, e.g., Brooks Agreement § XXIV; e.spire Agreement § 30.15; Omniplex Agreement § XXII; Preferred Carrier Services Agreement § XXII; see generally Bailey Test. at 19; Auinbauh Test. at 7-8.

Actual commercial usage in Missouri and elsewhere in SWBT's five-state region, as well as internal, carrier-to-carrier, and third party testing, confirm that all checklist items are available today on a nondiscriminatory basis. Consistent with the recommendations of the FCC and DOJ, Southwestern Bell also has established more than 100 performance measurements with self-executing damages provisions, which confirm Southwestern Bell's current compliance with the checklist and ensure its future compliance. See generally Dysart Test. The Missouri PSC has received no formal complaints regarding SWBT's implementation of its interconnection agreements. Bailey Test. at 11-12.

The following sections (and the affidavits and other materials supporting them) discuss Southwestern Bell's checklist offerings in detail.

A. Checklist Item (i): Interconnection

In order to comply with checklist item (i), Southwestern Bell must provide interconnection "at any technically feasible point" within its network that is "at least equal in quality" to the interconnection that Southwestern Bell provides itself, and this interconnection must be provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 271(c)(2). Southwestern Bell has complied with these requirements, and thus satisfies checklist item (i).

SWBT's 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. Deere Test. at 2-14. 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. Id. at 4.

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. This arrangement may be used to provide interoffice trunking for originating and terminating calls between the two networks or for transit of calls to or from a third party via SWBT's tandem switch. Id. at 3: Auinbauh Test. at 39.

Physical collocation of CLECs' equipment in SWBT buildings is available wherever space permits, on a first-come, first-served basis. Deere Test. at 6; see Auinbauh Test. at 16. Any equipment used for interconnection with SWBT or for access to UNEs may be located in a CLEC's secured collocation space, with the CLEC having responsibility for installation, operation, and maintenance of its own equipment. Auinbauh Test. at 17-18. In addition, collocated equipment may be used for interconnection with other collocating carriers in the same central office. Id. at 18.

CLECs in Missouri and elsewhere are successfully taking advantage of Southwestern Bell's physical collocation offerings. Five Missouri CLECs have been provided with 29 physical collocation spaces in 15 different Southwestern Bell central offices. Id. at 14; Deere Test. at 8. Throughout SWBT's five-state region, 262 physical collocation arrangements had been installed and delivered to CLECs for their use. Auinbauh Test. Sched. 3. CLECs in Missouri are currently utilizing physical collocation both for interconnection and to combine UNEs obtained from SWBT with other network facilities. Auinbauh Test. at 28-29.

Detailed terms for collocation are spelled out in SWBT's Missouri PSC-approved interconnection agreements, as well as in SWBT's Interconnectors' Technical Publication for Physical Collocation (provided as Auinbauh Test. Sched. 5), which is incorporated by reference in existing interconnection agreements. Id. at 17-19; see, e.g., AT&T Agreement Attach. 13, App. Collocation. All carriers that request collocation are provided copies of SWBT's Technical Publication and a model collocation agreement that addresses such details as equipment standards, insurance requirements, billing, and time intervals. Auinbauh Test. at 17-18 & Scheds. 4-5.

SWBT is legally obligated to provide all requesting CLECs with a quotation of estimated charges for physical collocation within 35 days of receiving a complete collocation application, and to provision collocation within 90 days from the CLEC's acceptance of SWBT's estimate (barring exceptional circumstances such as the need to install additional power or air conditioning to meet the CLEC's request). Id. at 20-21. These time intervals were set by the Missouri PSC. Id. To date, Southwestern Bell has responded to 32 requests for quotations in Missouri in an average of 32 days. Id. at 21. SWBT's average build-out time for new physical collocation arrangements in Missouri is 90 days. Id. Despite this record of timely construction, however, SWBT continues to improve its processes for handling physical collocation orders and has implemented new procedures to expedite the collocation process. Id. at 22-23. SWBT now provides CLECs with early access to their collocation space, has assigned project managers to oversee the preparation of each physical collocation space, and SWBT's representatives meet with all CLECs that have contracted for collocation space (as well as their installation vendors) prior to the start of construction, in order to ensure that the construction is not delayed through misunderstandings and/or last minute changes. Id. at 22.

Pursuant to a pricing decision of the Missouri PSC that is not subject to FCC review, and to accommodate the varying requests of CLECs and the unique circumstances of each collocation site, physical collocation pricing is determined on an individual case basis. Id. at 23-25; see Second Louisiana Order ¶ 60 (recognizing state jurisdiction over pricing). SWBT's prices are set to recover only SWBT's actual costs. Auinbauh Test. at 23.

Virtual collocation and similar SONET-based interconnection arrangements are offered by Southwestern Bell wherever physical collocation space is unavailable, or if requested by a CLEC. See id. at 19; Deere Test. at 8-9. The rates and terms of SWBT's virtual collocation arrangements are governed by SWBT's FCC Tariff No. 73. Auinbauh Test. at 15, 19, 25. 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. Id. at 19. SWBT publishes its installation intervals for all tariffed equipment in its Technical Publication for Virtual Collocation. Id. at 21. Southwestern Bell has completed 8 virtual collocation arrangements in Missouri in 5 different locations. Id. at 15; Deere Test. at 8.

In addition to these standard offerings, CLECs may request specially tailored interconnection arrangements through the Bona Fide Request ("BFR") process. Deere Test. at 9, 20. This process, described in various Missouri PSC-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; Auinbauh Test. at 26. SWBT will analyze the technical feasibility of the request and prepare a preliminary report for the requesting carrier within 30 days of receiving the request. Deere Test. at 20. If the CLEC authorizes further development, SWBT will, within ten days, negotiate a schedule for arriving at price and implementation terms (which generally will not extend beyond 90 days from receiving the request). Id. If the form of interconnection requested by the CLEC has already been provided to a CLEC, SWBT will compress this schedule and furnish a price quotation within 10 days of its receipt of the request. Id. If the CLEC's request is not technically feasible, SWBT will notify the CLEC within 30 days of its request. Id. If the CLEC disagrees with SWBT's determination that a requested arrangement is infeasible, the CLEC may seek arbitration with the Missouri PSC pursuant to section 252 of the 1996 Act. Id. at 20-21. The CLEC may cancel its request at any time but remains responsible for SWBT's reasonable development costs incurred up to the time of cancellation. Brooks & e.spire Agreements App. UNE § III.D; AT&T Agreement Attach. 6 § 2.22.3.

Interconnection trunking arrangements from a CLEC to SWBT (for traffic originated by the CLEC), and from SWBT to a CLEC (for traffic terminated over the CLEC's network), are discussed in the Affidavit of William C. Deere. Deere Test. at 12-14. Trunk forecasting and servicing for interconnection trunk groups are based upon the same industry-standard objectives that SWBT uses for its own trunk groups. Id. at 14. SWBT also uses standard Bellcore trunk traffic engineering methods to ensure that interconnection trunking is managed in the same manner as trunking for SWBT's own local services. Id. at 14.

SWBT's ability to supply interconnection trunks for CLECs is well-demonstrated. SWBT 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 Southwestern Bell states. Auinbauh Test. Sched. 3.

In order to ensure equal quality, interconnection with CLECs will be accomplished using the same facilities, interfaces, technical criteria, and service standards as SWBT uses for its own retail operations. Deere Test. at 9. SWBT also conducts extensive performance monitoring of its interconnection trunking arrangements. While the full range of performance measurements is discussed in Part II(O), below, it should be noted that the data confirm that SWBT is successfully furnishing interconnection on a nondiscriminatory basis. Id. at 10-12.

In its AT&T arbitration proceeding, the Missouri PSC established prices for local interconnection – as well as unbundled access, resale, and transport and termination of traffic – that the PSC concluded are consistent with the requirements of the 1996 Act. See Bailey Test. at 24-31. These prices were established after proceedings in which the Missouri PSC reviewed and ordered certain modifications to geographically deaveraged, forward-looking cost studies based upon the FCC's TELRIC methodology. Id. at 26-27; Moore Test. at, 9-10.

B. Checklist Item (ii): Access to Network Elements

The 1996 Act requires SWBT to provide "nondiscriminatory access to network elements" on an "unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. §§ 251(c)(3), 271(c)(2)(B)(ii); id. § 251(d)(1). The FCC has identified specific network elements, including OSS, that must be provided on a nondiscriminatory basis.[10]

Nondiscriminatory Access to OSS. Southwestern Bell's development and enhancement of its OSS to provide CLECs nondiscriminatory access to applications has been sustained and costly. Since enactment of the 1996 Act, Southwestern Bell has spent more than $34 million on its OSS in order to enhance its existing systems and acquire the new hardware needed to provide nondiscriminatory access. Ham Test. at 85.

These systems improvements have been accompanied by the development of wholly new organizations and procedures to serve CLEC customers. SWBT's Call Center, which is available 24 hours a day, seven days a week, assists CLECs that have questions or problems regarding attempts to access OSS functions electronically. Id. at 85-86. On-line assistance is available as well, through Southwestern Bell's secure Internet site, located at <http://info.sbc.com/lwc>. Id.

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[10] 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. First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15683, ¶ 366 (1996) ("Local Competition Order"); modified on recon. 11 FCC

at 86. This Internet site provides electronic access to SWBT's Resource Guide, CLEC Handbook, Accessible Letters, CLEC Education, IS (Information Services) Call Center, and Performance Measurements. Auinbauh Test. at 9. CLECs can use this Internet site even as they simultaneously access SWBT's OSS. Ham Test. at 86.

SWBT has developed, at its own expense, extensive training for CLEC employees. Auinbauh Test. at 11. SWBT presents workshops on the operational information that is required for both manual and electronic ordering processes. Id. These workshops are offered free of charge for up to six employees from each CLEC. Id. SWBT also offers classes on OSS interfaces. Id. At present, SWBT provides approximately 25 days of training to interested CLECs, and will add additional classes to meet CLEC needs. Id. In Missouri, approximately 224 employees, from 24 different CLECs, have participated in SWBT's workshops. Id. at 13. Ninety-eight percent of these CLEC employees indicated that they were satisfied with the training. Id.

SWBT also has established a Local Service Center ("LSC"), staffed by over 500 employees, that provides CLECs with a single point of contact for the ordering and billing of UNEs. Kramer Test. at 7-22, 24-27; Locus Test. at 2-3. The LSC executes complex transactions that are performed manually for both Southwestern Bell retail customers and CLECs, as well as the transactions of CLECs that prefer to use manual processes. See generally Kramer Test. at 7–11. The LSC's training procedures and staffing have been designed to anticipate and meet all reasonably foreseeable CLEC demand. Id. at 10-15. Indeed, LSC Service representatives

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Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8^{th} Cir. 1997), cert. granted sub nom. AT&T v. Iowa Utils Bd., 118 S. Ct. 879 (1998).

undergo three months of training that ensures they are able to perform the kinds of transactions CLECs may request. Id. at 12. SWBT also offers CLECs training on the LSC's procedures, as well as ongoing conference calls to discuss operational practices and individual service issues. Id. at 37-39.

The LSC confirms CLEC orders by notifying CLECs by fax of the assigned telephone number, order number, and due date for each order request. Id. at 18. In September 1998, these manual Firm Order Confirmations were timely sent to CLECs over 96 percent of the time. Id. At 19 The LSC also receives error reports at least four times per day, which allow LSC representatives to notify CLECs of their errors without delay. Id. at 21. The LSC monitors CLEC activity on a daily and weekly basis; this information, along with historical trends, time and motion studies, internal forecasts, and referencing benchmarks, is used to ensure that the LSC always has sufficient staffing for CLEC needs. Id. at 34.

SWBT's Local Operations Center ("LOC") supports the provisioning of UNEs and resold services other than "plain old telephone service" ("POTS"),[11] as well as any maintenance and repair functions requested by CLECs. See generally id. at 24-27. The LOC, which had a budget of more than $5.9 million in 1997, is open to serve CLECs every hour of every day. Id. at 9. SWBT provides CLECS with individual orientation sessions at the LOC. Id. at 39-40. From February 1998 to the present, approximately 35 CLECs have attended these orientation sessions. Id. at 39.

[11] Orders for resold POTS are distributed for installation through electronic systems in the same manner as Southwestern Bell retail POTS orders. They therefore do not go through the LOC.

Upon receipt of a work order, LOC technicians perform turn-up and testing on the interconnection facilities, message trunks, UNEs, or resold special service circuits requested by the CLEC. Id. at 23. The results of these tests are provided to CLECs manually; CLECs interested in obtaining these results electronically may do so by subscribing to SWBT's Electronic Bonding Interface.[12] All POTS maintenance reports, for both SWBT retail customers and CLEC customers, are processed on a "first-come, first-served" basis through the same back office systems. Id. at 26. SWBT tracks incoming trouble volumes on an hourly basis; this information, together with modeling, internal forecasts, historical data, and work time studies, is used by SWBT to ensure that the LOC is always adequately staffed. Id. at 36.

SWBT also has established dedicated local provider account teams to facilitate the negotiation and implementation of particular interconnection agreements. Auinbauh Test. at 8. Each CLEC is assigned an account manager, who is responsible for assisting the CLEC with all activities related to the CLEC's entry into the local market. Brainard Test. at 3. Account managers are obligated to be responsive to their CLEC customers' needs. In order to help ensure that account managers are satisfying this obligation, SWBT developed an Account Manager Satisfaction Survey that it requests CLECs to complete. Id.; Bailey Test. at 15-16, sched 2. Initial results from this survey reveal that 78 percent of CLEC respondents are either "very satisfied" or "satisfied" with their account manager. Brainard Test. at 4.

Since the Act was passed in February 1996, SWBT has processed more than 2.1 million CLEC service orders using these and related procedures. Kramer Test. at 15; Auinbauh Test.

[12] Id. This interface, which is used for CLEC trouble administration, allows for a CLEC's operations system to flow trouble tickets to SWBT's operations systems electronically, on a

Sched. 3. In September 1998 alone, SWBT processed more than 330,000 CLEC orders. Auinbauh Test. Sched. 3. More than 46 percent of the 102,000 orders processed to date for Missouri were delivered to SWBT using electronic interfaces. Id. The LOC has coordinated the provisioning of facilities and services for CLECs in large volumes as well, such as more than 160,000 one- and two-way interconnection trunks. Id.; see Kramer Test. at 15.

SWBT has confirmed that its OSS have ample capacity to meet the needs of CLECs. 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 Test. 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 Sched. 3. SWBT also has the capacity to process electronically more than 1,000,000 CLEC transactions per month using the EASE interface. Thorsen Test. at 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 Test. at 3; Auinbauh Sched. 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 Test. at 8.

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machine-to-machine basis. Kramer Test. at 25.

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 Test. at 84. For each interface, SWBT provides CLEC representatives with written materials (including business rules) and offers extensive training. Id. at 88-94 ; see Auinbauh Test. at 11-13. As a result of these efforts, 48 CLECs currently are using Southwestern Bell's electronic OSS interfaces. Kramer Test. at 16.

There is no "best" form of access to OSS, however. As the FCC has stated, "smaller competing carriers [may] prefer" manual access to OSS for their own business reasons. Michigan Order, 12 FCC Rcd at 20616-18, ¶ 137 & n.333. By offering CLECs their choice of manual or electronic interfaces, SWBT has ensured that new competitors can enter the local market on their own terms.

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 Test. at 13-29. SWBT provides CLECs all necessary technical specifications for each of these interfaces. Ham Test. at 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.

EASE is the same on-line system SWBT's retail service representatives use to accomplish pre-ordering tasks for residential customers with up to five lines and for business customers with up to thirty lines. Id. at 15. EASE integrates ordering and pre-ordering functions into a single application on a machine-to-machine basis, and is available to CLECs for pre-ordering and ordering resold services, including basic Centrex and basic rate interface ISDN. Id. at 16-18. As the FCC has noted, integration of pre-ordering and ordering functions minimizes the need for data entry by CLECs and thus enables CLECs to reduce the number of improperly formatted local service requests they submit. See South Carolina Order, 13 FCC Rcd at 603, ¶ 114. Between July 1997 and September 1998, CLECs successfully entered more than 447,000 service orders directly into EASE. Ham Test. Sched. 8.

The second pre-ordering interface SWBT offers CLECs is Verigate, a graphical user interface operating on Windows™. Id. at 17-18. Verigate provides CLECs access to pre-ordering capabilities for resold services and UNEs; it uses plain-English displays and was designed for CLECs that do not want to use EASE but also do not want to develop their own graphical user interface. Id. at 18. Verigate has processed more than 508,000 CLEC transactions in total, including more than 82,000 in September 1998 alone. Id. Scheds. 5-1, 5-2. Verigate's current capacity is approximately 11,680 pre-order transactions per hour. Id. at 21.

In order to give CLECs flexibility to use the interfaces they prefer, SWBT has not integrated Verigate with the ordering/provisioning capacities of SWBT's Local Service Request Exchange ("LEX"). Id. at 19. SWBT has continued to enhance Verigate, however, and a new version of the interface will be released in late November 1998. Id. at 21. This new version,

Version 6.0, will contain a number of enhancements for access to customer service records (including the elimination of Verigate's current 30-line limit), as well as new functions that allow CLECs to copy telephone numbers from the Available Telephone Number List and the Reserved Telephone Number List, and paste these numbers into other Windows™ applications. Id.

DataGate is an application-to-application electronic interface that uses the same data stream as Verigate but is designed to be used by CLECs that have their own software programs or applications. Id. at 22. Such interfaces allow CLECs to connect their own OSS directly to SWBT, thereby minimizing the need for manual entry of data. See South Carolina Order, 13 FCC Rcd at 624, ¶ 157. The newly developed national standards for pre-ordering will be used to "front-end" DataGate, which will allow CLECs to adhere to national standards while preserving the background application functionality, data content, and performance standards that have already been established for DataGate. Ham Test. at 22.

AT&T, MCI, and Sprint currently use DataGate for various functions at commercial volumes. Id. at 22-23 & Sched. 6-1. Ample capacity exists for all anticipated CLEC needs: According to the independent audit conducted by Coopers & Lybrand, DataGate is capable of processing nearly 593,000 orders per month. Verigate (which utilizes the same processing systems as DataGate) alone, is capable of processing nearly 522,000 orders per month. Id. at 21; Thorsen Test. at 9. DataGate can handle nearly 2,900 orders per hour, and Verigate can handle nearly 2,500 orders per hour. Ham Test. at 24, Thorsen Test. at 9.

CLEC pre-ordering capacities are at parity with those of SWBT's retail operations. Ham Test. at 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 Test. at 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 Test. at 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. EASE provides CLECs with electronic access to available due dates, and once a given date is selected, this date becomes an automatic Firm Order Commitment. 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. EDI Gateway allows CLECs providing resale services to perform conversions, new connections with basic directory listings, changes of service, disconnections, and the suspension of order requests electronically. Id. at 40-41. EDI Gateway also supports the ordering and provisioning of certain UNEs. Id. at 40-41, 44. UNE orders that can be accepted by SWBT's EDI interface include conversions, new connects, changes, disconnects, outside moves, and records change orders. Id. As industry guidelines are defined and approved for additional UNE orders, SWBT will incorporate those guidelines into EDI. Id. at 44. SWBT has committed to update its EDI Gateway to support newly adopted guidelines for resold services and UNEs within 120 days from when these new guidelines become final, or in accordance with any timetables set by the OBF. Id.

Since EDI was developed specifically to accommodate the CLECs' own self-provided interfaces, implementation of EDI Gateway depends on the efforts of CLECs as well as SWBT. Id. at 42, 44-45. SWBT has provided interested CLECs with extensive documentation on EDI to CLECs, in order to aid them in their EDI development work. Id. at 45. AT&T is currently testing EDI for the processing of UNEs through a simulation process. Id. at 46. Through this testing, SWBT has discovered some discrepancies between EDI mapping and the applicable business rules, all of which have been quickly resolved. Id. MCI successfully tested EDI, but nevertheless has indicated that at present it will not be using EDI to send commercial volumes of orders. Id. at 47.[13]

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 Test. at 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

[13] As discussed above, SWBT's systems for processing UNE orders that currently do not flow-through EDI ensure nondiscriminatory processing of these orders as well. The LSC has ample manual capacity to process CLECs' orders on a nondiscriminatory basis, within the requested due dates. Kramer Test. at 7-8, 12-14.

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 Test. at 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.

Once orders have been entered and accepted for processing, they are assigned "due dates" in a nondiscriminatory fashion. Id. at 15; Kramer Test. at 19. CLECs may check the status of all orders by using "Order Status," an application from the Southwestern Bell Toolbar. Ham Test. at 55-56. Order Status is a Southwestern Bell-developed graphical user interface that enables CLECs to access SWBT's "back-office" systems in order to retrieve and review the status of service orders. Id. The latest release of Order Status, which will be available on or about November 22, 1998, contains a new field, "Typist ID," which allows CLECs to determine whether a local service request has flowed-through to SORD without manual intervention. Id. at 56.

Maintenance and Repair. SWBT provides CLECs a choice of two electronic interfaces for maintenance and repair. These are Trouble Administration ("TA") from the Southwestern

Bell Toolbar and Electronic Bonding Interface ("EBI"). <u>See</u> Brooks & e.spire Agreements App. OSS § 4; Ham Test. at 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 Test. at 24-26.

TA is a graphical user interface currently used by SWBT's business customers and interexchange carriers for maintenance and repair. Ham Test. at 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. <u>Id.</u> TA also will provide trouble history for POTS lines and UNEs. <u>Id.</u> Using this information, a CLEC may issue a trouble report (or check the status of an existing trouble report) without any manual intervention on the part of Southwestern Bell representatives. <u>Id.</u> By March 31, 1999, TA will be enhanced to allow CLECs to perform a mechanized loop test on a UNE analog port in cases in which the CLEC has performed a UNE combination with a 2-wire 8db analog loop. <u>Id.</u> For CLECs using TA, there are no manual interventions in the creation of trouble reports for resale services or UNEs. <u>Id.</u> Although most CLECs have elected to submit trouble reports manually by calling the LOC, some CLECs are currently taking advantage of TA's capabilities. <u>Id.</u> at 64 & Sched. 11-1.

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. <u>Id.</u> at 64-65. While AT&T, MCI WorldCom, and Sprint have repeatedly delayed deploying EBI capability for local services, <u>id.</u> at 66-69, a number of carriers are successfully using EBI for exchange access, <u>id.</u> 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. Southwestern Bell 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 Test. at 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 Test. at 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.. This team has made approximately 233 premise visits and/or conference calls to 92 different CLECs. Id. Thirteen CLECs, including AT&T and MCI, are receiving their bills via EDI. Id. at 71-72.

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 Southwestern Bell 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 Test. at 9. Southwestern Bell 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 Test. at 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 Test. at 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. SWBT has scheduled meetings with interested CLECs in order to allow these CLECs to offer their suggestions on topics covered by the change control process, as well as ways they believe the process itself can be improved. Id. at 77-78. The proprietary interface change control process is also used by SWBT to notify CLECs of changes to SWBT's proprietary interfaces. Id. at 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. Now that these systems are in place, the remaining question is whether CLECs will make the investments needed to utilize SWBT's offerings, particularly the electronic interfaces. The answer to that question is uncertain. What is certain, however, is that in the OSS area SWBT is comfortably ahead of its potential CLEC customers.

Access to Network Elements. In addition to making its OSS available, SWBT provides CLECs access to piece-parts of its network in compliance with Checklist Item (ii). In that regard, the FCC has held 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." Second Louisiana Order ¶ 163. Southwestern Bell satisfies this requirement.

First, although not required to do so by the 1996 Act, SWBT offers a Network Component Service ("NCS") that enables CLECs to obtain UNEs in pre-assembled combinations. Auinbauh Test. at 29-30. In addition, the AT&T Agreement arbitrated by the Missouri PSC obligates SWBT to provide UNEs on a pre-combined basis upon request, at the UNE rates set by the Missouri PSC pursuant to 47 U.S.C. § 252(d). See Bailey Test. at 16-18; AT&T Agreement Attach. 6, § 2.4.

Second, SWBT has developed offerings that enable CLECs themselves to combine UNEs, and has spelled out those offerings in detail. In addition to traditional collocation, SWBT offers five alternative methods that CLECs may use to access and combine UNEs. See Bailey Test. at 19-20; Deere Test. at 31-33. 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. Deere Test. at 32-33. 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. Id. at 35. These five methods are further described in SWBT's CLEC's Technical Publication for Access to Unbundled Network Elements, which has been provided with this application. See id. Sched. 2.

Methods (1) through (4) do not require the CLEC to own or operate any equipment of their own to make use of SWBT's UNEs. Id. at 36. Moreover, the materials and procedures used in these methods have been tested in actual practice, by SWBT as well as collocated

CLECs. See Id. at 40, 57 (collocated CLECs are combining 1,770 unbundled loops with transmission equipment in Missouri); id. at 42 (practical usage proving there is no service degradation when multiple cross-connects are used to link loops and switch ports); id. at 44 (SWBT technicians place thousands of cross-connects every day); id. at 57 (SWBT's use of cross-connections as a collocated CLEC in GTE territory); id. at 58-59 (testing of unbundled local loops).

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. See Auinbauh Test. at 26; see also Second Louisiana Order ¶ 168 (recognizing that CLECs are not entitled to methods of access that are inconsistent with judicial interpretations of the 1996 Act).

The standard methods of access developed by Southwestern Bell entail provision of cross-connects – the wires, fibers, or equipment that connect one piece of equipment to another. Mr. Deere's testimony discusses the types of cross-connects that are used with different UNE offerings. Deere Test. at 56-62. 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 customers. Id. at 62. SWBT currently uses these proven methods of cross-connection in its own operations as a collocated CLEC in GTE's territory. Id. at 59; see also South Carolina Order, 13 FCC Rcd at 653, ¶ 205. Similar methods likely are being used by collocated CLECs in Missouri today. Deere Test. at 40.

In various proceedings, AT&T has claimed that using cross-connects to combine UNEs limits CLECs' practical ability to perform this function. That is simply untrue. The methods of UNE access offered by SWBT can be used to combine any UNEs the CLEC wishes to combine.

Id. at 52-55. Use of cross-connections also will not delay the switching of customers to a CLEC using network elements. To the contrary, SWBT's technicians at times place thousands of cross-connections in a central office in a single day, and there is no realistic limitation on the number of UNEs that could be combined by a CLEC using the standard methods offered by SWBT. Id. at 44-47, 60.

Far from suggesting a discriminatory level of service for CLEC customers, use of cross-connections is a standard part of SWBT's analogous retail operations. Each time SWBT connects new customer premises to its network, it uses cross-connections. Id. at 52-53. SWBT regularly uses multiple cross-connections and an Intermediate Distribution Frame to improve transmission performance on local loops. Id. at 44-45, 60-61. And while a short service interruption is inherent in the process of separating UNEs from SWBT's network and incorporating them into the CLEC's rival network, that necessary interruption is not increased as a result of any of the methods of access offered by SWBT. Id. at 43.[14]

C. Checklist Item (iii): Poles, Ducts, Conduits, and Rights-of-Way

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

[14] Significantly, moreover, a similar service interruption would occur if the end user customer ever returned to SWBT.

duct-feet (13 miles) of conduit space and 185,026 poles in Missouri. Auinbauh Test. Sched. 3; Hearst Test. at 5. There have been no denials of access. Hearst Test. at 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 Test. Sched. 3. Such access is therefore "business as usual." See Hearst Test. at 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. As described in the accompanying Testimony of James Hearst, these procedures meet all statutory and FCC requirements. 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 Test. at 40.

Evaluation of Facilities Requests. SWBT has established nondiscriminatory procedures for evaluating facilities requests pursuant to section 224 of the Act. See generally Hearst Test. 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. Applications for access that do not require "make-ready" work or modifications are granted immediately, upon verification that the space is available. Id. at 10. For requests that require such work, SWBT will respond within 45 days after the application is submitted. Id. at 9-10. In actual practice, this review period has been substantially less than 45 days; through third-quarter 1998, the average time to grant an application for access was 14 days. Id. at 10.

Access to Facilities Information. Pursuant to the Master Agreement, SWBT provides CLECs nondiscriminatory access to information concerning SWBT's facilities. SWBT's records are available for review regardless of whether a CLEC has submitted an application for access to these facilities. Id. at 7. SWBT allows CLECs to view these records within two business days of a request. Id. at 6.

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. See Report and Order, Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCC Rcd 4387 (1987), clarified, 4 FCC Rcd 468 (1989). These 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 Test. at 14-15, 16-19 (discussing rates); 2 FCC Rcd at 4387, ¶ 2, 4396-97, ¶ 71; 4 FCC Rcd at 472, ¶ 39. 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 Test. at 16-19.

D. Checklist Item (iv): Unbundled Local Loops

Southwestern Bell complies with checklist item (iv), which requires it to make available local loop transmission from the central office to the customer's premises unbundled from local switching or other services. 47 U.S.C. § 271(c)(2)(B)(iv). Standard unbundled local loops available under SWBT's Missouri PSC-approved interconnection agreements are 2-wire analog loops with 8db or 5db loss, 4-wire analog loops, 2-wire ISDN digital grade lines, and 4-wire DS-1 digital grade line. Deere Test. at 21. Additional loop types may be requested through the BFR process. Id. at 21. In fulfillment of FCC requirements, SWBT utilizes alternative facilities to offer CLECs access to unbundled loops for the very small percentage of end users in Missouri who are currently served using integrated digital loop carrier ("IDLC") equipment. Id. at 23, 51. SWBT also is willing to provide CLECs with unbundled loops capable of supporting asymmetric digital subscriber line ("ADSL") technologies. Id. at 22. SWBT currently is negotiating with CLECs the terms, conditions, and prices for access to ADSL-conditioned loops, pursuant to the BFR process. Id. Other requests for technically feasible loop types and conditioning likewise will be considered under the BFR process. Id. at 20-22.

In addition to loops themselves, CLECs are able to obtain and use the NID under terms and conditions established by the Missouri PSC. Id. at 18-19. CLECs may connect to the customer's inside wire at SWBT's NID, as is, at no charge, or they may pay SWBT to perform repairs, upgrades, disconnects, or rearrangements they desire. Id. at 19. SWBT provides and connects the NID at no additional charge when the CLEC orders an unbundled loop. Id. CLECs likely will provide their own NID when serving multiple dwelling units; accordingly, SWBT will assist CLECs by relocating or rearranging the SWBT NID to allow access to inside wiring. Id.

Provisioning. 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. These options are discussed in the affidavit of William Deere. Id. at 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. Id. at 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 Test. Sched. 3. 1,770 of these loops have been provisioned in Missouri, a number that has quadrupled in the last nine months. Id. at 30. Further, Southwestern Bell has tested (and continues to measure) its ability to process orders and bill for the various loops that its approved agreements make available, ensuring that these transactions flow through SWBT's systems and are executed in a timely and accurate fashion. See Deere Test. at 23-25; Dysart Test. at 22-30. Prices for unbundled local loops were set by the Missouri PSC after review of SWBT's forward-looking economic cost studies. Bailey Test. at 26-27.

E. Checklist Item (v): Unbundled Local Transport

Section 271(c)(2)(B)(v) requires SWBT to offer local transport unbundled from switching or other services. SWBT's shared and dedicated transport offerings in Missouri satisfy this checklist item. Deere Test. at 25-27.

Shared Transport. 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. See Deere Test. at 25-26. CLECs using shared transport have access to the routing tables in SWBT's switches. Id. at 28-29.

SWBT permits a requesting carrier to use shared transport to provide interstate exchange access to its customers. CLECs can obtain from SWBT the usage data needed to bill access charges for originating traffic. Ham Test. at 76; Locus Test. at 7-8. Although current industry technologies do not permit identification and recording of the source of terminating traffic received from CLECs over shared trunks, SWBT is working to implement a network solution to this problem on an expedited basis and has developed an interim solution that enables CLECs to bill and collect appropriate revenues until the necessary modifications to SWBT's systems are completed. Auinbauh Test. at 30-33; Locus Test. at 8-9; see generally Second Louisiana Order ¶¶ 230, 233 (approving use of negotiated surrogate arrangements).

Dedicated Transport. Dedicated transport is available at various transmission speeds between a SWBT tandem or end office and a CLEC tandem or end office. Deere Test. at 25-26. Cross-connections also are available from SWBT for use with unbundled dedicated transport. Deere Test. at 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. Id. at 27.[15] Cost-based prices for unbundled transport were set in the AT&T arbitration. Bailey Test. at 28-30; see AT&T Agreement Attach. 6, App. Pricing - UNE.

CLECs may request other forms of dedicated transport requiring higher levels of capacity through the BFR process. Deere Test. at 27. SWBT also permits CLECs to use dark fiber to provide their own dedicated transport. Id. at 27.

All SWBT shared transport trunks are engineered to blockage levels that are incorporated into SWBT's interconnection agreements with CLECs. Dysart Test. at 33-35; see, e.g., AT&T Agreement Attach. 11, App. ITR. If the designed blockage levels on trunks for a particular tandem or end office are exceeded, SWBT provisions more trunks, or makes other appropriate adjustments to its network. Dysart Test. at 35. These policies are backed by performance data and performance commitments. Although blockage on shared transport trunks necessarily affects

[15] This service allows CLECs to exchange signals between high-speed digital circuits without returning all of the circuits to analog electrical signals. Moore Test. at 27.

all carriers using the trunks (including SWBT) equally, SWBT nevertheless provides data for shared transport trunk blockage and blockage distribution. Id. at 35-36 & Sched. 2 at 182. For dedicated transport, SWBT provisions trunks that are engineered to the same blockage levels as all other SWBT trunks. Id. at 35. It is the CLEC's responsibility to order additional trunks when blockage increases above acceptable levels. When that time comes, SWBT's performance data and performance standards guarantee the CLEC that it can obtain the additional trunks it seeks on a nondiscriminatory basis. Id. Sched. 2 at 110, 113-114, 116, 118, 120-121, 123, 155-156, 159, 161-162, 166.

F. Checklist Item (vi): Unbundled Local Switching

Southwestern Bell also satisfies section 271(c)(2)(B)(vi), which requires incumbent LECs to make available to CLECs local switching unbundled from transport, local loops, or other services. The FCC's rules require further unbundling of local and tandem switching capabilities. 47 C.F.R. § 51.319(c)(2).

Line-Side and Trunk-Side Facilities of the Switch and Basic Switching Functions. SWBT provides requesting carriers access to line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. See Deere Test. at 28. This includes, among other things, the connection between a loop termination and a switch line card, id.; the connection between a trunk termination and the trunk card, id.; analog and ISDN basic and primary rate interface trunk ports, id. at 31; all vertical features of the switch, id. at 29; 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, id. at 29-30.

Obligation to Provide Vertical Features. 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. Id. at 30. These features are ordered by CLECs using the same order process that SWBT uses. Id..

Customized Routing. SWBT provides two methods of customized routing: Advanced Intelligent Network ("AIN") and line class codes. Id. at 29. AIN is a vendor-independent network architecture that allows the creation of custom telecommunications services, such as customized routing. Id. at 75-77. Where possible, SWBT will use a customized routing method for CLECs using unbundled local switching that is based on AIN. Id. at 29. In the instances 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. Id. at 30. SWBT provides pricing proposals for this routing within 10 business days of a CLEC request and will fulfill orders for customized routing using line class codes within 30 business days. Id.

Trunk Ports, Unbundled Tandem Switching and Usage Information for Billing. As noted above in connection with shared transport, SWBT provides CLECs access to trunk ports on a shared basis, with access to routing tables resident in SWBT's switch. Id. at 29. Unbundled tandem switching is available as well. Id. at 31. Also as discussed in connection with shared transport, 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. See supra pp. 30-31.

SWBT measures the performance of the unbundled local switching it provides to CLECs. SWBT provides measurement of the average installation interval and percent installations completed in two days for analog switch ports. Id. at 32; see Dysart Test. Sched. 2 at 108, 111-112.

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. Auinbauh Test. Sched. 3.

G. Checklist Item (vii): Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services

Southwestern Bell 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 Test. at 63-71; See generally Weckel Test.

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 Test. at 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 Test. at 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 Test. Sched. 3. CLECs are free to establish any E911 trunking arrangement they wish with the local governmental authority. Deere Test. 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 Test. at 36-39. Statistical reports show that these nondiscriminatory procedures enable CLECs to achieve error percentages for their customers' information that are comparable to SWBT's error rates. Deere Test. at 69-70. 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 Test. at 39. CLECs in Missouri have the ability to enter customer data into the 911 database and to receive Southwestern Bell'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 Test. at 7-8. Twenty-five CLECs in Missouri, including seven facilities-based carriers, 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 Test. at 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 Test. at 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 Missouri PSC. Id. at 22.

H. Checklist Item (viii): White Pages Directory Listings

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 Missouri PSC-approved agreements. In making this service available, Southwestern Bell satisfies checklist item (viii).

Nondiscriminatory Appearance and Integration of White Pages Listings. Southwestern Bell makes available White Pages listings for the end users of both resellers and facilities-based carriers. Weckel Test. at 27; see also Brooks & e.spire Agreements App. WP; AT&T Agreement Attach. 1 App. WP - Resale, Attach. 19. These listings are maintained in Southwestern Bell's White Pages database in the same manner as listings for SWBT's retail customers. Weckel Test. at 28. Listing information for resellers' customers is not distinguished from listing information for SWBT's retail customers, and thus reseller listings appear alphabetically alongside SWBT end user listings. Id. at 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. Southwestern Bell's directories contain over 24s,000 listings for customers of facilities-based CLECs and resellers in Missouri. Id. at 28; Auinbauh Test. Sched. 3. Southwestern Bell will also transmit facilities-based CLECs' listings to third-party directory publishers upon request of the CLEC. Weckel Test. at 32-33.

CLECs themselves may choose to be included on an informational page listing carrier-specific contact information. Id. at 31-32. Southwestern Bell 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.

I. Checklist Item (ix): Nondiscriminatory Access to Telephone Numbers

When they enroll new customers who have not previously had telephone numbers, or who wish to add a new number or change their number, CLECs require access to telephone numbers. As Central Office ("CO") Code Administrator for its territory, SWBT meets this demand by providing CLECs with nondiscriminatory access to telephone numbers for assignment to their customers. See generally Adair Test.; 47 U.S.C. § 271(c)(2)(B)(ix). Southwestern Bell thus satisfies checklist item (ix).

As Code Administrator, SWBT has followed industry-established guidelines published by the Industry Numbering Committee. Adair Test. at 3-8. Pursuant to those procedures, SWBT 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. Adair Test. at 5 & Sched. 3. SWBT utilizes identical standards and procedures for processing all number requests, regardless of the requesting party, and charges no fees for activating CO codes. Adair Test. at 4-5.

SWBT has not turned down any requests for NPA/NXX code assignments in Missouri, other than as necessary to implement an industry jeopardy plan for number conservation in the 816 area code. Adair Test. at 5-7. The Missouri PSC and affected industry members participated in the meetings at which this jeopardy plan was discussed and implemented. Id. at 6. In November 1998, SWBT began to implement a jeopardy plan for the 314 area code. Id. at 7. This plan will follow industry-established guidelines and will be implemented in exactly the same fashion as the successful plan for the 816 area code. Id. Neither SWBT nor the Missouri PSC has received any complaints about SWBT's implementation of jeopardy plans. Id. at 6.

In January 1999, Lockheed Martin will assume CO code administration responsibilities. Id. at 8. Until the transition to Lockheed Martin is complete, SWBT will continue to perform its code administration responsibilities and will continue to work with Lockheed Martin to facilitate the transfer of code administration responsibilities. Id. 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. Id.

J. Checklist Item (x): Nondiscriminatory Access to Databases and Associated Signaling Necessary for Call Routing and Completion

Southwestern Bell 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 Test. at 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. CLECs can use this service to furnish SS7-based services to their own end-user customers or customers of other CLECs. Id. at 72. SS7 signaling can be provided between the CLEC's switches, between the CLEC's switches and SWBT switches, or between the CLEC's switches and the networks of other carriers connected to SWBT's SS7 network. Id. SS7 interconnection facilities may be obtained from SWBT or furnished by the CLEC itself. Id. at 73.

Nondiscriminatory Access to Signaling and Databases. SWBT's Missouri PSC-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 Test. at 76. Requesting carriers are provided the relevant information they need to enter and/or format for entry the input into the appropriate databases. Deere Test. at 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.

K. Checklist Item (xi): Number Portability

Southwestern Bell also makes available interim number portability ("INP") in accordance with checklist item (xi). INP enables customers of facilities-based carriers to retain their existing telephone number even after they no longer subscribe to SWBT's service. SWBT's INP offerings comply with section 271(c)(2)(B)(xi), which requires a Bell company to provide CLECs with INP through remote call forwarding ("RCF"), direct inward dialing ("DID"), or other comparable arrangements, until the FCC issues regulations to ensure long-term number portability ("LNP").

In accordance with the orders of the Missouri PSC, SWBT makes available RCF or DID, at the CLEC's option. Deere Test. at 78-82; see also Brooks & e.spire Agreements App. PORT

§ II.E; AT&T Agreement Attach. 14 §§ 3-5. Pursuant to the Missouri PSC's order in the AT&T arbitration, route indexing forms of INP are available as well, provided that the CLEC pays the associated costs. Deere Test. at 82. As an alternative to INP, SWBT also will reassign NXX codes where all numbers covered by the code are served by the same CLEC. Id. at 82.

Implementation of INP requires cooperation not only among various departments within SWBT, but more importantly between SWBT and the CLEC. If the CLEC is not prepared to execute a cut-over of the right lines at the right time, the process will not proceed as planned and the cut-over will fail. To address this issue, SWBT has established the necessary procedures for manual intervention if and when problems arise. See Kramer Test. at 28-29. SWBT also has taken a number of affirmative steps to improve its processes and coordination with CLECs. Id. at 29-32. As evidence of the success of this approach, SWBT has successfully ported 2,373 of its own telephone numbers in Missouri to CLECs. Auinbauh Test. Sched. 3; Kramer Test. at 5. Each such transfer represents direct loss of at least one (and possibly many more) SWBT line(s) to a facilities-based competitor. See Tebeau Test. Sched. 7.

SWBT has developed procedures and performance measurements to ensure that CLEC orders for coordinated conversion of unbundled loops with INP are processed in a timely manner, with no unnecessary disruption of service. See Dysart Test. at 43-44; see also id. at 35-36.

Cost Recovery. SWBT will recover the costs of providing INP in a competitively neutral manner. Deere Test. at 82.

Long-Term Number Portability. As the Testimony of Gary A. Fleming describes, SWBT has implemented long-term number portability in Missouri using the Location Routing Number ("LRN") method. Fleming Test. at 4-7 and Table 1. The LRN method satisfies the FCC's performance criteria for long-term number portability. Id. at 4.

Pursuant to the switch request process established by the FCC and the Missouri PSC, SWBT and the Missouri PSC distributed surveys to all carriers operating within the St. Louis and Kansas City metropolitan statistical areas ("MSAs"); these are the two Missouri MSAs covered by the FCC's implementation schedule for LNP. Id. at 7-8. Based on the carriers' switch selections, see id. Sched. 8 (list of switches selected), SWBT deployed LNP in the St. Louis MSA on June 26, 1998 and in the Kansas City MSA on July 27, 1998. Id. at 8 & Sched. 2. SWBT expects to initiate live commercial porting in St. Louis and Kansas City on December 14, 1998, even before the FCC's deadline. Id. at 6, 13-15. 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. Id. at 9-10.

SWBT's OSS enable CLECs to order LNP with or without an unbundled loop, and in a manner that gives efficient competitors a meaningful opportunity to compete. See id. at 13. LNP may be ordered through SWBT's EDI Gateway. Ham Test. at 44. SWBT has conducted extensive systems modifications and intra- and intercompany testing to ensure its ability properly to support ordering, maintenance and repair, and billing of LNP. Fleming at 12-13.

SWBT is recovering its costs of LNP in accordance with FCC rules. Id. at 20.

L. Checklist Item (xii): Local Dialing Parity

In satisfaction of checklist item (xii), SWBT's Missouri PSC-approved interconnection agreements provide all CLECs with nondiscriminatory access to services and information that are necessary to allow local dialing parity. Local dialing parity 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. See Deere Test. at 83-84; Brooks Agreement § VI.B.1; e.spire Agreement § 15.1; AT&T Agreement § 47.

The Commission has held "that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251."[16] Consistent with its obligations, SWBT ensures in its interconnection agreements that CLEC customers will not have to use access codes or dial any greater number of digits than SWBT end users to complete the same call. Deere Test. at 84. 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. Id. at 88.

M. Checklist Item (xiii): Reciprocal Compensation for the Exchange of Local Traffic

Southwestern Bell'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 Missouri PSC in the AT&T arbitration have been found to satisfy the 1996 Act's requirements. See Bailey Test. at 26. Southwestern Bell's rates for reciprocal compensation are based on forward-looking cost studies adjusted pursuant to the order of the Missouri PSC. Id. at 17; Auinbauh Test. at 33-34; see also Brooks Agreement § III; e.spire Agreement § 5; AT&T Agreement § 58 & Attach. 12.

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[16] Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 19392, 19430, ¶ 71 (1996).

Just as SWBT has developed a surrogate method that allows CLECs using unbundled local switches to collect exchange access charges pending recording of usage data for all calls, SWBT will negotiate surrogate methods of reciprocal compensation for those limited situations where it is not technically possible to record all usage. Id. at 36.

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. Id. Sched. 3. This does not include vast amounts of Internet traffic that has been exchanged between SWBT and CLECs, id. at 38. The Missouri PSC 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 Test. at 17-18, 27. Should the Missouri PSC make a similar decision concerning other CLECs, SWBT will comply – just as it is complying with the Birch Telecom decision. Id. at 27.

N. Checklist Item (xiv): Resale

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 Missouri PSC-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 Test. at 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 Missouri PSC established retail discounts pursuant to the 1996 Act. Bailey Test. at 27-28. SWBT submitted an avoided cost study, prepared in accordance with the FCC's vacated pricing rules, supporting service-specific discounts or an aggregate discount of 13.2 percent. Moore Test. at 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 Test. at 28; see also AT&T Agreement Attach. 1, App. Services/Pricing, Ex. A. The Missouri PSC's discount rate for non-operator services falls well within the FCC's now-defunct proxy range. See 47 C.F.R. § 51.611 (vacated).

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 Test. at 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 Test. at 29.

SWBT also offers for resale at wholesale rates its promotional offerings with durations of greater than 90 days. Bailey Test. at 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 Test. at 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 Test. at 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 Test. at 15. Resellers currently serve nearly 30,000 lines in Missouri. Id. at 28; Auinbauh Test. Sched. 3.

O. Performance Measurements

Although the 1996 Act nowhere contains any requirement that a Bell company establish performance measurements to satisfy its obligation of providing nondiscriminatory interconnection and network access, Southwestern Bell has taken very seriously the Commission's request for "[c]lear and precise" measurements backed by self-executing contractual enforcement mechanisms. Michigan Order, 12 FCC Rcd at 20656, ¶ 209; see Second Louisiana Order ¶¶ 363-364. Working with DOJ, the Texas Public Utility Commission, and CLECs such as AT&T and MCI WorldCom, SWBT has developed a comprehensive set of 103 measurements covering pre-ordering, ordering, provisioning, maintenance and repair, and billing of interconnection, UNEs, and resold services, as well as DA services, operator services, and INP. Dysart Test. at 16-48 & Sched. 1 (describing measurements). DOJ has determined that these performance measurements, described in the testimony of William R. Dysart, "would be sufficient, if properly implemented, to satisfy the Department's need for performance measurements for evaluating a Section 271 application filed in the not-too-distant future."[17]

Wherever possible, these measurements compare SWBT's level of service on behalf of CLECs to SWBT's level of service in its own retail operations. "Parity" of service exists where the difference in performance is no greater than one standard deviation in either direction – a criterion negotiated under the supervision of the Texas PUC. Dysart Test. at 9-16. Where no comparable retail function exists, the level of service provided to CLECs is tested against standard intervals that also were established through negotiations with AT&T and MCI and incorporated into their Missouri PSC-approved agreements. Id. at 3; see AT&T Agreement § 45 & Attach 17. If a performance breach occurs, SWBT automatically will incur a penalty that reflects the magnitude of the breach. Conversely, SWBT will accrue credits against future penalties by giving CLECs superior performance. Dysart Test. at 9-10. In this way, SWBT has committed to "appropriate, self-executing enforcement mechanisms" in accordance with the Commission's expressed desire. Michigan Order, 12 FCC Rcd at 20749, ¶ 394; Second Louisiana Order ¶ 364.

SWBT reports its performance monthly, on a geographically disaggregated basis (e.g., separately for the Kansas City and St. Louis market areas) where appropriate, using defined service and facility categories. Dysart Test. at 5-6. Performance data is accessible via an Internet Web site. Id. at 8. CLECs wishing to receive performance measurement reports do not need to

[17] Letter from Donald J. Russell, Chief, Telecommunications Task Force, to Liam S. Coonan, Esq., Senior Vice President and Assistant General Counsel, SBC Communications at 1 (Mar. 6, 1998) (Dysart Test. Sched. 2).

have specific provisions in their interconnection agreements; they may view the reports on-line on an interim basis prior to amending their agreements. Id. at 8. SWBT currently is providing performance measurement reports to seventeen CLECs throughout its region, including one CLEC in Missouri. Dysart Test. at 8.

The performance measurements demonstrate that SWBT is providing CLECs with nondiscriminatory access to facilities and services. Of the 149 measurements for which there is sufficient data to provide statistically reliable results, more than 120 demonstrate parity between SWBT's retail operations and CLECs. Id. at 46.[18] For the relatively small number of measurements that do not demonstrate parity, SWBT has undertaken investigations to determine the cause. Id. These investigations showed that for some measurements, the data yield misleading results. For example, the Kansas City and St. Louis percentage of NFW ("no field work") missed due dates appear to be out of parity because the expected number of missed appointments is so low that even a handful of missed dates statistically suggests a lack of parity. Id. at 46-47. However, a closer look at the data reveals that SWBT met 99.85 percent of these appointments for CLEC customers in Kansas City, and 99.83 percent in St. Louis – percentages that hardly suggest discrimination. Id. at 48. For other measurements, SWBT's investigation revealed a significant, nondiscriminatory difference between SWBT's retail operations and CLECs' service, which skews the performance results. See id. at 46-48.

[18] Any suggestion that all measurements must be at parity or better would require SWBT to provide CLECs with superior overall service than SWBT's retail customers. That is self-evidently incorrect: nondiscrimination does not require that all disparities favor CLECs, nor does nondiscrimination require perfection. See Michigan Order, 12 FCC Rcd at 20693, ¶ 278 ("an absolute-perfection standard is not required by the terms of the competitive checklist.").

Although extensive, the performance monitoring commitments contained in the AT&T agreement are not necessarily exhaustive. Because the need for performance measurements may evolve along with networks and local competition, Southwestern Bell will negotiate additional or different measurements individual CLECs may deem necessary for their own purposes. Dysart Test. at 4, 7.

III. SOUTHWESTERN BELL WILL PROVIDE INTERLATA SERVICES IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272

Southwestern Bell is submitting with its application extensive evidence demonstrating that it will comply with the requirements of section 272 when it receives interLATA authorization for Missouri.[19] Indeed, SWBT and SBLD are operating in accordance with section 272's requirements today. More broadly, Southwestern Bell 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.[20]

Separate Affiliate Requirement of Section 272(a). SBC has established SBLD as a separate affiliate to provide in-region, interLATA services in compliance with the structural

[19] Section 271(d)(3)(B) employs the future tense, requiring the Commission to ensure that "the requested authorization will be carried out in accordance with the requirements of section 272" (emphasis added). While "past and present behavior" under applicable rules may be relevant to ensuring future compliance with section 272, Michigan Order, 12 FCC Rcd at 20734, ¶ 366, the Act does not empower the FCC to require full section 272 compliance before a BOC receives interLATA authorization.

[20] Southwestern Bell intends to offer in-region, interLATA services in Missouri through SBLD. Lube Test. at 2. SBC owns two Bell operating companies, Pacific Bell and Nevada Bell, in addition to SWBT. While not covered by this application, these other Bell operating companies and Pacific Bell Communications – the section 272 affiliate that was formed to provide long distance in their regions – are currently operating in conformity with section 272 and will comply

separation and operational requirements of section 272. Lube Test. at 5, 6; Rehmer Test. at 3. SBLD is a wholly separate entity from SWBT, and neither owns stock of the other. Lube Test. at 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 Test. at 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 Test. at 8-9; Rehmer Test. at 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 Test. at 8; Rehmer Test. at 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 Test. at 8-9; Rehmer Test. at 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 Test. at 9; Rehmer Test. at 5.

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with this section when SBC is authorized to offer long distance services in California and Nevada. See generally Rehmer Test.; Lube Test.; Larkin Test.

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 Test. at 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 Test. at 4-5; Lube Test. at 11. A regular audit program ensures GAAP compliance and confirms the effectiveness of SBLD's internal controls. <u>See</u> Lube Test. at 12-13, 28-29; Larkin Test. at 13-21.

SBLD has separate officers, directors, and employees from SWBT. 47 U.S.C. § 272(b)(3); Lube Test. at 14-16; Rehmer Test. at 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 Test. at 16-17; Rehmer Test. at 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 Test. at 7; Lube Test. at 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 Test. at 8-12; Lube Test. at 21-27. As indicated on the website, transactions remain posted for one year after their termination. Lube Test. at 27 & Sched. 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 Test. at 8-12; <u>see also</u> Lube Test. at 21-27. For asset transfers, the quantity and, if relevant, the quality of the transferred assets are disclosed. Larkin Test. at 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 Test. at 10-12; Lube Test. at 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 Test. at 7; see also Lube Test. at 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 Test. at 5-6. Indeed, Southwestern Bell 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 Test. at 9-10, 18-19; Lube Test. at 28 & Sched. 15 (SBLD compliance training policy). A compliance booklet has been prepared for distribution to all SBC employees. Rehmer Test. at 19 & Sched. 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 Test. at 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 Test. at 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 Test. at 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 Test. at 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 Test. at 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 Test. at 13-14; Lube Test. at 28-29. In accordance with section 272(d)(2), the independent auditor will provide the FCC, the Missouri PSC, and other involved state commissions with access to working papers and supporting materials relating to the review. Larkin Test. at 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 Missouri PSC, 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. at 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 Test. at 11-13; see Deere Test. at 85. SBLD's requests are placed and processed using the same OSS as requests from unaffiliated entities. Id.; see Deere Test. at 85. Unaffiliated carriers are able to obtain information regarding the service intervals within which SWBT provides service to itself and its affiliates. See Rehmer Test. at 13; Dysart Test. (performance measurements); Deere Test. at 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 Test. at 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 Test. at 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 Test. at 29-30; Rehmer Test. at 16.

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 at 671-72, ¶ 239. When

Southwestern Bell is authorized to offer long distance service in Missouri, it will conduct any joint marketing in a manner consistent with the Commission's decision. Rehmer Test. at 16-17; Lube Test. at 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 Test. at 10-11; <u>see</u> Lube Test. at 31-32.

IV. SOUTHWESTERN BELL'S ENTRY INTO THE INTERLATA SERVICES MARKET IN MISSOURI WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST

The final element of the Commission's section 271 analysis is a determination whether interLATA entry "is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C). The remainder of this brief demonstrates that Southwestern Bell's provision of interLATA services in Missouri easily meets this test.

In passing the 1996 Act, Congress expected that "removing all court ordered barriers to competition — including the MFJ interLATA restriction — will benefit consumers by lowering prices and accelerating innovation." 142 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statement of Sen. Breaux). DOJ agrees that in-region, interLATA entry by BOCs will promote long distance competition. DOJ Oklahoma Addendum at 3-4. This Commission has itself affirmed that "BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunications markets." <u>Michigan Order</u>, 12 FCC Rcd at 20741-42, ¶ 381. As Chairman Kennard recently noted, granting BOCs in-region long distance relief will afford consumers "a whole new world of choice in local and long distance service." Separate Statement of Chairman Kennard, <u>Second Louisiana Order</u>, at 2-3.

The damage done by continuing to exclude Bell companies from in-region, interLATA services is staggering. As the attached affidavits of Alfred Kahn and Timothy Tardiff, Richard Schmalensee, and the WEFA Group's Michael Raimondi demonstrate, residential callers in Missouri are being denied a real alternative to the major interexchange carriers' high basic rates, and the State of Missouri is being denied approximately 16,000 jobs and a $1.5 billion increase in its gross state product over the next ten years. Raimondi Test. at 5. Professor Schmalensee of MIT estimates that if Southwestern Bell offered in Missouri the low, "no-strings-attached" basic rates that it has sought permission to offer in Oklahoma, residential customers in Missouri would benefit from additional competition across the interLATA market by about $33 each per year — whether or not they take their interLATA service from Southwestern Bell. Brandon & Schmalensee Test. at 49-50. The total consumer benefit in Missouri would be $52 million per year. Id. There is no legitimate justification for denying Missouri's consumers such concrete benefits.

A. The Scope of the Public Interest Inquiry

While the public interest inquiry generally may provide the FCC with "broad discretion . . . to consider factors relevant to the achievement of the goals and objectives of" legislation, Michigan Order, 12 FCC Rcd at 20744-45, ¶ 385, it is limited by Congress's specific determinations.[21] In the 1996 Act, Congress decided that it would open local markets by

[21] See NAACP v. FPC, 425 U.S. 662, 669 (1976) ("the use of the words 'public interest' in a regulatory statute . . . take meaning from the purposes of the regulatory legislation"); New York Central Sec. Corp. v. United States, 287 U.S. 12, 25 (1932) ("the term 'public interest' as thus used [in a statute] is not a concept without ascertainable criteria"); Business Roundtable v. SEC, 905 F.2d 406, 413 (D.C. Cir. 1990) ("broad 'public interest' mandates must be limited to 'the

enacting a competitive checklist that sets forth concrete obligations in plain terms. The "checklist" is Congress's test of "what . . . competition would encompass," 141 Cong. Rec. S7972, S8009 (daily ed. June 8, 1995) (statement of Sen. Hollings), and Congress forbade the Commission from second-guessing its legislative judgment or modifying the checklist "by rule or otherwise," 47 U.S.C. § 271(d)(4) (emphasis added); see also 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (noting adoption of checklist approach in place of "actual competition" test). As the Chairman of the Senate Commerce Committee reassured Senators, "[t]he FCC's public-interest review is constrained by the statute" because "the FCC is specifically prohibited from limiting or extending the terms used in the competitive checklist." Id. at S7967 (daily ed. June 8, 1995) (statement of Sen. Pressler). Accordingly, the Commission may not use the public interest inquiry to add local competition criteria beyond those that Congress included in the checklist.

For its part, DOJ has insisted that only when local markets are "fully and irreversible" open to competition will the public inquiry standard of section 271 be satisfied.[22] DOJ has not defined this vague standard, but if it exceeds the requirements of the competitive checklist, applying it would violate Congress's express prohibition against any extension of the checklist. See 47 U.S.C. § 271(d)(4). Moreover, DOJ has relied for its standard on the contentions of an expert, Professor Marius Schwartz, who has admitted that: (1) he did not quantify the cost-

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purposes Congress had in mind when it enacted [the] legislation'" (quoting NAACP, 425 U.S. at 670)).

[22] Evaluation of the United States Department of Justice at 49, Application of BellSouth Communications Inc. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 (FCC filed Aug. 19, 1998), at 41 ("DOJ Second Louisiana Evaluation").

benefit comparison upon which he based this standard; (2) he did not quantify how much more open the local market could be made by adding requirements to the competitive checklist; and (3) he was simultaneously serving as a paid advocate of AT&T's interests when he advocated this standard for DOJ.[23] Unable to point to any quantitative analysis in support of his theory, Professor Schwartz instead relies on "logic" to support his contention that his "open market" standard "will yield large benefits in advancing local competition at the expense of comparatively modest and short-lived costs in the long distance market." Schwartz Supp. Aff. ¶ 11. However, "logic" – especially that of an expert who has been retained by AT&T – is an exceedingly slim basis upon which to ignore the clear intent of Congress.

The Commission may as part of its public interest inquiry evaluate such matters as the current state of long distance competition and the degree to which the checklist, section 272, and other regulatory safeguards constrain anticompetitive conduct in the interLATA market. These inquiries are familiar for the Commission. As long as a decade ago, for example, the Commission addressed the hotly contested issue of whether regulatory safeguards and market conditions were then sufficient to preclude BOCs from impeding competition in long distance. The Commission concluded that they were, and thus agreed with DOJ that the line of business

[23] See Schwartz Supp. Aff. ¶ 9 (DOJ South Carolina Evaluation Ex. 2). Dr. Schwartz has acknowledged that he filed affidavits for AT&T and DOJ in the same two-week period — apparently with the approval of DOJ. See Letter from Marius Schwartz to Magalie Roman Salas, CC Docket No. 97-231, nn.4, 6 (Jan. 19, 1998). In his presentation for AT&T, Schwartz argued for restrictions on entry into AT&T's markets. Ex Parte Letter from Kristen C. Thatcher, AT&T, to William F. Caton, Docket No. IB 97-142 (Oct. 27, 1997).

restrictions in the Modification of Final Judgment ("MFJ") should be lifted, notwithstanding that in 1987 BOCs had no obligations to competitors comparable to the checklist.[24]

The Commission also may consider individual circumstances that Congress could not have anticipated — such as the applicant's history of compliance or non-compliance with Commission rules.[25] The Commission may not, however, use the public interest inquiry to substitute its own local competition plan for that established by Congress,[26] or to rewrite express provisions of the Act.[27] In particular, the public interest test may not be used as a vehicle for

[24] Responsive Comments of the Federal Communications Commission as Amicus Curiae on the Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Companies by the Modification of Final Judgment at 58, United States v. Western Elec. Co., No. 82-0192 (D.D.C. filed Apr. 27, 1987).

[25] See Michigan Order, 12 FCC Rcd at 20749-50, ¶ 397. A review of Southwestern Bell's past compliance provides evidence that supports approval of Southwestern Bell's application. For example, in its recent review of Southwestern Bell and SNET's joint application to transfer control of certain wireless (radio) licenses and wireline authorizations from SNET to SBC as part of the merger of the two companies, the Commission concluded that given "SBC's evident fitness to hold its current licenses," it "has the requisite qualifications to hold the licenses and authorization currently held by SNET." Memorandum Opinion and Order, Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorization from Southern New England Telecommunications Corporation to SBC Communications, Inc., FCC 98-276, ¶ 27.

[26] See generally 47 U.S.C. § 271(d)(4); Conference Report at 1 (enacting a "de-regulatory national policy framework"); 141 Cong. Rec. S7895 (daily ed. June 7, 1995) (statement of Sen. Hollings) ("We should not attempt to micro-manage the marketplace"); id. at H8282 (daily ed. Aug. 2, 1995) (statement of Rep. Bliley) (Congress wanted to promote "competition, and not Government micro-management of markets"); accord Local Interconnection Order, 11 FCC Rcd at 15509, ¶ 12 ("look[ing] to the market, not to regulation," to determine entry strategies).

[27] See NAACP 425 U.S. at 669; United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988) (when "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law," statutory provision's meaning is "clarified by the remainder of the statutory scheme"); National Broadcasting Co. v. United States, 319 U.S. 190, 216 (1943) (the public interest "is to be interpreted by its context").

circumventing the specific statutory restrictions of sections 251 and 252 regarding such matters as the pricing of UNEs and resold services. Because section 252 reserves pricing authority to the states and the public interest provisions of section 271 do not purport to override that delegation of authority, the Commission may not usurp state jurisdiction over pricing through the section 271 process. Indeed, the United States Court of Appeals for the Eighth Circuit has expressly forbidden the FCC from imposing, relying upon, or considering federal pricing standards in section 271 proceedings. See Iowa Utils. Bd., 135 F.3d 535 (1998).

B. The Current Long Distance Oligopoly Limits Competition

Turning to the core of the Commission's proper inquiry, it has long been settled that the benefits of new entry in long distance presumptively outweigh any risk of harm,[28] even where the long distance entrant is an incumbent LEC.[29] That presumption is especially apt with respect to this application.

In the Michigan Order, the Commission repeated its "concern[s] . . . that not all segments of this market appear to be subject to vigorous competition," and "about the relative lack of

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[28] See Report and Order, Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecomm. Serv. off the Island of Puerto Rico, 2 FCC Rcd 6600, 6604, ¶ 30 (1987) ("plac[ing] a burden on any entity opposing entry by a new carrier into interstate, interexchange markets to demonstrate by clear and convincing evidence that [additional] competition would not benefit the public") (emphasis added); Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, MTS-WATS Market Structure, 81 F.C.C.2d 177, 201-02, ¶ 103 (1980) (Commission will "refrain from requiring new entrants to demonstrate beneficial effects of competition in the absence of a showing that competition will produce detrimental effects").

[29] See Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecomm. Serv. off of the Island of Puerto Rico, 2 FCC Rcd at 6604, ¶ 30 ("Commission's "open entry policy clearly contemplate[s] competitive entry by independent local exchange companies") (citing MTS-WATS Market Structure, 81 F.C.C.2d at 186).

competition among carriers to serve low volume long distance customers." Michigan Order, 12 FCC Rcd at 20552-53, ¶ 16. While access charges declined by 69 percent between May 1984 and December 1997, long distance carriers failed to pass along all of these cost savings to consumers. See Kahn & Tardiff Test. at 9-10. In particular, recent decreases in access charges have not been matched by decreases in the rates paid by consumers. Id.; Brandon & Schmalensee Test. at 10-14. AT&T raised its interstate residential domestic direct-dial basic rates by 86 percent from 1991 to 1998, though interstate access charges and other fees paid by interexchange carriers to serve residential customers in Missouri fell by 12.5 percent during the same period. Brandon & Schmalensee Test. at 10-11. Net of access charges and other fees, AT&T raised interstate residential domestic direct-dial basic rates in Missouri by 228 percent. Id. Not surprisingly, the FCC Chairman has expressed skepticism about claims by the large interexchange carriers that they have passed on to consumers reductions in access charges: "[AT&T, MCI, and Sprint] said that if we cut access charges, then they would cut long-distance bills. Have they done so? Well, they have yet to show me that consumers got the promised savings."[30] In a competitive industry, regulators do not need to prod competitors into passing on cost-savings to consumers in this fashion. See Brandon & Schmalensee Test. at 14 ("If the long-distance market were truly competitive, the incumbent interexchange carriers instead would have

[30] Remarks by William E. Kennard, Chairman, Federal Communications Commission, to U.S. Dep't of Commerce, "Connecting All Americans" Conference, Feb. 26, 1998 (as prepared for delivery); see also Kennard Challenges Long Distance Companies to Prove They Reduced Rates, Communications Daily, Feb. 27, 1998, at 1-2 ("In a letter to carriers . . . [Chairman] Kennard . . . questioned why long distance companies have been adding charges to customer bills rather than making reductions. He said there's [a] 'growing body of evidence that suggests that the nation's largest long distance companies are raising rates when their costs of providing service are decreasing.'").

passed through to consumers the reductions in access charges and other fees . . . [t]hey also would have passed through any reductions in their own internal costs.").

Few observers are better positioned to discuss today's interLATA market than Joseph Nacchio, formerly Executive Vice President of AT&T's Consumer and Small Business Division. In a speech to industry analysts during March 1998, Mr. Nacchio confessed that, "as former architect" of AT&T's pricing policies, "I know [the long distance industry is] oligopolistic." "Nobody really flows through access charge reductions," Mr. Nacchio was quoted as saying, for pricing has "no relation to cost."[31]

Flat-rate promotions do not mark a substantial departure from the long-standing pattern of lock-step price increases by the major interexchange carriers. Brandon & Schmalensee Test. at 14-18. For AT&T's Missouri residential customers, AT&T's price hike for interstate toll rates (net of access charges and other fees) was 85 percent from 1991 to 1998, even after discounts. Id. at 16. If AT&T had merely passed on to consumers the industry-average decrease in access charges between 1993 and 1997, AT&T's basic rate would have been 12.1 cents per minute – 33 percent lower than the actual rate of 18 cents per minute that AT&T currently charges. Id. at 16-17.

Consider, for example, AT&T's One Rate Plus calling plan, which offers a flat rate of 10 cents per minute after paying a monthly fee of $4.95. This plan is unattractive for lower-volume customers for whom the monthly fee amounts to a substantial percentage of total charges. In Missouri, only about one percent of customers have a level of interstate usage that would provide

[31] Nacchio Questions "Flow-Through" of Access Charge Reductions, TR Daily, Mar. 13, 1998.

them with a rate as low as the 12 cents per minute that AT&T would be charging if it had merely passed through to its residential customers its cost savings. Brandon & Schmalensee Test. at 18.

Flat-rate and discount plans, moreover, are not used by most residential callers. In fact, over 50 percent of Missouri residential customers paid rates that were equal to or higher than AT&T's basic rates. Id. at 15.[32] Moreover, the major carriers' calling plans have themselves become vehicles for price increases. AT&T's price "simplification" plan, announced in November 1997,[33] added three hours daily to the highest rate category and virtually eliminated the sharp drop in rates after 11:00 p.m.[34] AT&T has also penalized its 20 million "occasional callers" — those callers who make fewer than three long distance calls per month — by forcing these customers into a pricing plan that will increase their rates.[35] And AT&T has announced that starting in January of 1999, it will charge all new customers and all customers that change calling plans a minimum of $3.00 per month – a policy that could eventually increase average residential rates by as much as 15 percent and increase AT&T's profit margin by 30 percent. Brandon & Schmalensee Test. at 17-18 & n.24.

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[32] See also Pradnya Joshi, The Big Savings Maze, Newsday, Jan. 11, 1998, at F8 (60-63 percent of long distance customers pay basic rates); Reply Affidavit of Paul W. MacAvoy on Behalf of Ameritech Michigan at ¶11, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Dkt. No. 97-137 (FCC filed July 7, 1997) ("47 percent (or approximately 30 million) of AT&T's customers have average monthly bills of less than $10 and thus are not eligible for a discount plan.").

[33] See AT&T Abandons Distance Charges, Joins MCI and Sprint in Using Per-Min. Rates, Communications Daily, Nov. 5, 1997, at 3.

[34] Id.

[35] See Now on 'Offensive': AT&T's Armstrong Announces Job Cuts, Says Senior Management 'Owns Strategy', Communications Daily, Jan. 27, 1998, at 2.

AT&T and MCI seek to deny discounts not only to low-volume customers, but also to higher-volume customers who are not price sensitive. For example, when LCI announced that it was moving to one-second billing,[36] AT&T responded in trade publications that it would offer similar service when requested but would not advertise the program.[37] By keeping its offering a secret, AT&T is able to retain per-minute billing for the vast majority of its customers.[38] As Professor Schmalensee explains, "[t]he combination of rising basic rates and optional calling plans, which the long-distance carriers change over time, effectively exploits many customers' lack of information and inertia. With their pricing, the interexchange carriers segment the market and separate the active 'bargain-hunters' from the 'victims.'" Brandon & Schmalensee Test. at 21.

C. Market Evidence Confirms that Southwestern Bell's Entry into the InterLATA Market in Missouri Will Benefit Consumers

Southwestern Bell's entry into the interLATA services market in Missouri will provide the needed competition and benefit long distance consumers through lower prices and/or higher quality service. Moreover, by chipping away at costly barriers between local and long distance services, Southwestern Bell's entry will bring further benefits. The United States is the only nation in the world that rigidly divides local from long distance telephone service and thereby deprives consumers the benefits of both vertical integration and additional competitors in long

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[36] Communications Daily, Dec. 5, 1997, at 6. On the average 4.5 minute long-distance call, not billing for the additional 30 seconds reduces the charge by 10 percent.

[37] Long Distance Carriers Move Toward Per-Sec. Billing Amid Competition, Communications Daily, Dec. 4, 1997, at 2.

[38] Id.

distance. Kahn & Tardiff Test. at 62, n.77. Despite hypothetical possibilities of anticompetitive conduct, every other country that has permitted competition in long distance has decided that the benefits of allowing incumbent LECs to participate outweighs possible anticompetitive concerns. Id. The record of incumbent LECs' competitively beneficial provision of vertically related services makes clear that the unanimous conclusion of all these other nations is correct.

1. Evidence of Competition Where LECs Have Been Allowed To Offer Long Distance

Uniform historical experience confirms the likely benefits of in-region, interLATA entry by Southwestern Bell. As the FCC has recognized, the "recent successes of [SNET] and GTE in attracting customers for their long distance services illustrates the ability of local carriers to garner a significant share of the long distance market rapidly"; "recent studies" based upon these positive market experiences "have predicted that AT&T's share of the long distance market may fall to 30 percent with BOC entry"; and such "additional competition in the long distance market is precisely what the 1996 Act contemplates and is welcomed." Michigan Order, 12 FCC Rcd at 20551-52, ¶ 15.

One of the best examples of this healthy competition is found in Connecticut. Long distance customers in that state have benefited from SNET's price competition with AT&T and the other incumbents since SNET entered the interstate market in 1994.[39] SNET has competed effectively by offering one-second billing and rates 15 to 25 percent below AT&T's — a scenario that augers well for consumers when Southwestern Bell enters the interLATA market in

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[39] Consumers of intrastate services also have benefited, as AT&T responded to SNET's long distance offerings with competitive intrastate offerings.

Missouri. Brandon & Schmalensee Test. at 46-49 & Attachs. 1-2; Kahn & Tardiff Test. at 63. These savings especially have benefited low-volume callers who, prior to SNET's entrance, had disproportionately stayed with AT&T because they were ignored by other carriers. See Brandon & Schmalensee Test. at 49. SNET has shown both a willingness and the ability to compete for this segment of the market, attracting a much higher share of interstate customers than interstate revenues.[40]

To compete with SNET, AT&T sought authority to reduce its long distance rates specifically for Connecticut.[41] AT&T's stated reason for the petition was "the rapidly emerging competition from SNET in Connecticut."[42] AT&T thus effectively admitted that it faces more intense competition in Connecticut than elsewhere because the incumbent LEC has been allowed to enter the long distance market.[43]

The two geographic corridors running from New York City and Philadelphia to New Jersey offer another example in which incumbent LECs — in this case Bell Atlantic and NYNEX

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[40] See James Eisner & Peyton Wynns, Historical Patterns of Entry into Long Distance by Local Exchange Carriers, Industry Analysis Division, Common Carrier Bureau (FCC rel. Sept. 10, 1998), at 2 ("[T]he proportion of Connecticut's telephone lines presubscribed to SNET America in 1996 averaged about 25% but the calling volume on those lines accounted for only about 10% of total toll revenues.").

[41] See AT&T Comments, Market Definition, Separations, Rate Averaging and Rate Integration, at 29, Policy and Rules Concerning the Interstate, Interexchange Marketplace & Implementation of Section 254(g), CC Docket No. 96-61 (FCC filed Apr. 19, 1996) ("AT&T Rate Averaging Comments"); AT&T Corp.'s Petition for Reconsideration at 2-5, Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of § 254(g), CC Docket No. 96-61 (FCC filed Sept. 16, 1996) ("AT&T Petition for Reconsideration").

[42] AT&T Petition for Reconsideration at 2.

[43] See id. at 2-5; AT&T Rate Averaging Comments at 29.

— have competed in in-region, interLATA services by setting prices below those of the major carriers. AT&T concedes that Bell Atlantic's corridor rates are as much as one-third lower than AT&T's,[44] and credits Bell Atlantic's widespread marketing of "sav[ings] over AT&T's basic rates" for Bell Atlantic's 20 percent market share of interstate corridor calls.[45] AT&T and MCI sought permission to reduce their rates in these corridors precisely because they face more intense competition there than elsewhere.[46] Neither carrier, moreover, questions that consumers in these corridors are better off because of price competition from the incumbent BOC.[47]

2. Southwestern Bell Is Suited To Break Up the Interexchange Oligopoly in Missouri

Southwestern Bell will offer consumers these same sorts of competitive benefits when it provides in-region, interLATA service in Missouri. Southwestern Bell has an affirmative incentive to lower long distance prices in Missouri, because increased interLATA usage will increase usage of Southwestern Bell's access services as well. David Sibley and Dennis Weisman, who have investigated the economic incentives of BOCs that have interLATA operations, explain that Southwestern Bell likely "would not have incentives to discriminate

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[44] AT&T Corp.'s Petition for Waiver and Request for Expedited Consideration, Attach. A, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 (FCC filed Oct. 23, 1996) ("AT&T Waiver Petition").

[45] Id. at 3.

[46] See id. at 1, 5; MCI Comments at 1, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 (CPD filed Nov. 18, 1996) ("MCI Comments") (petitioning the Commission "so that [MCI] likewise will be in a position to benefit consumers by being able to compete effectively against Bell Atlantic and AT&T").

[47] See AT&T Waiver Petition at 5 (consumers in the corridors, unlike other areas, "benefit from the highest degree of competition possible"); MCI Comments at 3 ("fully support[ing]" AT&T's "arguments").

against rivals [in the interexchange business] but, in fact, to act in a pro-competitive manner" that protects Southwestern Bell's access revenues by increasing interLATA traffic. Sibley/Weisman 1997 Reply Aff. ¶ 27 (appended to Reply Brief of Southwestern Bell in CC Docket No. 97-121).

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 Test. at 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 Test. at 28-29. AT&T secured approval to acquire McCaw Cellular Communications in part on such grounds.[48]

Unlike smaller resellers currently in the market, Southwestern Bell has the size to negotiate substantial volume discounts from facilities-based interexchange carriers. Kahn & Tardiff Test. at 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.[49] 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 Test. at 35

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[48] Memorandum Opinion & Order, Applications of Craig O. McCaw, 9 FCC Rcd 5836, 5885, ¶ 83 (1994), aff'd sub nom. SBC Communications Inc. v. FCC 56 F.3d 1484 (D.C. Cir. 1995) ("McCaw Order").

& 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.[50] The Commission thus has supported developments that promise to speed the introduction of bundled services at the retail level. For example, AT&T's buyout of McCaw Cellular Communications was approved by the Commission in part because the Commission "would deny users the current and prospective benefits of bundling only if presented with a compelling public interest justification" for doing so. McCaw Order, 9 FCC Rcd at 5880, ¶ 75.

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[49] See Brandon & Schmalensee Test. at 31-33; Kahn & Tardiff at 20; see also McCaw Order, 9 FCC Rcd at 5871-72, ¶ 57 (AT&T's acquisition of McCaw would serve the public interest due to AT&T's brand name, financial strength, marketing experience, and technological know-how).

[50] McCaw Order, 9 FCC Rcd at 5879-80, ¶¶ 73-75; see also 142 Cong. Rec. S714 (daily ed. Feb. 1, 1996) (statements of Sen. Harkin) (1996 Act will allow "low cost integrated service, with the convenience of having only one vendor and one bill to deal with"); S. Rep. No. 104-23, at 43

Southwestern Bell will not be the only, or even the first, carrier to market bundled offerings, and it will have no unfair advantage in providing bundled packages. A study by the Yankee Group found that two-thirds of households are likely to sign up with one company for all their telecommunications services, with the majority choosing their current long distance carrier as that sole provider.[51] A similar study by Deloitte & Touche indicates that nearly 70 percent of business customers surveyed named interexchange carriers as their preferred provider of bundled, "one-stop shopping" services.[52] Given Southwestern Bell's satisfaction of the competitive checklist, and thus the openness of local markets in Missouri according to Congress's dispositive test, all other carriers have the same opportunity as Southwestern Bell to offer bundled packages of interLATA and intraLATA services. Indeed, the major interexchange carriers already are well down that road.[53] Even the smaller CLECs have begun offering bundled services, albeit only to the more lucrative business customers; they freely admit that the ability to bundle services currently is one of their biggest advantages over incumbent LECs.[54]

(1995) (joint offerings constitute a "significant competitive marketing tool"); Gordon Test. at 18 (bundled services one of the expected benefits from BOC entry into the interLATA market).

[51] Yankee Group Press Release, Yankee Group Survey Finds AT&T Is Top Choice for Consumers Interested in Single Communications Provider, Jan. 20, 1998.

[52] Deloitte & Touche Consulting Group, Fourth Annual Telecommunications Competition Survey: Business Users' Perspectives On Competition Issues 6 (1998). The study also stated that interexchange carriers were responsible for 80 percent of business customers' defections from incumbent LECs for the provision of local service. Id. at 4.

[53] MCI is offering long distance, cellular service, Internet access, and MCImetro local service on the same bill in some states. Gordon Test. at 18. AT&T has likewise established its own package of services called "AT&T.ALL." Id. at 18-19.

[54] See Residential Entry Debated: CLEC Executives at ALTS See Continued Buildouts, Dependence on New Capital, Communications Daily, May. 5, 1998, at 6.

Approval of Southwestern Bell's application also will lift remaining prohibitions on Southwestern Bell's participation in telecommunications equipment manufacturing and allow Southwestern Bell to pursue all opportunities in this area, subject to statutory and regulatory safeguards. See 47 U.S.C. § 273(a); Conference Report at 67 (allowing BOCs to engage in manufacturing will "foster[] competition . . . and creat[e] jobs along the way").

Finally, approval of this application would trigger "1+" intraLATA competition in Missouri, intensifying competition in the intraLATA toll market as well. Currently, allowing interexchange carriers to carry intraLATA toll traffic on a 1+ basis would put Southwestern Bell – which cannot even compete for the interexchange carriers' interLATA business – at an insurmountable disadvantage in toll markets. Only it could not offer dialing for all toll calls. At the time that Southwestern Bell enters the interLATA market in Missouri, however it will provide intraLATA dialing parity in the State and all interested carriers will have a full and fair opportunity to compete for all toll traffic. See 47 U.S.C. § 271(e)(2).

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 Test. at 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 Test. 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 Test. at 4-5. As noted above, moreover, if Southwestern Bell were to offer the same 14-cent per minute flat-rate in Missouri that it has proposed in Oklahoma, Missouri residential consumers will save $33 per year per line, or roughly $52 million per year in total. Brandon & Schmalensee Test. at 6, 49-50.

In other proceedings, the incumbent interexchange carriers and DOJ have questioned the magnitude of the consumer savings that will result from BOC entry into long distance. See DOJ South Carolina Evaluation at 48-49. The important thing, however, is the indisputable fact of significant consumer benefits from greater interLATA competition. Even the DOJ/AT&T consultant, Dr. Schwartz, "expect[s] price reductions." Schwartz Supplemental Aff. ¶ 77 (filed with DOJ South Carolina Evaluation). The exact number of billions of dollars of consumer benefits is nearly immaterial for purposes of this application, because the public interest requires that consumers be allowed to reap any possible benefits from competitive markets where, as here, there are no offsetting costs.

D. Southwestern Bell's Entry into the InterLATA Market, Subject to Extensive Statutory and Regulatory Safeguards, Presents No Risk to Competition

For all its potential strengths as a competitor, Southwestern Bell has absolutely no ability to impede competition by entering the interLATA market in Missouri. The 1996 Act and regulatory reforms have rendered 20-year-old worries about cross-subsidy and network discrimination obsolete.

1. Regulation and Practical Constraints Make "Leveraging" Strategies Impossible To Accomplish

In light of the federal and state safeguards that prevent Bell companies from engaging in anticompetitive conduct upon entering long distance, the FCC has held that the Bell companies should be regulated as non-dominant when they provide in-region, interLATA services.[55] It

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[55] Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, 12 FCC Rcd 15756 (1997) ("BOC Non-Dominance Order").

found that Bell companies could not drive other interexchange carriers from the market through cost misallocation, that federal and state price caps reduce incentives to misallocate costs, and that existing safeguards "will constrain a BOC's ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur." BOC Non-Dominance Order, 12 FCC Rcd at 15817, ¶ 105. The FCC likewise dismissed fears of predation against the established long distance incumbents, id. at 15819, ¶ 108; found that the numerous protections against discrimination will prevent Bell companies from gaining market power upon entry through such tactics, id. at 15821-26, ¶¶ 111-119; and concluded that any risk of price squeezes can be addressed through FCC procedures and the antitrust laws, id. at 15831-32, ¶¶ 128-129. Finally, the FCC recognized "that the entry of the BOC interLATA affiliates into the provision of in-region, interLATA services has the potential to increase price competition and lead to innovative new services and market efficiencies." Id. at 15835, ¶ 134.

Each of these conclusions is buttressed by the success that federal and state regulators have had in regulating the Bell companies over the years, as well as by the new, additional safeguards imposed by the 1996 Act and the FCC's implementing regulations.

a. Cost Misallocation. Theories that Southwestern Bell might shift costs incurred in providing interLATA services to local ratepayers, thereby giving itself a competitive edge as an interLATA carrier, are premised upon the assumption that Southwestern Bell "is regulated under rate-of-return regulation."[56] To cure this problem, the FCC has

[56] Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 18877, 18882-83, ¶ 7 (1996) ("Non-Accounting Safeguards NPRM"). DOJ contended in supporting approval of the MFJ that the Bell System's alleged practice of subsidizing its competitive

overhauled its approach to rate regulation, adopting a price cap regime that sets maximum rates almost entirely without regard to costs, thereby giving LECs "a powerful profit incentive" to cut the costs of their regulated services. National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993). There is no "reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce higher legal ceiling prices."[57] Indeed, the FCC has described price cap regulation as providing strong "efficiency incentives" to keep down costs allocated to regulated services.[58]

Congress nevertheless took steps to address supposed worries about possible cost misallocation. In 47 U.S.C. § 272, Congress sharply reduced opportunities for cost-shifting by requiring that BOCs provide long distance service through an affiliate that has separate facilities, employees, and record-keeping from the local telephone company. Congress reinforced

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offerings at ratepayers' expense "stem[med] . . . directly from AT&T's status as a rate of return regulated firm . . . " Competitive Impact Statement at 13, United States v. AT&T, No. 74-1698 (D.D.C. filed Feb. 10, 1982).

[57] Id.; see Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd, 18877, 18942-43, ¶ 136 (1996) ("Non-Accounting Safeguards NPRM") (Commission's price cap policies "reduce[] the potential that the BOCs would improperly allocate the costs of their affiliates' interLATA services").

[58] Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996; 11 FCC Rcd 17539, 17605-06, ¶ 145 (1996) ("Accounting Safeguards Order"); see also Illinois Pub. Telecomm. Ass'n v. FCC, 117 F.3d 555, 570 (D.C. Cir.) (under price caps "risk of losses" is borne by "investors rather than ratepayers"), clarified on reh'g, 123 F.3d 693 (D.C. Cir. 1997), cert. denied, 118 S. Ct. 1361 (1998). To the extent that improper cost-sharing may formerly have been a concern, see Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136, that concern is addressed by the Commission's decision to eliminate sharing entirely. Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers and Access Charge Reform, 12 FCC Rcd 16642, 16699-703, ¶¶ 147-155 (1997).

structural separation with demanding accounting requirements. See 47 U.S.C. § 272(d). The FCC likewise has expressed confidence in the efficacy of structural separation in various contexts.[59]

Beyond this statutory requirement, the FCC has explained that its preexisting "cost allocation and affiliate transactions rules, in combination with audits, tariff review, and the complaint process, have proven successful at protecting regulated ratepayers from bearing the risks and costs of incumbent local exchange carriers' competitive ventures." Accounting Safeguards Order, 11 FCC Rcd at 17550-51, ¶ 25. The FCC reasoned that these rules together "will effectively prevent predatory behavior that might result from cross-subsidization," and that because they "have proven generally effective" there was "no reason to require a change to a different system." Id. at 17551, ¶ 28, 17586, ¶ 108.[60]

At the state level, legislators and regulators have an "overwhelming concern for keeping the rates for local residential service low," and consequently have a powerful reason to prevent cost-shifting from unregulated activities to regulated telephone services. United States v. Western Elec. Co., 993 F.2d 1572, 1581 (D.C. Cir.), cert. denied, 510 U.S. 984 (1993). Like the FCC, Missouri has abandoned rate-of-return regulation in favor of a price cap plan governing

[59] Report and Order, Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Sys., 86 F.C.C.2d 469, 494, ¶ 50 (1981) (cellular); Final Decision, Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384, 453, ¶ 177 (1980) (Bell System), aff'd sub nom. Computer & Communications Indus. Ass'n v. FCC, 693 F.2d 198, 211 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

[60] See also First Report and Order, Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line

Southwestern Bell's intrastate rates. Report and Order, Petition for Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation, No. TO-97-397 (Mo. PSC Sept. 16, 1997); Bailey Test. at 7. Additionally, the PSC requires Southwestern Bell to follow the FCC's Uniform System of Accounts and Part 32 rules. 4 CSR 240-30.040; see also MO Rev. Stat. § 392.210 (1997) ("the form of such reports shall follow, as nearly as may be, the form prescribed by the Federal Communications Commission").

b. Other Pricing Strategies. Just as cost misallocation would be impossible to accomplish, Southwestern Bell would not and could not raise the cost of its access services in an effort to effectuate a "price squeeze" on other interexchange carriers.[61] The FCC has cited a host of factors that "constrain the ability of a BOC or its interLATA affiliate to engage in a predatory price squeeze," and concluded that BOCs "will not be able to engage in a price squeeze to such an extent that the BOC interLATA affiliates will have the ability, upon entry or soon thereafter, to raise price by restricting their own output." See BOC Non-Dominance Order, 12 FCC Rcd at 15832, ¶ 129; see also Access Reform Order, 12 FCC Rcd at 16101, ¶ 278 ("we have in place adequate safeguards against such conduct."). The Commission has found that interexchange carriers' ability to acquire retail services at wholesale rates and to buy unbundled network elements is itself sufficient to enable those competitors "to defeat" an

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Charges; 12 FCC Rcd 15982, 16104, ¶ 283 (1997) ("Access Reform Order") (price caps protect against cross-subsidization).

[61] See generally Town of Concord v. Boston Edison Co., 915 F.2d 17, 18 (1st Cir. 1990) (per Breyer, J.) (discussing theory of price squeezes), cert. denied, 499 U.S. 931 (1991).

attempted price squeeze.[62] The Commission likewise has concluded that a strategy of providing long distance services below cost to drive out competitors could not be profitable for Bell companies because losses incurred in predation could not later be recovered through supra-competitive pricing. BOC Non-Dominance Order, 12 FCC Rcd at 15815-16, ¶ 104, 15819, ¶ 108; see also Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18943-44, ¶ 137.

Wholly aside from regulatory safeguards, "predatory pricing schemes are rarely tried, and even more rarely successful." Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 226 (1993) (citations omitted). In an industry with standardized technologies and sophisticated, well-financed incumbents who have made mammoth sunk investments, any attempt at predatory pricing would be doomed. Kahn & Tardiff Test. at 38. Even AT&T has conceded that "there is little reason to fear that a BOC could monopolize the interexchange market" by driving the major incumbents out of business.[63]

c. Price Discrimination. Perhaps the weakest of all theories advanced by those with a vested interest in delaying interLATA competition is that BOCs might discriminate in the pricing of their exchange access services. The FCC has for years "require[d] any exchange carrier offering interexchange service to impute to itself the same costs that it uses to develop the access rates that it charges its interexchange customers." Order on Reconsideration, Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 2637,

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[62] Memorandum Opinion & Order, Applications of Pacific Telesis Group, Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control, 12 FCC Rcd 2624, 2649, ¶ 54 (1997).

2714, ¶ 168 (1991). Consistent with that regulatory requirement, Congress specifically provided that a BOC must charge its affiliate, or impute to itself, "an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service." 47 U.S.C. § 272(e)(3). The FCC thus rightly has concluded that "the statutory and regulatory safeguards . . . will prevent a BOC from discriminating to such an extent that its interLATA affiliate would have the ability, upon entry or shortly thereafter, to raise the price of in-region, interstate, domestic, interLATA services." BOC Non-Dominance Order, 12 FCC Rcd at 15825, ¶ 119.

d. Technical Discrimination. Theories that Southwestern Bell might impede competition by engaging in technical discrimination are equally unfounded. AT&T/TCG/TCI/British Telecom, MCI WorldCom/MFS, and Sprint/Centel/Deutsche Telekom/France Telecom are sophisticated, vertically integrated goliaths with revenues much greater than Southwestern Bell's, and with the expertise and resources to detect and challenge systematic discrimination. Cf. Western Elec. Co., 993 F.2d at 1580 ("[I]nformation service giants operating throughout the country, such as IBM, AT&T and GE, will notice any discrepancies in treatment by the various BOCs and will have the capacity and incentive to bring anticompetitive conduct to the attention of regulatory agencies.").

Indeed, to state how discrimination against them would have to occur is virtually to prove its impossibility: In order to gain an anticompetitive edge, Southwestern Bell would have to

[63] AT&T's Opposition to Ameritech's Motions for "Permanent" and "Temporary" Waivers from the Interexchange Restriction of Decree at 26, United States v. Western Elec. Co., No. 82-0192 (DOJ filed Feb. 15, 1994).

provide inferior access services to its major competitors without disrupting its own local or long distance services, in a fashion that cannot be proved by other interexchange carriers or detected by regulators, yet is so apparent to customers that it drives them to switch to Southwestern Bell's long distance service, but not the service of some other competitor. See id. at 1579 (noting that discrimination is unlikely where "customers could readily shift to the BOC's larger competitors"). When one considers these realities, it is not surprising that incumbent interexchange carriers never have produced specifics (much less hard evidence) as to the precise form hypothetical future discrimination would take, how it is feasible, what effect it would have on consumer decision-making, what costs it would impose on interexchange carriers, or how it would reduce competition and increase prices. Competitively meaningful discrimination simply cannot go undetected.

Furthermore, Southwestern Bell has been providing exchange access services to the long distance industry for more than a dozen years. From a technical standpoint, Southwestern Bell cannot discriminate against these carriers, or CLECs who might serve them and any such attempts would be easily detected through routine monitoring procedures. Deere Test. at 84-101. As the FCC has put it, "sufficient mechanisms already exist within the 1996 Act both to deter anticompetitive behavior and to facilitate the detection of potential violations of section 272 requirements."[64] Indeed, the FCC explained that "the reporting requirements required by the

[64] First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 21905, 22060, ¶ 321 (1996) ("Non-Accounting Safeguards Order"), on recon., 12 FCC Rcd 2297 (1997), further recon. 12 FCC Rcd 8653 (1997), aff'd sub nom. Bell Atlantic Tel. Co. v. FCC, 131 F.3d 1044 (D.C. Cir. 1997).

1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between Bell companies and competing carriers will collectively minimize the potential for anticompetitive conduct by the Bell Company in its interexchange operations. In addition to deterring potential anticompetitive behavior, these information disclosures will also facilitate detection of potential violations of the section 272 requirements." Non-Accounting Safeguards Order at 22063, ¶ 327.

Suggestions that a Bell company might seek to slow-roll interexchange carriers in developing and implementing new access arrangements are equally unfounded. The 1996 Act provides that a Bell company "may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards," 47 U.S.C. § 272(c)(1); must "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates," id. § 272(e)(1); and may not provide facilities, services, or information concerning exchange access to its long distance affiliate unless they are made available to other providers of interLATA service on the same terms and conditions, id. § 272(e)(2), (4).

Regulators should have no trouble enforcing these requirements. Gordon Test. at 20-21. Existing rules relating to enhanced services and customer premises equipment currently protect against analogous discrimination. Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18915-16, ¶ 75. Moreover, access revenues account for approximately 33.6 percent of Southwestern

Bell's total operating revenues.[65] Southwestern Bell thus has an affirmative incentive to provide higher-quality or lower-cost access to interexchange carriers, so as to increase demand for its exchange access services and avoid the loss of access revenues that would result if interexchange carriers provided their own access services or obtained access services from a facilities-based competitor to Southwestern Bell. See Brandon & Schmalensee Test. at 38-42. All that will be required in the context of new exchange access arrangements is an evolution of existing, routinized, and mutually advantageous arrangements between interexchange carriers and Southwestern Bell, which leave no room or reason for misconduct.

e. Misuse of Confidential Information. Section 272(c)(1) prohibits a BOC from discriminating "in the provision or procurement of goods, services, facilities, or information." The Commission has interpreted "information" in section 272(c)(1) to include network disclosure information. Non-Accounting Safeguards Order, 11 FCC Rcd at 22010, ¶ 222. Accordingly, a BOC must make such information available to other interexchange carriers on the same terms and conditions as its own long distance affiliate. Id. In its recent rulemaking implementing the customer privacy requirements of 47 U.S.C. § 222, moreover, the FCC determined that the safeguards established by that section appropriately address potential anticompetitive use of CPNI by a Bell company offering in-region, interLATA services.[66] Southwestern Bell will fully comply with the requirements of 27 U.S.C. § 222 in its use of CPNI.

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[65] Federal Communications Comm'n, Statistics of Communications Common Carriers 76 (1996-97 ed.).

[66] Second Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary

f. Penalties. In light of its inability to engage in cost misallocation or any form of discrimination, there simply would be no reason for Southwestern Bell to risk the substantial penalties likely to follow such a fruitless endeavor. If Southwestern Bell were to violate any provision of the Communications Act it would be required to pay civil fines, 47 U.S.C. § 202(c), and would be liable to injured parties for the amount of their injuries plus attorneys' fees, id. §§ 206-207. In addition, section 220(e) of the Communications Act imposes criminal penalties for false entries in the books of a common carrier — a strong deterrent against purposeful violations of the accounting requirements described above. Sections 501 through 504 provide additional penalties — including imprisonment, fines, and forfeiture — for knowing violations of any statutory or regulatory provision. Moreover, if the FCC determines that Southwestern Bell "has ceased to meet any of the conditions required for" interLATA entry, it may revoke interLATA authority under section 271(d)(6).[67]

All of the Act's and the FCC's specific protections are backed up by federal and state antitrust laws. The weighty corporate and personal penalties (including imprisonment) that may be levied against violators of the antitrust laws, combined with the near impossibility of keeping

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Network Information and Other Customer Information, 13 FCC Rcd 8061, 8172-179, ¶¶ 155-169 (1998).

[67] The FCC has ruled that, once a complainant makes a prima facie showing that a BOC has "ceased to meet the conditions of entry," the burden shifts to the BOC to produce evidence of its compliance. Non-Accounting Safeguards Order, 11 FCC Rcd at 22072, ¶ 345. This is a complete answer to claims that discrimination and cross-subsidy, even though detectable, might be hard for rival interexchange carriers to prove.

systematic discrimination or cost-shifting secret, make it most unlikely that Southwestern Bell managers would order unlawful practices.[68]

2. *Actual Experience with LEC Participation in Adjacent Markets Disproves Theories about Anticompetitive Potential*

Southwestern Bell's inability to raise prices or restrict output as an interexchange carrier in Missouri is confirmed by more than a decade of experience with LEC entry into markets adjacent to the local exchange, including, in some instances, long distance service. As noted earlier, LECs have competed fairly and effectively where they have been permitted to offer long distance. One would not have expected such competitive benefits based on the doomsday predictions of potential competitors, which were of the same ilk as the arguments they will make in opposing this application.

The New Jersey Corridors. When NYNEX and Bell Atlantic sought permission to operate as interexchange carriers in limited geographic corridors during the early 1980s, the district court credited suggestions that allowing such service would give "the Operating Companies the same incentive to discriminate against the new entrants that they had while part of the integrated Bell System," and that it "may be tantamount to giving to the Operating Companies a monopoly over certain interstate traffic." United States v. Western Elec. Co., 569 F. Supp. 990, 1018 n.142, 1023 (D.D.C. 1983). However, these merged companies do not dominate the corridor traffic. By AT&T's own account, Bell Atlantic has less than 20 percent of the corridor business. AT&T Waiver Petition at 3. AT&T and MCI have sought authority to

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[68] See, e.g., 15 U.S.C. §§ 1, 2 (Sherman Act); United States Sentencing Comm'n, Guidelines Manual § 2R1.1 (requiring prison sentences for a number of antitrust violations).

lower their long distance rates in the corridors while they raise them elsewhere, not because of any leveraging of local "bottlenecks," but rather because their prices are being undercut. See id. at 5; MCI Comments at 3. Disproving the predictions of potential competitors, Bell Atlantic and NYNEX have benefited consumers by lowering prices.

GTE/Sprint. GTE's ownership of Sprint proves the same point on a larger scale. As the fourth largest LEC and the incumbent carrier across large geographic areas, GTE had the same theoretical incentives to impede interexchange competition as would a BOC entering the long distance market today. See United States v. Western Elec. Co., 993 F.2d at 1579 (explaining relevance of GTE experience). Indeed, when seeking to place conditions on GTE's purchase of Sprint in 1984, the DOJ argued that, because GTE "provide[d] in the same market both local monopoly telecommunications services and competitive long distance services," it necessarily would have "the incentive and the ability to foreclose or to impede competition in the competitive (or potentially competitive) market by discriminating in favor of its own long distance carrier." United States v. GTE Corp., 603 F. Supp. 730, 732 (D.D.C. 1984).

Yet, after the acquisition was completed, Sprint never was able to accumulate disproportionate market share in areas served by a GTE telephone company. Even AT&T and MCI have had to concede that GTE's so-called "bottleneck" power in the local exchange never enabled it to "achieve market power" in its in-region, interLATA market.[69] Indeed, GTE sold Sprint in three installments between 1986 and 1992.

[69] MCI's Initial Comments to the Department of Justice Concerning the Motion to Vacate the Judgment and NYNEX's Request to Provide Interexchange Service in New York State at 58, United States v. Western Elec. Co., No. 82-0192 (D.D.C. filed Dec. 9, 1994); see AT&T's

Cellular Services. Given that cellular carriers and interexchange carriers have similar local interconnection requirements, Bell companies have had essentially the same incentive and ability to act anticompetitively against rival cellular carriers as they would have to act anticompetitively against other interexchange carriers in in-region states. See Kahn & Tardiff Test. at 65-66. As with interexchange carriers, moreover, predictions of future harm to the public interest preceded Bell company participation in the cellular business.[70]

Yet, this theoretical incentive of wireline carriers to inhibit cellular growth has not created any actual problems. The Commission has confirmed "the infrequency of interconnection problems" between LECs and unaffiliated cellular providers. Report and Order, Eligibility for the Specialized Mobile Radio Servs., 10 FCC Rcd 6280, 6293, ¶ 22 (1995). Indeed, "the wireless communications business is one in which relatively small, entrepreneurial competitors have often been as successful as . . . the BOCs." McCaw Order, 9 FCC Rcd at 5861-62, ¶ 38.

The Bell companies, who would know if incumbent local telephone companies could give their cellular affiliates an unfair competitive edge, have invested heavily in cellular systems

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Opposition to the Four RBOCs' Motion to Vacate the Decree at 159, United States v. Western Elec. Co., No. 82-0192 (D.D.C. filed Dec. 7, 1994).

[70] See, e.g., 825-845 MHz Inquiry, 86 F.C.C.2d at 469, 530-31, 540-43, 550-51, 643 (summarizing comments of Millicom, Telocator, and the DOJ); Gordon Test. at 27 ("It is worth emphasizing . . . that BOCs have not discriminated in the cellular market where they control a required input and an affiliate competes against unaffiliated companies. The local exchange carrier in those markets clearly has not favored the BOC's affiliated cellular company, even though they theoretically would have the incentive to do so. If BOCs were favoring their affiliated cellular providers, presumably the BOCs themselves would be reluctant to provide cellular service in other regions where they would be competing against the wireline carrier's affiliate.").

that compete with the incumbent LECs' systems. Kahn & Tardiff Test. at 66. Such investments would not have been made if Bell companies really believed that LECs can frustrate fair competition. Even AT&T effectively has agreed that the Bell companies have no ability to overwhelm competitors in wireless; it bought the nation's largest cellular carrier and has invested billions more for PCS licenses, investments that would not make sense if the incumbent LEC had a clear edge. Id. at 66.

E. The Effect of Southwestern Bell's Entry on Local Competition

Even if the Commission were to focus on local competition rather than the critical interLATA issues, it would have to find that approving Southwestern Bell's application is in the public interest. All potential entrants will have to compete more intensely for local business in Missouri once Southwestern Bell is able to offer attractive bundled packages of local and long distance service, but this is especially true for the major interexchange carriers. The fear of losing long distance profits to Southwestern Bell once Southwestern Bell is able to be a one-stop provider will no doubt speed the entrance of the major interexchange carriers into the local markets. See Gordon Test. at 19. As the Oklahoma Corporation Commission determined in connection with section 271 relief in that state, "once full long distance competition is opened up in Oklahoma, the major competitive providers of local exchange service will take notice and adjust their respective business plans to move Oklahoma closer to the top of their schedules, resulting in faster and broader local exchange competition for Oklahoma consumers."[71] The

[71] Comments of the Oklahoma Corporation Commission at 11, Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121 (FCC filed May 1, 1997).

FCC itself has recognized that, as a general matter, Bell company entry into interLATA services "would surely give long distance carriers an added incentive to enter the local market." South Carolina Order, 13 FCC Rcd at 552-53 ¶ 25.[72]

Nor could Southwestern Bell "backslide" on its firmly established steps to open the local telephone business. Southwestern Bell has made irreversible investments in opening the local market, has developed a track record of performance, and instituted extensive system changes and performance measurements. In addition, the substantive requirements of the 1996 Act, as well as FCC and Missouri PSC orders implementing those sections — not to mention the antitrust laws — will fully apply to Southwestern Bell's local operations, just as they govern the operations of other incumbent LECs. Section 271(d)(6) also gives the FCC special tools to ensure Southwestern Bell's continued compliance with the prerequisites of interLATA relief. If Southwestern Bell failed to meet any of its statutory or Commission-imposed obligations, CLECs that closely monitor Southwestern Bell's performance would no doubt report those violations to the FCC, the Missouri PSC, or the courts.

Delaying section 271 relief in Missouri would deny consumers added choice and competitive benefits in the interLATA market. There would be no offsetting benefits (but rather,

[72] In its South Carolina Order, the FCC determined that interexchange carriers might not be able to enter the local market because BellSouth had not satisfied all checklist requirements. As explained in Part II of this Brief, however, the same cannot be said of Southwestern Bell in Missouri.

parallel consumer losses) in the local market. As the former Chairman of the FCC has put it, "[c]ompetition delayed is competition denied."[73]

CONCLUSION

Southwestern Bell has opened its local markets in Missouri to competition and provided CLECs with products and services covering all fourteen checklist items. Approving this application will acknowledge that Southwestern Bell has complied with the requirements of the Act and therefore is entitled to offer interLATA services in Missouri.

More important, however, granting this application will bring consumers in Missouri the full rewards from competition contemplated by Congress. While both residential and business customers in Missouri currently are benefiting from local competition, these benefits will remain partial and incomplete until consumers also have unfettered choice of long distance providers. The application should be granted.

[73] Separate Statement of Chairman Reed Hundt at 6, Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, 12 FCC Rcd 16436, 16507 (1997).

Respectfully submitted,

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JAMES D. ELLIS
MARTIN E. GRAMBOW
PAUL K. MANCINI
KELLY M. MURRAY
175 E. Houston
San Antonio, Texas 78205
(210) 351-3449
Counsel for SBC Communications Inc.

ROBERT M. LYNCH
DURWARD D. DUPRE
MICHAEL J. ZPEVAK
One Bell Plaza
Dallas, Texas 75202
(214) 464-4244
PAUL G. LANE
One Bell Center
Room 3520
St. Louis, Missouri 63101
Counsel for Southwestern Bell Telephone Company

MICHAEL K. KELLOGG
AUSTIN C. SCHLICK
WILLIAM B. PETERSEN
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
1301 K Street, N.W.
Suite 1000 West
Washington, DC 20005
(202) 326-7900
Counsel for SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Long Distance

________________, 1999

DIRECT TESTIMONY INCLUDED IN ACCOMPANYING BINDERS

____
(Name of Company)

Implementation Schedule

Please indicate below the month/year you started or plan to begin providing local telephone exchange service in Missouri.

Resale				Using CLEC Facilities (Excluding UNEs)				Using CLEC Facilities (Including UNEs)			
Residential Customer		Business Customer		Residential Customer		Business Customer		Residential Customer		Business Customer	
Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year

1998 Local Service Projection

Please provide your best estimate of the cumulative number of customers and lines you serve or plan to serve in Missouri during 1998.

	Resale				Using CLEC Facilities (Excluding UNEs)				Using CLEC Facilities (Including UNEs)			
	Residential		Business		Residential		Business		Residential		Business	
	# Cust.	# Lines	# Cust.	# Lines	# Cust.	# Lines	# Cust.	# Lines	# Cust.	# Lines	# Cust.	# Lines
October												
November												
December												

1999 Local Service Projection

Please provide your best estimate of the cumulative number of customers and lines you plan to serve in Missouri during 1999.

	Resale				Using CLEC Facilities (Excluding UNEs)				Using CLEC Facilities (Including UNEs)			
	Residential		Business		Residential		Business		Residential		Business	
	# Cust.	# Lines	# Cust.	# Lines	# Cust.	# Lines	# Cust.	# Lines	# Cust.	# Lines	# Cust.	# Lines
January												
February												
March												
April												
May												
June												
July												
August												
September												
October												
November												
December												

Please identify the geographic areas of the state where your company is currently offering local service to:

(1) Residential subscribers: ______________________________

____

(2) Business subscribers: ______________________________

____

Requests for Information

Please provide answers to all of the following requests for information in writing, no later than ____________________, 1997. Provide your responses to:

____
Missouri Public Service Commission
301 West High Street, Floor 5A
P.O. Box 360
Jefferson City, Missouri 63101

1. State the legal name of your company and, if different form the formal name of your company, state all other names your company has used, is using, or intends to use in providing local telephone service to Missouri customers.

2. Is your company certified by the Missouri Pubic Service Commission (PSC) to provide local exchange service in Missouri?

3. Identify the service territory your company is certified by the PSC to serve.

4. State the date your company commenced offering local residential telephone service, other than exchange access, to subscribers in Missouri. If your company has not commenced offering such local residential telephone service to subscribers in Missouri, state separately the dates your company expects to commence offering residential resale and/or residential facilities-based local service to customers in Missouri.

5. State the date your company commenced offering local business telephone service, other than exchange access to subscribers in Missouri. If your company has not commenced offering such local business telephone service to subscribers in Missouri, state separately the dates your company expects to commence offering business resale and/or business facilities-based local service to customers in Missouri.

6. Has your company provided or is your company providing local service on a test basis to any individuals or business in Missouri? If so, describe when such test commenced, when it was completed (or when it is expected to be completed), what information was learned from the test and how many individuals and/or businesses participated in the test.

7. Has your company provided or is your company providing local service without charge to any individuals or businesses in Missouri? If so, indicate how many individuals and/or businesses have received or are receiving free service and state why service has been or is being provided without charge.

8. How many residential local telephone subscribers and lines is your company serving in Missouri?

   A. Of these, how many subscribers and lines are being served on a resale basis?

   B. Of these, how many subscribers and lines are being served through unbundled network elements? From which incumbent LEC are you receiving unbundled network elements?

   C. Of these, how many are being served by means of your company's facilities, either in whole or in part?

9. How many business local telephone subscribers and lines is your company serving?

   A. Of these, how many subscribers and lines are being served on a resale basis?

   B. Of these, how many subscribers and lines are being served through unbundled network elements? From which incumbent LEC are you receiving unbundled network elements?

   C. Of these, how many are being served by means of your company's facilities, either in whole or in part?

10. Has your company requested collocation facilities from an incumbent LEC, either in Missouri or in any other state? If so, please identify the incumbent LEC.

11. Has the incumbent LEC(s) provided you with the collocation facilities you requested? If yes, for what are the facilities being used (e.g. local residential and/or business)? If the collocation facilities you have requested have not been provided by the incumbent LEC, what is the stated reason for the failure to provide the facilities?

12. If your company is not offering local residential service on either a resale basis or facility basis in Missouri, identify why your company is not offering this service.

13. Provide a copy of all written promotional materials (including, but not limited to, brochures, advertisements, etc.) describing:

   A. the service your company offers business local subscribers in Missouri; and

   B. the service your company offers residential local subscribers in Missouri.

14. Provide a copy of the text of all radio and television promotional materials describing the services:

    A. your company offers business local subscribers in Missouri; and

    B. your company offers residential local subscribers in Missouri.

15. Identify the total number, type and location of central office switches your company owns or controls, which serve Missouri customers.

16. Provide information regarding any complaint your company has against any incumbent LEC with regard to its compliance with the federal Telecommunications Act of 1996 or the PSC rules, that has been filed with the PSC or with the Federal Communications Commission regarding the incumbent's operations in Missouri. With regard to each such complaint state:

    A. The name of the incumbent LEC against whom the complaint was made;

    B. A description of the issue in dispute in each such case;

    C. When, where and by whom each such complaint was filed; and

    D. The current status of each such complaint.

17. Identify with specificity all facilities your company has placed in service in Missouri that can be used to provide local telephone service.

18. Identify all facilities your company plans to place in service in Missouri in the next 12 months that will be used to provide local telephone service. Also, provide the expected date each facility will be placed in service.

19. Identify all local services your company provides to subscribers at rates different than set forth in your company's tariffs approved by the PSC. State the tariffed rate for each such service, the actual rate charged and state all reasons why the tariffed rate is not being charged.

20. If your company has fiber facilities in place in Missouri, state whether any residential customers (single family or multiple dwelling units) are located within 1,000 feet of those facilities. If so, are your offering or providing service to any such residential customers? If not, state all reasons why you are not.

21. Please provide a proposed implementation schedule for the provision of local telephone service by your company in Missouri. This schedule should include:

A. When your company started or will start providing local telephone service to residential customers and on what basis (e.g., resale, facility-based and/or through the purchase of unbundled network elements).

B. When your company started or will start providing local telephone service to business customers and on what basis (e.g., resale, facility based, and/or by the purchase of unbundled network elements).

22. Provide a copy of your company's current business plan(s) for providing local telephone service in Missouri.

23. State whether your company has offered to provide local telephone service to any customer in Missouri located outside of your company's approved service territory. If so, identify the customer(s) and provide all reasons why your company has not filed an application to amend its approved service territory to include the customer(s) involved.

24. Has your company requested unbundled network elements from an incumbent LEC, either in Missouri or any other state? If so, identify the incumbent LEC the request was made upon.

25. Did your company receive the requested unbundled network elements? If so, identify the elements your company is obtaining. If not, state why not.

26. Has your company requested access to poles, ducts, conduits and/or rights-of-way from an incumbent LEC(s), either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

27. Did your company receive the requested access to poles, ducts, conduits, and/or rights-of-way from the incumbent LEC(s) mentioned above? If not, state why not.

28. Has your company requested local loop transmission from SWBT or any other incumbent LEC(s) from one or more of its central offices to your company's customers' premises, either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

29. Did your company receive the requested local loop transmission from any SWBT or any other incumbent LEC(s) central office to your company's customers' premises? If not, state why not.

30. Has your Company requested local transport from SWBT or any other incumbent LEC(s) unbundled from switching or other services, either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

31. Did your company receive the requested local transport from the trunk side of SWBT or any other incumbent LEC(s), unbundled from switching or other services? If not, state why.

32. Has your company requested local switching unbundled from transport local loop transmission or other services from SWBT or any other incumbent LEC(s), either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

33. Did your company receive the requested local switching from SWBT or any other incumbent LEC(s), unbudled from transport, local loop transmission or other services? If not, state why not.

34. Has your company requested 911 or E911 services from SWBT or any other incumbent LEC(s), either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

35. Did your company receive the requested access to 911 and/or E911 services? If not, state why not.

36. Has your company requested directory assistance services from SWBT or any other incumbent LEC(s), either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

37. Did your company receive the requested directory assistance services? If not, state why not.

38. Has your company requested operator call completion services from SWBT or any other incumbent LEC(s), either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

39. Did your company receive the requested operator call completion services? If not, state why not.

40. Has your company requested white pages directory listings from SWBT or any other incumbent LEC(s), either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

41. Did your company receive the requested white pages directory listings? If not, state why not.

42. Has your company requested interim number protability from SWBT or any other incumbent LEC(s), either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

43. Did your company receive the requested interim number portability? If not, state why not.

44. Has your company requested access to SWBT's or any other incumbent LEC(s) databases and associated signaling necessary for call routing and completion, either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

45. Did your company receive the requested access to the databases and associated signaling necessary for call routing and completion? If not, state why not.

46. Has your company requested telephone numbers from SWBT or any other incumbent LEC(s) for assignment to your customers, either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

47. Did your company receive the requested telephone number assignments to your customers? If not, state why not.

48. Has your company requested SWBT or any other incumbent LEC(s) to provide your company with access to the services and information necessary to allow your company to implement local dialing parity, either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

49. Did your company receive the requested local dialing parity? If not, state why not.

50. Has your company requested from SWBT or any other incumbent LEC(s) a reciprocal compensation arrangement for the transport and termination of traffic, either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

51. Has your company entered into a reciprocal compensation arrangement with SWBT or any other incumbent LEC(s) for the transport and termination of traffic, either in Missouri or any other state? If not, state why not. If so, identify the incumbent LEC upon which the request was made.

52. Has your company requested telecommunications services from SWBT or any other incumbent LEC(s) for purposes of resale, either in Missouri or any other state? If so, identify the incumbent LEC upon which the request was made.

53. Did your company receive the requested telecommunications services for purposes of resale? If not, state why not.

54. State whether your company believes, with respect to your company alone, SWBT has taken all of the operational and technical steps necessary to fully implement each of the requirements of the competitive checklist set forth in Section 271 of the federal Telecommunications Act of 1996. If your company believes, with respect to your company alone, that one or more checklist requirements are not being met by SWBT, identify each such checklist requirement and state in detail why your company believes SWBT has not complied with it.