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November 26, 1997

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65101

Re: Case Number TO-98-115

Dear Judge Roberts:

Attached for filing with the Commission is the original and fifteen (15) copies of AT&T Communications of the Southwest, Inc.'s Responses to Recommendations of the Special Master and Entry of Appearance for Kevin K. Zarling in the above referenced case.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

LATHROP & GAGE, L.C.

By: Paul S. DeFord (pje)
Paul S. DeFord

cc: All Parties of Record

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Second Compulsory Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company	))))))	**CASE NO. TO-98-115**

COMES NOW AT&T Communications of the Southwest, Inc., and files these comments on the recommendations of the Commission's Special Master and Arbitration Advisory Staff ("AAS") in the above-referenced proceeding, and would respectfully state as follows:

INTRODUCTORY COMMENTS

As an initial matter, AT&T wishes to acknowledge the hard work of the Special Master and AAS in producing their recommendations. The Special Master and AAS sifted through not only voluminous prefiled testimony, but the lengthy oral arguments of the Parties as well, and the recommendations reflect the Special Master's and AAS' diligent efforts to achieve a thorough understanding and careful consideration of the complex legal and policy issues at stake in this arbitration. The Commission's Procedural Order in this arbitration required the Staff and the Parties to engage in a relatively novel process, and AT&T, for one, believes the process worked well. The number of settled issues produced as a result of the proceeding before the Special Master and AAS is the most obvious example of how well the process worked. Approximately 157 out of an initial 203 issues were settled or withdrawn, due in large part to the efforts of the Special Master and AAS. Even on issues that were not settled, the Parties frequently managed to modify their proposed contract language so as to narrow the dispute and make the language, while not agreeable, at least less objectionable to the other Party. Regardless of the ultimate

decisions in this arbitration, AT&T encourages the Commission to consider using the Special Master process in the future for subsequent arbitrations and for the resolution of issues that are certain to arise in the implementation of interconnection agreements.

In general, AT&T supports the recommendations of the Special Master and AAS. Naturally, AT&T is most supportive of those recommendations which adopt AT&T's proposed contract language, and many of the comments herein are intended to provide further support for those recommendations. AT&T's proposed contract language will result in an interconnection agreement that will provide AT&T with a fair and legal foundation from which to enter into local exchange competition in Missouri. In addition, AT&T does comment on some, but not all, of the recommendations which favor Southwestern Bell Telephone Company ("SWBT"). The time and page limits placed upon these comments do not permit AT&T to address each and every recommendation. Consequently, failure to specifically address a particular recommendation that agrees with AT&T's position should not be viewed as particularly significant. Similarly, failure to specifically oppose a recommendation that agrees with SWBT's position should not be viewed as acquiescence or abandonment of AT&T's position.

AT&T's comments, where applicable, are presented in order under the section numbers for each substantive area, i.e., "IV. UNE Parity," as found in the Parties' testimony. AT&T has not listed section numbers where it has no comments. AT&T's position on each issue in this arbitration has not changed from the position stated in AT&T's prefiled testimony, unless the issue has been settled as reflected in the Settlement document filed November 21, 1997, or unless such change is specifically discussed herein.

III. OPERATIONAL ISSUES

Issue 1: Interim Access to EASE for UNE Ordering

AT&T requests the Commission to approve AT&T's proposed language on this issue, contrary to the recommendations of the Special Master. AT&T seeks interim access to EASE for UNE ordering that will be largely complementary to, not duplicative of, its interim access to LEX. AT&T seeks to use EASE on an interim basis to order UNE loop with port combinations to provision retail service in competition with the retail POTS service that SWBT provisions over EASE. This interim access to EASE, as well as to LEX, is important for several reasons.

EASE has been tested and is working to provision Texas resale customers with little or no manual work on the SWBT side of the interface. LEX is a new system, untested between SWBT and AT&T, that requires manual processing on both sides of the interface. AT&T only recently has gained access to SWBT's off-the-shelf version of LEX, and there has been limited time to complete testing and to address any problems associated with AT&T's use of LEX. AT&T still does not know whether LEX will provide a satisfactory interface for interim UNE orders for an unbundled analog 8db loop together with an unbundled analog switch port, the paradigm order type that will be used to effect a CLEC simple conversion to UNE-based POTS service.

What AT&T does know is that SWBT has said that LEX will not provide flow-through capability for UNE orders. Thus, LEX will at best be inferior at processing UNE loop with port orders to the EASE interface that SWBT uses to provision retail POTS service, which also uses loops with ports. On the other hand, EASE is itself only a partial interim UNE solution. EASE can meet the parties' needs for processing loop with port orders pending reasonable completion of the EDI interface. EASE would not be suitable for ordering individual elements without substantial redevelopment work, which AT&T does not seek to require. For ordering individual

UNEs and for more complex business orders, AT&T will continue to need interim access to LEX.[1]

Because time is short, because LEX is new and untested, because EASE for UNE ordering is untested, because neither LEX nor EASE has been applied to UNE ordering in commercial volumes, it makes sense for AT&T to have the option of using whichever of the two interfaces offers the greater prospect for working well for particular UNE order types on a commercial scale. The contract language proposed by AT&T would allow for that option. Without that option, unresolved problems with LEX could force AT&T to choose between deferral of UNE-based market entry and risking customer dissatisfaction with AT&T's new service as a result of SWBT's interface. No new entrant should face that choice unnecessarily. AT&T requests approval of its proposed language.

Presented with this same issue, the Texas Public Utility Commission has ordered the parties to include language in a revised interconnection agreement that allows access to both EASE and LEX on an interim basis. PUC Docket No. 16189 et al., Arbitration Award at App. B - p. 8 (Sept. 30, 1997). SWBT filed a motion to clarify this ruling and requested the Texas Commission to delete the references to EASE. AT&T opposed SWBT's request, urging the need for interim access to EASE as described above. The Texas Commission has denied SWBT's request for clarification on this point.[2] By its proposed language, AT&T seeks to have in

[1] LEX has been developed as a permanent UNE ordering solution for smaller CLECs. AT&T does not expect that its interim use of LEX will impose significant burden or expense on SWBT that it has not already undertaken for independent business purposes. The point here is that, although AT&T can make interim use of LEX for some UNE orders, LEX must at this time be viewed as a competitively inferior alternative for the loop with port orders (CLEC simple conversion) that will be critical to the development of UNE-based competition. Indeed, as noted below, SWBT appears by its proposed language to be attempting to deny use of LEX for that order type altogether. For this limited, but important application, AT&T seeks interim use of the EASE interface.

[2] PUC Docket No. 16189, et al., Southwestern Bell Telephone Company's Brief on Eighth Circuit Impact and

Missouri the same interim access to EASE for UNE loop with port orders that has been awarded in Texas.

In any event, SWBT's proposed language should be rejected. Operations Issue 1, as defined by the parties, is confined to determining whether SWBT should be required to provide interim access to EASE for UNE ordering and under what terms and conditions. Joint Statement of Issues Remaining at 11. SWBT's language does not address EASE at all, but seeks to impose new limitations on LEX ordering that are not germane to this issue. By limiting LEX "conversion" orders to "resale only" and by failing to provide for "conversion with changes" or "conversion as specified", SWBT may be attempting to eliminate any means for ordering (with appropriate specification) a set of elements that are currently combined in SWBT's system and may be used to provide service to a customer won by AT&T. Elsewhere the Special Master recommends that SWBT be required to provide such already-intact UNE combinations to AT&T, based on SWBT's specific contractual undertaking to do so (UNE Parity Issue 3). SWBT's proposed Attachment 7, section 3.2.1 would appear designed to deny AT&T any interim interface for placing the CLEC Simple Conversion Order that this Commission has provided for and that is expressly authorized in section 3.4 of Appendix Pricing UNE. *See* July 31, 1997 Arbitration Order at Attachment B, p. 5 and Attachment C, p. 10 and 122. At a minimum, SWBT's proposed language on this issue should be rejected, so that, if LEX is to be the only interim UNE ordering solution, it will be clear that that solution must support all order types

Motion For Clarification of First Phase Award at 9 (Oct. 22, 1997); PUC Docket No. 16189 et al., Response of AT&T Communications of the Southwest, Inc. To SWBT Motion For Clarification of First Phase Award at 8 (Nov. 3, 1997); PUC Docket No. 16189 et al., Amendment and Clarification of Arbitration Award at 3 and Appendix D (Nov. 25, 1997).

provided for in the Commission's Arbitration Orders and the Interconnection Agreement.[3]

IV. UNE PARITY

General Comments - UNE Parity Issues 3, 16: Combining Elements

The Special Master has recognized that the existing Interconnection Agreement between the parties includes agreements that SWBT will not separate requested network elements that it currently combines (Issue 3) and that, when AT&T orders elements for use in combination that are not currently combined, SWBT will perform the combining, e.g., install the cross-connect between the unbundled loop and the unbundled switch port (Issue 16). SWBT made those contractual commitments when it executed this agreement on October 9, 1997, almost three months after the Eighth Circuit's July 18, 1997 decision to vacate the FCC rules that required ILECs to combine elements on behalf of CLECs.[4] Nothing in the Eighth Circuit's October 14, 1997 Order on Rehearing, which vacated the related FCC rule that required ILECs not to separate elements that they currently combine, excuses SWBT's performance of these agreements.[5]

SWBT's contractual commitments to combine elements, and to leave them combined, are not provisions that were ordered into the contract by this Commission, over SWBT's objection, either explicitly or implicitly. Rather, they are the product of negotiations between the parties, and they are consistent with SWBT's preference to minimize direct CLEC access to the

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[3] The Commission also could resolve this issue by ordering both AT&T and SWBT's language, with the result that EASE would be the interim ordering solution for UNE loop and port combinations, and LEX would be the interim solution for other order types. In that event, AT&T would not object to deletion of the phrase "UNEs and" from the final sentence of AT&T's proposed section 3.2.1, clarifying that interim EASE for UNEs would apply only to combination orders.

[4] *Iowa Utilities Board v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997).

[5] *Iowa Utilities Board v. FCC*, No. 96-3321, Order on Petitions for Rehearing, October 14, 1997.

equipment and facilities that make up its network.[6] The Special Master's recommendation to hold SWBT to its agreements on this subject is well grounded in traditional contract law, it is consistent with the Eighth Circuit's recent rulings, and it is essential in order to avoid a new round of protracted delay, if not outright denial, in bringing the promise of UNE-based competition to Missouri consumers.

To understand where the parties find themselves today on the issue of how elements will be combined, it is important to review where they have been, both in the litigation before the Eighth Circuit and in interconnection agreement negotiations. SWBT and other incumbents did **not** go before the Eighth Circuit recognizing that new entrants may provide finished telecommunications services entirely over UNEs, but arguing that the new entrants must do the combining and putting forward terms of network access to facilitate such combining activities. Rather, SWBT and others presented a broadside attack on the FCC's unbundling rules and urged that CLECs cannot use UNEs alone to provide a finished service. SWBT's challenge to the "who does the combining" rules was subsidiary to this broader assault on the FCC's unbundling rules.

With this challenge to the unbundling rules pending, what was SWBT's position during Missouri interconnection agreement negotiations? This Commission had ruled that "there shall be no restrictions or limitations on CLEC use of UNEs." December 11, 1996 Arbitration Order at 13. While that ruling did not address how elements might be combined, the parties took it as establishing (subject to the usual reservation of appellate rights) that AT&T was not required to own its own network facilities before it could use SWBT UNEs. The parties proceeded to develop contract terms that would permit AT&T to use all of the UNEs needed to provide a

[6] *See generally,* MoPSC Case No. TO-97-40, Commissioner's Examination of SWBT Witness Deere, Tr. 1231, and surrounding discussion (October 16, 1996).

finished service to customers.

In the course of those negotiations, **SWBT's willingness to do the combining activity (and to leave intact already-combined elements) was not an issue**. The parties developed specific disagreements related to the functionality and performance of the elements that AT&T would use in combination -- e.g., when AT&T uses a loop and switch port in combination, would AT&T have access to the mechanized loop testing capability of the switch that SWBT uses to test equivalent loops for its retail customers (UNE Parity Issue 7). They disagreed over certain details of the UNE ordering process. (E.g., Operations Issues 2 and 3). But SWBT never proposed, and the parties never contemplated, that AT&T would have direct access to SWBT's network facilities to place physical or electronic connections between SWBT-supplied elements. SWBT had made quite clear its desire to avoid or restrict direct CLEC access to its network facilities, in Missouri and elsewhere.[7] The present AT&T/SWBT Interconnection Agreement was built on the premise that, insofar as AT&T is permitted to use UNEs in combination, then, so long as AT&T satisfies any relevant ordering requirements, SWBT will perform any needed combining activity.[8]

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[7] *See generally,* MoPSC Case No. TO-97-40, Commissioner's Examination of SWBT Witness Deere, Tr. 1231, and surrounding discussion (October 16, 1996). *See also* Note 11, below.

[8] The Interconnection Agreement does provide terms and conditions on which AT&T may collocate equipment in SWBT facilities. Collocation provides a means for AT&T to connect its own equipment to SWBT UNEs. However, as the Special Master has recognized, requiring AT&T to collocate in order to combine SWBT elements to one another is prohibited by the 8th Circuit's ruling that an CLEC is not required to own or control any portion of a telecommunications network before being able to purchase UNEs. *See* Joint Statement of Issues Remaining, Special Master's Recommendations on UNE Parity Issues 14b and 16. *See also In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in South Carolina*, FCC CC Docket No. 97-208, Evaluation of the United States Department of Justice at 22 (Nov. 4, 1997) (BellSouth requirement that new entrant collocate its own facilities in a central office in order to combine elements does not permit a finding that BellSouth is offering the nondiscriminatory access to UNEs required by the Act). More to the point here, the AT&T/SWBT Interconnection Agreement does not require AT&T to collocate its own facilities in order to combine one SWBT element with another SWBT element, but provides for SWBT to make those combinations (or leave them

SWBT's contractual undertaking to combine elements for AT&T (and to leave already-combined elements intact) manifests itself in multiple provisions of the current agreement. On October 9, 1997, having had almost three months to make judgments about the Eighth Circuit's ruling that vacated the FCC rule requiring ILECs to combine elements for CLECs, SWBT signed an Interconnection Agreement that includes these provisions:

- AT&T may request multiple elements on a single LSR (order form) for a specific customer (Attachment 7, section 1.2)

- Repeated references to AT&T ordering Network Elements and "Combinations" (Attachment 7, sections 1.3, 1.5)

- When AT&T orders an unbundled local switch port, SWBT will provide access to common-use elements (common transport, tandem switching, signaling) without a separate order (Attachment 7, section 1.5.1)

- SWBT will make connections between AT&T or third-party-supplied facilities and SWBT's network for access to UNEs at any technically feasible point designated by AT&T (Attachment 6, section 2.1)

- The unbundled local switching element will route calls on SWBT's common network (i.e. Common Transport) except as required to fulfill AT&T requests for customized routing (Attachment 6, section 5.2.2)(in other words, SWBT agrees to AT&T's use of local switching in combination with its common transport network and will leave intact the routing tables and trunking connections that combine the local switch with the common transport network)

- When AT&T uses unbundled local switching, it will be provided with use of SWBT's SS7 signaling network, at a per call rate, without a separate order for SS7 signaling (Attachment 6, section 9.2.1.1.3)

- Cross-connects are defined as "the means by which unbundled elements are connected with other unbundled elements or with collocation"; SWBT offers four types of loop cross-connects, including the "Cross connect to Switch Port ('MDF to Switch Port') with and without testing" (Attachment 6, sections 11.1 and 11.2); and

- "Except upon request, SWBT will not separate requested network elements that SWBT currently combines" (Attachment 6, section 2.8).

intact), consistent with SWBT's preference to minimize outsider access to its network.

SWBT was not compelled by the December 1996 Arbitration Order to include any of these provisions. The only item listed above that was addressed in that Order was the loop cross-connect, which this Commission recognized as a separate element at SWBT's request and over AT&T's objection. December 11, 1996 Arbitration Order at 9. When it signed the current Interconnection Agreement containing all these provisions, SWBT's petition for rehearing was pending in the 8th Circuit, with a decision forthcoming at any time. SWBT could have proposed to qualify its commitment to any of the above-listed provisions on the outcome of that petition; it did not. It agreed to these provisions, presumably for the same reasons that it had agreed all along that it would do the combining, if CLECs were permitted to rely entirely on network elements to provide a finished service -- namely, to restrict direct CLEC access to SWBT network facilities and for its own section 271 purposes. Whatever SWBT's reasons, what matters for purposes of contract law is that SWBT included these unqualified contractual undertakings in the agreement with AT&T that SWBT signed October 9, 1997.

What SWBT now seeks to do is escape those contractual undertakings, toss aside over a year's work in developing UNE contract terms, refuse to perform any combining activity for AT&T or other CLECs, break apart network facilities that are already in place to serve customers that may be won by new entrants (for the sole purpose of making the new entrants incur the delay and cost of putting them back together), and effectively defer access to any use of UNEs in combination until some indefinite time in the future when terms of CLEC access to SWBT network facilities for purposes of combining elements might be negotiated. SWBT's sole support for this draconian turnabout is the Eighth Circuit's Order on Rehearing. The Special Master is correct in concluding that that Order provides no basis for excusing SWBT's performance of the

existing contract provisions that require it to combine (and leave intact) network elements for AT&T.

Certainly the Order on Rehearing had no impact on those provisions listed above that relate to SWBT combining elements that are not connected at the time AT&T orders them. (UNE Parity Issue 16). The Eighth Circuit had vacated the FCC rules (Rule 51.315(c)-(f)) that required ILECs to undertake such combining activities in its July 18, 1997 ruling; nothing about that ruling changed with the October 14, 1997 Order on Rehearing. SWBT cannot suggest that it was under any legal compulsion to agree to combine elements for AT&T, by virtue of FCC rules that already had been vacated at the time SWBT signed the agreement.

Nor does the Order on Rehearing provide a basis for undoing SWBT's agreement that, except upon request, "SWBT will not separate requested Network Elements that SWBT currently combines." Attachment 6, section 2.8 (UNE Parity Issue 3). The Special Master is correct that nothing in that Order makes this provision illegal. Nothing in the Order on Rehearing or the Act prohibits an ILEC from **agreeing** with an CLEC that it will not break apart elements that are already connected when the CLEC orders those particular elements.[9] The Order held only that the FCC may not impose that requirement by rule. SWBT could have proposed to condition its contractual commitment not to separate elements on the continued

[9] SWBT acknowledges that there is nothing illegal about the current contract language by its proposals in this arbitration of contract language that expresses a willingness "to discuss with AT&T arrangements under which SWBT may agree not to separate such network elements," provided that these discussions "would be outside the Telecommunications Act of 1996 and not subject to arbitration." Joint Statement of Issues Remaining at 19, 21. Indeed, in Texas SWBT recently offered to provide combining for AT&T (and to leave already-connected elements intact) if it could extract unregulated, non-cost-based prices in exchange. PUC Docket Nos. 16189 et al, Southwestern Bell's Supplemental Brief on Eighth Circuit Alternatives at 16-20 (Nov. 7, 1997). The Texas Commission has decided to hold SWBT instead to commitments that it made to provide combining (and leave connected elements intact) for AT&T at cost-based UNE prices, commitments that SWBT made on the record of arbitration proceedings in that state, after considering the Eighth Circuit's July 1997 ruling. PUC Docket Nos. 16189 et al., Amendment and Clarification of Arbitration Award at 4-6 (Nov. 25, 1997).

existence of FCC Rule 51.315(b); it did not.[10]

Rather, it appears that in Missouri, as in Texas, SWBT evaluated the Eighth Circuit's July ruling and, taking account of its own objectives (minimizing CLEC contact with SWBT network equipment and facilities, making progress toward section 271 relief), decided to move forward toward a competitive local telecommunications market on the same basis that the parties had understood throughout these negotiations -- SWBT would combine elements rather than have the CLEC do the combining, and it would leave intact already-connected elements ordered with appropriate specificity. In Texas, where the existing interconnection agreement with AT&T had been signed back in January 1997, SWBT's decision took the form of numerous commitments made on the record at arbitration proceedings in August of this year, such as the following:

> And what we thinks works best based on the agreement that we have and where we're at in the process is to continue to offer to you what we have offered in the past: and that is to actually do the connecting of the network elements. . . . And frankly the decision is we'll continue to do some of the work. It works best where we're at with this agreement and let's get on with it.[11]

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[10] The intervening law provision of the AT&T/SWBT Interconnection Agreement does not provide a basis for SWBT to avoid any of the relevant contractual commitments by citation to the Order on Rehearing. The intervening law provision in the signed Agreement, section 3.2 of the General Terms and Conditions, applies only when a court or regulatory agency determines that contract modifications are necessary in order to bring services provided under the AT&T/SWBT agreement "into compliance with the Act." An agreement to combine elements (or leave elements connected) does not raise any compliance issue; as shown earlier, *see* note 4 *supra*, SWBT's own proposals in this arbitration and its offers elsewhere acknowledge that SWBT may lawfully agree to such provisions. Further, the intervening law language that the parties have through this arbitration agreed to add as section 3.1, while technically inapplicable to an event (such as the Order on Rehearing) that predates this revision to the Interconnection Agreement, would not lead to any different result. For that new language applies only to provisions of the contract "required by the Arbitration Award." As shown above, none of the relevant provisions have been required by order of this Commission. (The Commission did recognize the loop cross connect as a distinct element, but it was AT&T, not SWBT, who was legally compelled by the Order to include this SWBT-proposed element in the contract, and the Commission did not specify that SWBT provide the MDF to Switch Port cross-connect which will be used for combining the loop and switch port. That particular cross-connect was not included in the elements for which interim prices were ordered by the Commission. *See* December 11, 1996 Arbitration Order at Attachment A-2, A-4).

[11] PUC Docket No. 16189, et al., Cross-examination testimony of SWBT Witness Auinbaugh, Tr. 507-08 (August 12, 1997). The Texas Interconnection Agreement between AT&T and SWBT signed in January 1997 had included parallel provisions to some of the combining provisions contained in the October 1997 Missouri Agreement (including Missouri's Attachment 6, section 2.8), and the parties had agreed to incorporate into the

The Texas Commission has decided that these and similar statements represented a voluntary commitment to combine, made despite SWBT's understanding of the Eighth Circuit's July ruling as having eliminated any legal obligation to combine. That Commission has concluded that "SWBT's recent recantation of its commitment to combine network elements and, in the alternative, its unilateral imposition of new conditions to its performance come too late." Accordingly, SWBT will be held to its commitments and required to combine elements for AT&T during the life of the existing Interconnection Agreement in Texas.[12]

The case for that same conclusion is even more compelling here. In Missouri, SWBT's considered commitment to combine elements (and to leave connected elements intact) comes with even more formality than a witness's sworn arbitration testimony. Here SWBT executed the contract that contains those commitments almost three months **after** it had the benefit of the Eighth Circuit's July ruling. This situation is more akin to that recently faced by the Ohio Commission, which has ruled that an ILEC's arms-length contractual commitment to combine elements for a new entrant is enforceable, the rulings of the Eighth Circuit regarding the FCC's combining rules notwithstanding.[13]

Texas Agreement some of the additional provisions that had been developed in contract negotiations for Missouri and other states. At the time of the August arbitration hearing in Texas, it was unclear whether SWBT would attempt to reverse field on the basis of the 8th Circuit's July decision. The question was posed directly at the hearing, with answers such as that quoted above. *See also* SWBT Post-Hearing Impact of 8th Circuit Brief at 13 (August 20, 1997) (SWBT "has decided for policy reasons that it will perform the combining of unbundled network elements on behalf of the LSP in certain situations (e.g., in the central office))." *See generally* AT&T Communications of the Southwest, Inc.'s Response to SWBT's Brief on Eighth Circuit Alternatives at 8-14 (Oct. 31, 1997) (collecting representations). This Missouri arbitration must of course be based on the record here and the provisions of the Missouri Agreement, but the Texas experience helps to illustrate how SWBT could come to a deliberate decision to reaffirm its willingness to combine elements for AT&T, for SWBT's own purposes, notwithstanding the 8th Circuit's decision.

[12] PUC Docket No. 16189, et al., Amendment and Clarification of Arbitration Award at 6 (Nov. 25, 1997).

[13] *In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic*, Public Utilities Commission of Ohio, Case No. 96-922-TP-UNC, Second Entry On Rehearing at 3 (11/6/97).

In UNE Parity Issues 3 and 16, AT&T seeks this Commission's help in giving appropriate force to all the rulings of the Eighth Circuit, the contractual undertakings of the parties, the law of this state, and the interests of Missouri consumers in meaningful competition in local telecommunications service without further delay. The Eighth Circuit has done much more than vacate FCC Rules 51.315(b)-(f). It has reaffirmed a new entrant's right to provide a finished service entirely over UNEs, without owning or controlling its own facilities. 120 F.3d at 813-15. It has upheld the FCC rules that require ILECs to provide CLECs with access to unbundled elements on terms and conditions that are at least as favorable as the terms on which ILECs provide those elements to themselves. *Id.* at 819, n.39. And the Eighth Circuit upheld the majority of the FCC's unbundling rules with the recognition that Congress provided for access to unbundled network elements specifically in order to "jump-start competition;" Congress intended UNEs to support "rapid introduction of competition" in local telecommunications markets. *Id.* at 811, 817.

AT&T submits that the Special Master's recommendations on Issues 3 and 16 represent the only means to reconcile these concerns. Competition will move forward on the terms that the parties have negotiated for many months and very recently reaffirmed with execution of the existing Agreement. Meanwhile, AT&T's proposed Attachment 6, section 2.25, recommended for adoption by the Special Master, will provide a procedure for the parties to negotiate the terms and conditions under which SWBT will provide nondiscriminatory access to its network facilities to enable CLECs to combine elements. The issues to be addressed in such a negotiation are numerous, and not simple, as the list included in proposed section 2.25 shows. AT&T's proposed procedure even will allow SWBT to return to this Commission, after such terms have been developed, and urge that the existing contract provisions on combining somehow should be

modified (AT&T does not believe that the law will support such a request during the term of this Agreement, but its proposal provides SWBT the opportunity to present its argument again, after terms of network access have been developed).

The Special Master's recommendations on these issues do nothing more than enforce the parties' agreement under Missouri contract law. At least for the present and some time to come, those recommendations represent the only way in which SWBT can meet its obligation to provide nondiscriminatory access to unbundled network elements, for it has offered no alternative terms under which Missouri CLECs may have direct access to its network facilities for combining elements. The Special Masters recommendations thus are essential to the introduction of UNE-based competition in this state. AT&T requests the Commission to adopt the Special Master's recommendation on UNE Parity issues 3 and 16.

General Comments - UNE Parity Issues 1, 2, 7, 10: Nondiscriminatory Access to UNEs

AT&T submits that the Special Master's recommendation to adopt AT&T's proposed language on these issues should be accepted, for the reasons stated by the Special Master and those set forth in AT&T's testimony. Each of these disputes involves some aspect of defining what will constitute access to SWBT's unbundled network elements at "parity", or on terms that are "nondiscriminatory," with SWBT's own access to those network facilities. SWBT provides retail service to its customers over loops, connected to switch ports, connected to its common network facilities, just as AT&T will seek to do using those same unbundled elements in combination. AT&T's position on all of these issues is that when AT&T uses these facilities to provide a service to a retail customer, they should perform for AT&T just as they do for SWBT when it uses them to deliver equivalent retail services. For example, if SWBT can provide automated testing of analog loops through its analog switch ports, AT&T should be able to do

the same when is uses those elements.

These "parity" issues all are independent of the issues discussed above related to who will combine the elements. It is undisputed, and indisputable, that AT&T may use a SWBT unbundled loop together with a SWBT switch port to provide service to a retail customer. Whether SWBT combines the elements (or leaves connected elements intact), as it has agreed to do in the existing Interconnection Agreement, or whether an CLEC is combining elements under terms of network access yet to be developed, the elements should do for CLEC customers what they do for SWBT customers. This is the meaning of the general parity language that the Special Master has recommended under Issue 1. Whoever is doing the combining, AT&T customer service representatives should have access during the pre-order process to real-time information regarding dispatch requirements and due date for elements that will be used to provide service to its retail customers, when SWBT representatives have access to such information in offering equivalent service to their customers. (Issue 2). And AT&T should have access to the same testing functionality that is available to SWBT through the local switch. (Issues 7, 10).[14]

[14] SWBT may suggest that, in circumstances where an CLEC combines elements itself, SWBT should not be held responsible for performance of the elements because of the possibility that the CLEC could introduce a problem in the course of connecting the elements. However, under existing contract language AT&T and SWBT each accepts responsibility for "its own acts and performance of all obligations imposed by law in connection with its activities" under the Agreement. General Terms and Conditions, section 36.1. SWBT also is protected from liquidated damages liability for any failure to meet a performance measurement that results from a "delaying event," which is defined to include acts or omissions of AT&T. Attachment 17, section 5.1. To the extent that terms are developed that would allow AT&T to combine SWBT elements in the future, the UNE parity language recommended for adoption under Issues 1, 2, 7, and 10 will not expose SWBT to liability for any delayed or defective performance truly attributable to AT&T combining activities.

V. PRICING

General Comments

Generally speaking, the recommendations of the Special Master and AAS under this section involve determinations about whether to adopt AT&T's or SWBT's interim rates for various features of unbundled network elements. AT&T does not believe it would be beneficial to simply restate here its prefiled testimony on many of these issues, but would instead refer the Commission to AT&T's arguments in its prefiled testimony that most of these rates are for features that are included within the full functionality of the unbundled elements for which the Commission established permanent rates in either its July 31, 1997 or October 2, 1997 Orders.

However, AT&T's has two primary concerns regarding the pricing recommendations of the Special Master and AAS, and they revolve around "process" issues. First, it is important that discussions before the Special Master and AAS regarding the procedure for determining final rates be reflected in the Commission's Arbitration Order. As reflected in AT&T's prefiled testimony, if the Commission believes that charges for various UNE functionalities are not foreclosed by prior orders, then AT&T believes it is extremely important that the Commission's Arbitration Order make clear that SWBT is required to provide a TELRIC cost study to support SWBT's proposed charges, and that the final rates are to be TELRIC-based.

AT&T has continually emphasized the need for AT&T to have access to SWBT's cost studies, and the opportunity to comment on those cost studies. SWBT does not appear to oppose such an approach; the Parties differ, however, over reasonable terms for access to the cost studies. The Commission's Arbitration Order should include a procedure which assures such due process on the vital issue of rates. This is particularly important in view of AT&T's other primary concern about the pricing recommendations, which is that there should be no

predetermination about the appropriateness of imposing a charge for the UNE functionalities at issue. Interim rates should not presuppose final rates. Although the Special Master and AAS generally stated a belief that "a rate is appropriate" where SWBT's interim rate has been recommended, and while this was due at least in part to the AAS' review of SWBT's cost studies, AT&T has not been able to review the relevant cost studies. AT&T needs to be allowed to review any relevant cost studies and to present its arguments, based on those cost studies, as to why certain rates are inappropriate and should be lowered or disallowed altogether.[15]

While AT&T will vigorously participate in any proceeding to establish whether any additional permanent rates are appropriate, SWBT's position on pricing issues in this proceeding only reinforces AT&T's experience with implementation problems in other states in SWBT territory and foreshadows further disputes. Case No. TO-97-40 should have established the majority of permanent rates necessary for interconnection, but as AT&T moves forward it is SWBT who consistently asserts that "AT&T is asking for something new" and that SWBT was not required to provide cost support in the first arbitration for every single item that AT&T might order. AT&T's view is simple: in the first arbitration SWBT was requested to provide a comprehensive list of rates that it intended to charge for UNEs. The Commission established permanent rates in its July 31, 1997 Order,[16] and SWBT should not be allowed to continually and

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[15] The Commission found it had the authority to make final pricing decisions outside of the nine month time limit of the federal Telecommunications Act of 1996 in Case No. TO-97-40. Therefore, AT&T believes that it would be appropriate for the Commission to issue an order ruling on the disputed issues, prior to ruling on permanent rates. AT&T respectfully suggests that if the Commission adopts the pricing recommendations of the Special Master and AAS, then the Commission's Arbitration Order should delegate authority to a Special Master to set a procedural schedule and protective order for establishing permanent rates. A prehearing should also be scheduled, at which the Parties and Special Master can coordinate an appropriate procedural schedule for the pricing proceeding.

[16] This was also confirmed by the Commission's October 2, 1997 Order, which adopted AT&T's language in Issue 14 of the Parties' Joint Motion for Expedited Resolution of Issues. AT&T's language, which is virtually identical to the language in the Commission's July 31, 1997 Order, at page 4, states: "Prices for the unbundled network elements, as shown on Appendix Pricing UNE - Schedule of Prices, include the full functionality of each

unilaterally identify additional rate elements. SWBT's knowledge of its network is obviously greater than anyone else, and their ability to break each UNE into smaller and smaller functions apparently knows no end - - except for an end that must apparently be imposed by the Commission.

Issue 1f: Additional Service Order Charges for Manual Ordering

Although the Special Master's recommendation is, again, to set interim rates, and AT&T's comments above are also applicable here, this particular issue merits specific discussion. It is also important to draw the Commission's attention to the Special Master's recommendation on Issue 1e., which confirmed the Commission's previous rulings on the application of a $5.00 non-recurring service order charge. AT&T's primary concern with the recommendation for Issue 1f. may go more to a need for clarification. The Special Master's recommendation reflects an understanding that SWBT's proposed service order charges are applicable when SWBT does not currently have a mechanized ordering process. AT&T believes that the Commission's October 2, 1997 Order set the manual service order charge at $12.90, when a CLEC chooses a manual ordering process. The Order goes on to state that "if a CLEC chooses to use electronic ordering but SWBT is unable to provide such electronic ordering services, the $5.00 Service Order shall apply." October 2, 1997 Order at 6. In light of this language, the recommendation for Issue 1f seems at odds with previous Commission decisions. In no instance does AT&T intend to use a manual ordering process. At a minimum, in order to be consistent with prior Commission decisions, SWBT's proposed NRCs for the various service order types should be halved on an

element. No additional charges for any such element, the functionalities of the element, or the activation of the element or its functionalities shall be permitted." It is difficult to imagine how the contract language, and the Commission's Order, could be clearer or more comprehensive. If this language is to have meaning, the Commission must put an end to SWBT's rate element "shell game."

interim basis. Furthermore, AT&T is concerned that SWBT's proposed contract language is extremely vague and may result in disputes about when and for what services the manual ordering charges apply, even on an interim basis. SWBT's proposed language makes a single reference to a "large centrex-like customer over 30 lines" as an example.

In addition, the Special Master's recommendation suggests an implicit acceptance of separate service order charges, even when electronic ordering is used. Certainly the recommendation of the Advisory Staff in the first arbitration was that the interim $5.00 charge should apply only to initial service orders and that no service order charge should apply to other order types. The Staff recommended that the service order charge should apply "to initial service orders for each customer only and **should not apply to modifications to existing CLEC customers configuration**." July 31, 1997 Order, Attachment C, at 122 (emphasis added). Staff noted that this rate was likely to exceed the cost of electronic ordering "and should cover the costs of additional ordering." *Id.* The Staff also noted that SWBT had included an amount in Wholesale Marketing and Service Expense in common costs applied to all network elements. It concluded that "these two revenue sources should allow SWBT to recover the costs associated with additional orders." *Id.* The reference in Attachment C to "additional orders" can only be given meaning if it refers to additional order "types," inasmuch as there can only be one initial service order per customer. Consequently AT&T believes that on an interim basis the Commission intended that the initial $5.00 Service Order charge should cover all of the service order types addressed in Issue 1f. Finally, at a minimum and in an attempt to be consistent with the Commission's prior decisions and the Special Master's recommendation for Issue 1e, the Commission should clarify that there is no additional NRC for any of the service order types listed under 1f when electronic ordering is used.

VI. NETWORK EFFICIENCY

Issue 2: *Flexibility in Establishing Trunk Groups*

AT&T strongly supports the Special Master's recommendation to adopt AT&T's proposed contract language, which would allow AT&T to combine all forms of traffic on a single trunk group for maximum network efficiency. This issue goes to the heart of one of the key benefits intended by the requirement of competition: new, more efficient ways of providing telecommunications services. SWBT's proposed language would force AT&T to create redundant and inefficient networks. The new competitive paradigm is not about just doing things the way the incumbent has historically done them, when rate of return regulation may not have mandated the most efficient use of the network.

The FCC has recognized that section 251(c)(3) of the Act permits requesting telecommunications carriers to purchase UNEs for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers. FCC Local Competition Order, ¶ 356. SWBT seeks to limit AT&T's use of UNES by requiring that traffic continues to be segmented as it has traditionally been: local and intraLATA on one trunk group, with interLATA traffic (previously segregated as "access") on a separate trunk group.

SWBT's only argument is that AT&T will use this trunking arrangement to avoid access charges. However, AT&T has stated in many public forums (in addition to its Missouri testimony, most recently in testimony filed in Texas) that it does not seek to avoid the ongoing requirements to pay access when it functions as an IXC only. That is why AT&T has proposed the PLU process until SWBT has the ability to measure different types of traffic on a given trunk group, which SWBT should be able to do in the near future. As the Special Master noted,

AT&T's proposed language is entirely consistent with the Commission's December 11, 1996 Arbitration Order. AT&T would refer the Commission to AT&T's prefiled testimony on this issue for further support of the Special Master's recommendation, and AT&T respectfully requests that the Commission adopt the Special Master's recommendation.

X. CONTRACT TERMS AND CONDITIONS AND OTHER ISSUES

Issue 3b: Limitation of Liabilities

AT&T respectfully requests that the Commission not adopt the Special Master's recommendation on this issue. The Interconnection Agreement, as with most contracts generally, does not even need to have a limitation of liability provision; the Agreement can function without one. AT&T, however, believed that it was commercially reasonable to suggest that such a provision be included, and its proposal would limit the parties' liability to each other to the amount that AT&T pays SWBT under the Agreement in a contract year. The contract language in question does not impose a dollar amount of liability on either party; instead, it simply states that there will be a "cap" or limit on the amount of either parties' liability to the other. SWBT's would limit the amount to only what was paid for the affected service or business practice or ancillary functions in a contract year.

SWBT's proposed language should be rejected. It would effectively treat AT&T as if it were a residential or business customer who suffered an outage, for example. That is hardly the kind of a provision to put in an interconnection agreement dealing with rights and obligations of the sort involved here. Wrongful activities of SWBT might have serious impacts well beyond the particular service to which the wrongdoing related. For example, actions by SWBT which impair AT&T's local service might damage the customer's perception of AT&T for other services it provides. Recovery of lost toll revenue may well be precluded under SWBT's proposal.

Other provisions of the Agreement already preclude liability for consequential damages. Here, SWBT might assert a very low limit even if its negligence caused the death of an AT&T employee, or if its negligence caused direct damages to expensive switching equipment collocated by AT&T - - these are simple and obvious examples of potential monetary damages in excess of the limit SWBT's language would impose. There is no legitimate justification for such an unreasonably low limit. SWBT's proposed language is commercially unreasonable on its face, and should be rejected.

Issue 6: Local Exchange Carrier Selection / "Slamming"

AT&T respectfully requests that the Commission not adopt the Special Master's recommendation on this issue. The dispute here concerns a single sentence in a paragraph that deals with the carrier selection process and procedures involving local exchange "slamming." The reciprocal language of the sentence would require AT&T to furnish to SWBT, at no charge, customer authorizations in order to allow SWBT to investigate allegations of slamming.

Slamming is a vexing problem to all, but giving the monopoly incumbent the unbridled power to appoint itself as the policeman in charge of ensuring that its competitors are acting fairly in taking away SWBT's customers is unreasonable. SWBT has reason and incentive to want to challenge any customer loss that it incurs, and nothing in this language requires SWBT to prove to AT&T that a legitimate instance of slamming is even being investigated. This language could allow SWBT, by simply asserting that it has reason to want to investigate slamming issues, to demand wholesale from AT&T virtually all customer authorizations for local service, and at no charge.

If an allegation of slamming by AT&T exists, AT&T wants to know about it and wants to investigate the allegation itself. This language, however, makes SWBT - AT&T's competitor -

the investigator of such claims. While AT&T recognizes the burdens which dealing with slamming complaints impose upon state commissions such as the MoPSC, putting the fox in the hen house is not the way to deal with them. SWBT's language should not be adopted.

Issue 15: Intellectual Property Rights Associated with UNEs

AT&T respectfully requests that the Commission not adopt the Special Master's recommendation on this issue. SWBT's proposal would create a serious impediment to competition in Missouri. SWBT's language, which is based on a fundamentally flawed premise, would allow SWBT to evade its duties under the Act to provide nondiscriminatory access to unbundled network elements. Virtually identical language has been appealed by AT&T to the Federal District Court in Texas. Further, the FCC has been requested by MCI to issue a ruling declaring that such requirements are contrary to the Act.[17] In addition, prior FCC decisions clearly demonstrate that SWBT's proposal would violate the Act. In no event should the Commission adopt SWBT's proposal.

SWBT's Proposal Contravenes the Act

The express language of the Act requires SWBT to provide nondiscriminatory access to unbundled network elements to requesting parties such as AT&T. §251(c)(3) SWBT's language, however, would allow SWBT to deny such access solely because SWBT speculates that allowing access might violate third parties' rights in intellectual property associated with these elements. SWBT would require AT&T to first negotiate with numerous vendors about intellectual property issues; only after SWBT is satisfied that there are no intellectual property objections would SWBT allow AT&T access to unbundled network elements. This is entirely inconsistent with the Act.

First, it should be obvious that SWBT's language impose unnecessary obligations on AT&T (and other CLECs), and significantly conditions SWBT's obligations under the Act to provide network elements. But such obligations and conditions are found nowhere in the Act. Had Congress intended to enact the requirements proposed by SWBT, it would have written them into the Act. It did not. In short, there is no support in the Act for the Commission's adoption of SWBT's language.

To the contrary, SWBT invites this Commission to adopt language which is inconsistent with the Act's explicit requirements. SWBT's clear and unqualified duty is to furnish access to unbundled network elements on a nondiscriminatory basis under Section 251(c)(3). Among other things, this duty means that SWBT is required to provide access with the same quality and under the same terms that it provides to itself. Thus, as the Commission knows, under the Act SWBT must make necessary modifications to its network, if they are technically feasible, in order to provide such nondiscriminatory access. Yet here, SWBT is simply saying that it has no duty to provide nondiscriminatory access to unbundled network elements, because it speculates that there may be intellectual property issues. This flatly contradicts SWBT's Section 251 duties to provide nondiscriminatory access under the Act. Furthermore, the ultimate result of the adoption of SWBT's language would be to construct a barrier to entry to competition - discriminatory access to unbundled network elements - in violation of Section 253 of the Act.

What SWBT has proposed is a classic case of an "exception swallowing the rule." The mere speculative possibility that an intellectual property right might be violated through the use of unbundled network elements - the "exception" - has been used by SWBT to fashion language which would deny access to unbundled network elements, thus "swallowing" the rule. The clear

[17] In the Matter of Petition of MCI for Declaratory Ruling, CC Docket No. 96-98.

"rule" under the Act places the duty on incumbents to provide nondiscriminatory access to unbundled network elements. SWBT's "exception" language thus would allow SWBT to completely shirk its responsibilities under the Act.

The Speculative Concerns Raised by SWBT are Non-Existent or Grossly Overstated

SWBT's claimed concerns about potential intellectual property problems are specious to begin with. Even if there were any potential concerns, it is SWBT's obligation under the Act to deal with them in the first instance. AT&T, for example, does not seek access to proprietary software information, nor is it in a position to copy and distribute some third party vendor's proprietary software. SWBT's furnishing access to unbundled network elements, therefore, would not result in any potential violation of third party intellectual property rights to begin with.

Moreover, SWBT's assertions that its agreements with third party vendors only allow SWBT to make "internal use" of them and thus, do not allow CLEC use, is simply incorrect. In The FCC's recent Infrastructure Sharing Order proceedings, both Lucent and Nortel, suppliers of some 80% of the facilities and functionalities involved with unbundled network elements, stated under oath that the type of use of unbundled network elements contemplated under the Act is already allowed by agreements with incumbents such as SWBT.[18] This should not be surprising. Under the Act, the furnishing of access to unbundled network elements now is part of the "internal use" or "internal business" of the incumbent.

The Result is Discriminatory Access

Ultimately, the question is whether incumbents or CLECs must negotiate and deal with third party vendors about issues involving intellectual property rights associated with unbundled

[18] *See* Report and Order, ¶69, Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket No. 96-237 (released February 7, 1997) ("Infrastructure Sharing Order").

network elements. Under the Act, that duty rests in the first instance on the incumbents. The provisions of the Act and logic demonstrate why this is so. If CLECs were forced to negotiate with these vendors as a threshold condition to obtaining access, they would begin with no bargaining power whatsoever. They would be forced to deal, not with vendors of their choice, but with those third party vendors the LEC happened to have selected at an earlier time. Such third party vendors would effectively enjoy a "monopoly" status in this situation, and would have no incentive to deal with CLECs, other than to impose extra costs on them. Indeed, simply requiring CLECs to negotiate with numerous third parties imposes transactional costs on them in any case. Such costs would be incurred by CLECs in addition to whatever extra costs the third party vendors, at whose mercy they would be placed, might insist upon. Such costs would be in addition to the "cost-based" prices which the Act requires CLECs to pay to the incumbents for unbundled network elements. Of course, those "extra" costs should already be included in the prices that the CLECs must pay for unbundled network elements. The clear result is a discriminatory form of access.

The Concepts Proposed Here Have Been Rejected by the FCC

In the proceedings leading up to the FCC's First Report and Order, SWBT and other incumbents had an opportunity to raise issues such as these. The FCC determined that many of the proprietary information concerns raised by incumbents were nonexistent. To the extent potential concerns might exist, the FCC found that the LECs' obligations to furnish nondiscriminatory access to unbundled network elements were nonetheless "necessary" under the Act; conditions such as those urged here by SWBT were not adopted. This aspect of the FCC's First Report and Order has not been vacated by the Eighth Circuit. To the contrary, the Eight

Circuit, while not affirmatively ruling on SWBT's intellectual property claims, stated that it was skeptical of the merits of the claims.[19]

In addition, the FCC recently dealt with issues such as these in its Infrastructure Sharing Order.[20] In considering the Act's requirements under Section 259 to provide network information, the FCC found that it was the duty of incumbents to make intellectual property arrangements necessary to allow CLECs to have access to incumbents' networks as required under the Act. These findings clearly demonstrate that SWBT's language should not be adopted.

Concerns About Indemnification Obligations are Unfounded

In making his recommendations, it appears that the Special Master was concerned that SWBT might have to indemnify AT&T for third party vendor intellectual property claims involving unbundled network elements. Such concerns misapprehend the use which AT&T will make of unbundled network elements, and the logic and fairness of requiring incumbents to indemnify. As discussed earlier, concerns that intellectual property right violations are going to occur at all are either fabrications or greatly overblown. Thus, few, if any, indemnification issues should arise.

Moreover, if a violation is alleged but AT&T is using the unbundled network element in a way which would not have subjected SWBT to such a claim if SWBT were using it, should it not be SWBT's responsibility to hold AT&T harmless from such a claim? As shown above, under the Act SWBT has the duty to ensure that such use by AT&T is covered in its arrangements with third party vendors. SWBT's failure to meet its duties in this respect should not be shifted indirectly over to AT&T by shirking its indemnification obligations. There is

[19] *Iowa Utilities Board v. FCC*, 120 F.3d 753, 817 (8th Cir. 1997).

nothing unfair about such a result. The indemnification provisions of the Interconnection Agreement, which are designed to cover a myriad of circumstances, would not require SWBT to indemnify AT&T from AT&T's own wrongdoing. But this is a far cry from the notion that SWBT may fail to carry out its duties under the Act and shift all responsibility to AT&T. The Commission should reject SWBT's language and adopt AT&T's provisions.

Issue 18: Routing to Multiple End Offices

AT&T strongly supports the Special Master's recommendation to adopt AT&T's proposed contract language, which would permit AT&T to route local calls to multiple locations. One of the most critical functions that a local switch provides is the ability to route calls to multiple locations. It is through this function that a customer's calls can be routed to the appropriate location in a local exchange or to the appropriate long distance provider. It is also through this function that if one route to a terminating location is currently full, the switch can route the call to an alternate route through the tandem.

The FCC defined in ¶412 of its First Report and Order that the "features, functions and capabilities of the local switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks." Connecting to trunks would have to include the same capability that the local switch already possesses. SWBT has significantly restricted AT&T's access to this function in the way that it has implemented customized routing. SWBT has determined, without any input from AT&T, that it would only permit AT&T to customize route local calls to one location. Not only is this restriction clearly discriminatory in that SWBT can use the local switch to route to multiple locations, but it is also bad for customers. If SWBT

[20] *See* Report and Order, ¶69, Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket No. 96-237 (released February 7, 1997)

is permitted to impose this restriction on customized routing, the impact on customers will be to have their calls blocked, or AT&T will have to order inefficiently large trunks out of the local switch. On the other hand, if SWBT is required to implement customized routing in a way that is at parity with how SWBT is able to use its own switch, AT&T can implement a customized routed network with the same efficiencies, capabilities, and cost that SWBT itself enjoys. SWBT's proposed language limiting the capabilities of customized routing should be rejected and AT&T respectfully requests that the Commission adopt AT&T's proposed contract language in accordance with the Special Master's recommendation.

CONCLUSION

With the limited exceptions discussed above, AT&T supports the recommendations of the Special Master and AAS. AT&T believes that the recommendations will allow contract language which will promote competition in the state of Missouri. However, AT&T has taken great pains to limit its comments herein to the minimum number of issues that it believes require a different decision on the part of the Commission. Accordingly, AT&T respectfully requests that the Commission adopt AT&T's proposed language where AT&T has specifically taken exception to the recommendations of the Special Master and AAS, or issue appropriate clarifications. AT&T urges the Commission in all other respects to approve the recommendations of the Special Master and AAS.

Respectfully Submitted,

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