

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

|                                              |   |                            |
|----------------------------------------------|---|----------------------------|
| In the Matter of the Petition of TCG         | ) |                            |
| Kansas City, Inc. for Compulsory Arbitration | ) |                            |
| of Unresolved Issues with Southwestern Bell  | ) | Docket No. 00-TCGT-571-ARB |
| Telephone Company Pursuant to Section        | ) |                            |
| 252 of the Telecommunications Act of 1996.   | ) |                            |

**POST HEARING BRIEF OF SOUTHWESTERN BELL TELEPHONE COMPANY**

**I. INTRODUCTION**

The purpose of this arbitration proceeding is to assist the parties in completing an interconnection agreement for local exchange service pursuant to Section 252 of the Telecommunications Act of 1996 (hereinafter the "Act"). Southwestern Bell Telephone Company's ("SWBT") goal in this proceeding continues to be the completion of an interconnection agreement that is fair and equitable not only to SWBT, but for TCG Kansas City, Inc. ("TCG") as well. SWBT believes its proposals, set forth through the arbitration process and in its Last Best Offer ("LBO") achieve such a result for both parties.

SWBT believes the proposals brought forward in this proceeding by TCG cannot achieve a fair and equitable result. TCG's proposals attempt to address issues, specifically access-related issues that are well beyond the scope of a local interconnection agreement. SWBT believes TCG is attempting to single itself out for special treatment and exempt itself from existing federal and state access tariffs and access requirements, contrary to federal and state regulatory orders and regulations, as

Exhibit No. 27  
Date 1-24-01 Case No. TD 99-593  
Reporter TU

well as the Act. SWBT believes that TCG's proposals will result in TCG being over-compensated for reciprocal compensation of local traffic.

SWBT remains willing and able to provide TCG with those network elements and interconnection arrangements required by the Act, the FCC and the KCC, in order to facilitate TCG's ability to do business and compete with all carriers in the state of Kansas. However, SWBT expects to be fairly and appropriately compensated for the network elements, interconnection arrangements and access services that it provides.

This brief will summarize SWBT's position and the evidence presented with regard to the issues remaining for determination by the Arbitrator and the Commission. In addition, SWBT will discuss the applicability of the Act to the pending issues, as well as orders and regulations promulgated by the Federal Communications Commission ("FCC").

## **II. RESOLVED ISSUES AND SWBT'S LAST BEST OFFER**

SWBT believes the following issues have been resolved as between the parties:

Network Architecture Issue 5

Network Architecture Issue 7

Reciprocal Compensation Issue 3

Reciprocal Compensation Issue 8

The terms of said agreement are incorporated in the Last Best Offer Matrix attached hereto as Attachment "A".

Reciprocal Compensation Issue 7 will be resolved by the Commission in the context of Docket No. 00-GIMT-1054-GIT.

### **III. ARGUMENT AND AUTHORITY**

The majority of issues presented for arbitration in this proceeding are directly impacted by the fundamental question of which party's network architecture should be adopted – SWBT's or TCG's. This overarching question forms the basis for TCG's attempts to exempt itself from Kansas' access tariff requirements and payment of the associated access charges through its proposal for LATA wide local calling. This same proposal would also result in TCG being overcompensated for local calls eligible for payment of reciprocal compensation under the Act.

#### **NETWORK ARCHITECTURE ISSUES**

**Issue 1:      What method should be used to determine the quantity and location of interconnection points ("IP") in the LATA?**

This issue is TCG's attempt to limit the quantity and location of interconnection points ("IP") in a LATA. If TCG is successful in doing so, it will thus avoid payment of tariffed access charges. TCG is also attempting to increase their payments from SWBT based on an inappropriate designation of intraLATA calls as "local" traffic. TCG's own witness, David Talbott testified, that an IP is a very different concept from that of a physical point of interconnection ("POI"). (Tr. pp. 10-11, ls. 15-04). He stated that an IP is a "concept of financial responsibility." (Tr. p. 11, ls. 04-05). This issue is not about physically interconnecting TCG's network with SWBT's to provide local exchange service, this issue is solely about avoidance of access charges and TCG's attempt to inappropriately use the methodology of reciprocal compensation, which is reserved for local traffic, as required by the Act.

In the First Report and Order<sup>1</sup> the FCC held that

state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs.<sup>2</sup>

This finding is important in light of the FCC's recognition that the reciprocal compensation obligations imposed by section 251(b)(5) of the Act "apply only to traffic that originates and terminates within a local calling area, as defined in the following paragraph."<sup>3</sup> TCG's proposal in Issue 1 limits the Kansas Corporation Commission's ("KCC") ability to define a local calling area by imposing TCG's proposed network architecture on SWBT.

Historically, the KCC has exercised its authority, as recognized by the FCC, to define geographic areas as "local areas" or exchanges for local service or calling purposes. SWBT, as an incumbent local exchange company ("ILEC"), serves many of the KCC designated local exchange areas in the state of Kansas. SWBT's position is that the parties should agree to establish a facility meet in each KCC designated local calling area where the parties will exchange local traffic. (Tr. p. 52, ls. 07-10). In the KCC designated exchange areas where SWBT offers local exchange service, SWBT has approximately 170 end offices. (Tr. p. 49, ls. 09-13). However, based on SWBT's network architecture, if TCG wished to offer local service in each of those exchanges, it

---

<sup>1</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, FCC 96-325, Released August 8, 1996 [hereinafter the "First Report and Order"].

<sup>2</sup> *Id.* at ¶ 1035.

<sup>3</sup> *Id.* at ¶ 1034.

would need to establish an IP in only 30 of those 170 offices. (Tr. p. 49, ls. 09-13; pp. 52-54, ls. 17-08). SWBT's position is consistent with the FCC's discussion in the First Report and Order of local exchange traffic originating and terminating in a local calling area. TCG's position is not.

TCG's position is that TCG should meet SWBT only at what TCG characterizes as the "top" of its and SWBT's networks -- access tandem locations in Kansas. (Tr. p. 16, ls. 12-14). SWBT agrees with this theory only to the extent a local tandem exists.<sup>4</sup> (Tr. p. 52, ls. 11-17). SWBT, however, disagrees with TCG's proposal where SWBT has no local tandem. In that instance, the "top" of SWBT's network is the end or central office serving the KCC designated local exchange area. (Tr. p. 55, ls. 19-22).

TCG's proposal would result in only three IPs with SWBT in Kansas. Such an arrangement would result in SWBT shouldering an unfair facility transport burden. (Tr. p. 55, ls. 06-15). In addition, it would effectively eliminate the KCC established local service exchanges, abrogate Kansas' access tariff regime and result in all intraLATA calls, whether truly local or not, being subject to reciprocal compensation on a LATA-wide basis contrary to the system contemplated by the First Report and Order. The KCC has never before indicated its intent to move to LATA-wide local calling areas. Such a result here would have far reaching implications that transcend the boundaries of this docket.

SWBT's proposal is a fair and equitable manner in which TCG can establish IPs for the exchange of local traffic with SWBT. SWBT's proposal would allow TCG to

---

<sup>4</sup> In Kansas, SWBT has three local tandems in its architecture -- Kansas City, Topeka and Wichita. (Tr. p. 52, ls. 15-17).

connect in those areas served by local tandems, as it desires, and would prevent the unfair shifting of the transport burden to SWBT. Further, adoption of SWBT's architecture here preserves the existing access charge tariff regime approved by the KCC and ensures that reciprocal compensation is paid only when the traffic exchanged is truly local in nature.

**SWBT's Last Best Offer ("LBO") NA Issue 1:**

The parties should establish at least one point of interconnection (POI) for the exchange of local traffic within each Kansas Commission approved local exchange area. Where an exchange is served with a host-remote arrangement, the POI for the remote may be at the host switch location.

**Issue1.1: Should every TCG switch be considered a tandem switch for interconnection purposes?**  
**and**

**Reciprocal Compensation Issue 15:**

**Should TCG be allowed to charge the tandem rate to SWBT for calls originated on the SWBT network and terminated on TCG's network?**

Network Architecture Issue1.1 and Reciprocal Compensation Issue 15 are so closely related that they must be considered together and will be presented so here. SWBT is opposed to both of TCG's proposals.

Section 251(b)(5) of the Act obligates LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications.<sup>5</sup> The terms and conditions for reciprocal compensation must be just and reasonable and allow for the

---

<sup>5</sup> 47 U.S.C. §251(b)(5).

recovery of a reasonable approximation of the additional cost associated with transporting and terminating a call begun on another carrier's network.<sup>6</sup> In the First Report and Order, the FCC determined that

"additional costs" incurred by a LEC when transporting and terminating a call on a competing carriers network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g. fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrants network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.<sup>7</sup>

TCG's request that each of its switches be deemed a tandem switch is directly related to its request that it be allowed to charge SWBT the tandem rate for every call originated on SWBT's network and terminated on TCG's.

With specific regard to Issue 1.1, SWBT opposes any determination that would result in every TCG switch being considered a tandem switch for interconnection purposes. TCG's proposal makes absolutely no technical sense. (Jayroe-Direct, p. 17, ls. 05). TCG premises its proposal on three main theories: (1) that its switches perform both tandem and end-office functions; (2) the Equivalent Interconnection Principle; and, (3) the language of 47 C.F.R. §51.711(a)(3). (Talbot-Direct, pp. 15-16, ls. 17-02).

---

<sup>6</sup> 47 U.S.C. §252(d)(2).

<sup>7</sup> First Report and Order at ¶1090.

With regard to its first and third theories, TCG first asserts that the Arbitrator and Commission must "recognize parity" between a TCG-end office switch and a SWBT-tandem switch (Talbot-Direct, p. 16, ls. 01-02), then it asserts that switch functionality is to be disregarded by the Commission. (Talbot-Rebuttal, p. 20, ls. 19-22). TCG's assertions are wrong on both counts.

[I]n order to evaluate whether a switch performs as a tandem switch, it is appropriate to look at both the function and geographic scope of the switch at issue. Whether a switch performs as a tandem or end-office switch is a factual determination that has been expressly delegated to the state commissions by the FCC.<sup>8</sup>

While many types of switches are capable of performing tandem functions, TCG's switches are not operating in that manner for local interconnection purposes. (Jayroe-Direct, p. 17, ls. 05-07; Jayroe-Rebuttal, p. 6, l. 22). Mr. Talbot even characterizes TCG's switches as "local switches."<sup>9</sup> Although AT&T's switch may perform a tandem function for its interLATA long distance network, TCG's switch is operating as an end-office switch for the purpose of its local interconnection with SWBT's network. (Jayroe-Rebuttal, p. 7, ls. 01-05). For local interconnection purposes TCG's switch performs line functions and is homing off the SWBT tandem. If TCG's switch were truly a tandem for local interconnection purposes it would not home off SWBT's tandem. The ordering codes used by TCG also provide further evidence of its

---

<sup>8</sup> *U.S. West Comm. v. Minnesota Public Utilities*, 55 F. Supp.2d 968, 978 (D. Minn. 1999).

<sup>9</sup> Talbot-Direct, p. 6, l. 3. In his testimony, Mr. Talbot testifies that TCG's switches perform both tandem and end-office functions. (Talbot-Direct, p. 15, l. 17). However, in his direct testimony at footnotes 1 and 2 he testified, that AT&T uses long distance (4ESS) switches to provide local service and TCG uses Class 5 local switches. He also noted that "the local service networks of AT&T Communications and TCG, thus, are distinct, non-integrated networks owned by separate subsidiaries of AT&T Corp." (Talbot-Direct, p. 6, fn.1). (Emphasis added). He then states that "AT&T switches normally provide both an end-office and tandem function and are really multi-function switches, . . . ." (*Id.* at fn. 2).

use as those codes indicate that TCG's switch is an end-office switch, not a tandem functioning switch. (Id. at ls. 05-10).

TCG's conclusion that the Arbitrator and Commission must "recognize parity" between a TCG-end office switch and a SWBT-tandem switch relies on TCG's interpretation of 47 C.F.R. §51.711(a)(3). The cited regulation concerns the application of a tandem rate for reciprocal compensation purposes. Contrary to TCG's representation, the FCC did not explicitly recognize or mandate that TCG's end-office switch must for all purposes be treated as a tandem in its promulgation of the cited regulation. The language employed in 47 C.F.R. §51.711(a)(3) relates directly to the function and geographic scope of the switch for determining whether to apply a tandem-rate for reciprocal compensation purposes. It does not mandate that every TCG switch be treated as a tandem switch.

TCG has produced no affirmative evidence that its switches are capable of operating as tandem switches for local interconnection purposes. Instead, it relies on a vague argument called the "Equivalent Interconnection Principle" which allegedly equates the "top" of SWBT's network to TCG's own switches. (Talbot-Direct, p. 15, ls. 19-21). The record, however, contains no evidence supporting the use, development or application of any such principle in regulatory proceedings. Further, contrary to TCG's assertions, SWBT witness Jayroe testified that the end-office switch, not a tandem, is the top of SWBT's network in many of SWBT's local exchange areas. (Tr. p. 55, ls. 19-22). TCG's switches operate as end-office switches, performing line functions and homing off the SWBT tandem. (Jayroe, Direct, p. 17, ls. 08-09). TCG's switches are not and do not function like tandem switches. (Id., ls. 08-13).

TCG also alleges that the geographic area covered by each TCG switch is comparable to the area covered by SWBT's tandem switches and that its local Class 5 switch is able to connect "virtually any customer in the Kansas City LATA." (Talbot-Direct, p. 39, ls. 07-08, 10-12) (Emphasis added). Mr. Talbot further testified that TCG "has the ability to offer local exchange services across virtually all of the Kansas City LATA . . . ." (Talbot-Direct, p. 39, ls 16-19). (Emphasis added).

The FCC rule provides that where the competing carrier's switch **serves** a geographic area comparable to that served by the incumbent carrier's tandem switch, the rate to be charged is the tandem interconnection rate. The rule focuses on the area currently being served by the competing carrier, not the area the competing carrier may in the future serve.<sup>10</sup>

The issues cannot be determined simply by whether TCG has the ability to serve virtually the entire area served by SWBT's tandem. Rather, the determinative factor is whether TCG's end-office switch actually serves a comparable geographic area. TCG bears the burden of proof in this proceeding and it has failed to meet that burden.<sup>11</sup> The only evidence supporting TCG's claim is a map which purports to show the areas served by TCG's switch and SWBT's tandem in the Kansas City LATA. (Talbot-Direct,

---

<sup>10</sup> *MCI Telecommunications v. Michigan Bell Telephone*, 79 F.Supp.2d 768, 791 (E.D.Mich. 1999) (Emphasis original).

<sup>11</sup> See *Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Application 00-01-022, Filed January 24, 2000, Final Arbitrator's Report, Issued June 13, 2000. In order to qualify for the tandem-switched rate, the Arbitrator held that AT&T had to show both that its switches operate as a tandem by serving comparable geographic areas, and that its network was providing traffic-sensitive transport rather than the equivalent of the local loop, which is non-traffic sensitive and not eligible for reciprocal compensation. *Id.* at 425. The Arbitrator concluded that AT&T failed to satisfy its burden of proof to establish that its switches served geographic areas similar to those served by Pacific Bell's tandem switches. *Id.* at 430-31; see also *In the Matter of the Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Application 99-03-047, Filed March 22, 1999, Final Arbitrator's Report, Issue August 4, 1999 at pp. 79-82 (denying MFS/Worldcom's request to charge tandem rate for all local and ISP-bound calls terminated by Pacific Bell to MFS).

Attachment 17). Again, there is no other evidence in the record to support TCG's assertion – no customer numbers, number of cities served, miles covered or other measures on which the Arbitrator can rely. Accordingly, TCG's demand to treat its switches as tandems, and thus receive the tandem rate throughout the LATA, must be denied, as TCG has not sustained its burden of proof to demonstrate that it actually serves a geographic area comparable to SWBT's tandem switch. Mr. Talbott's testimony as to TCG or AT&T's future plans for service in the Kansas City or other LATAs is not sufficient. Likewise, his testimony as to TCG's options for providing LATA wide service will not satisfy the geographic area served test.<sup>12</sup>

There is simply no evidence in the record to support TCG's request that each of its switches be treated as a tandem switch. TCG's switches neither function as a tandem switch nor do they actually serve a geographic area comparable to SWBT's tandem switches. Accordingly, TCG's proposal that all of its end-office switches be considered as tandem switches for interconnection purposes must be rejected.

If the Commission rejects TCG's proposal to treat its end-office switches as tandem-switches, it need not address TCG's proposal in Reciprocal Compensation Issue 15. If, however, the Arbitrator finds TCG's proposal to have merit, one additional item must be considered.

TCG is seeking tandem compensation on every single call transmitted to them, regardless of whether their network is in fact covering an area comparable to SWBT's

---

<sup>12</sup> In *MCI Telecommunications*, the federal district court concluded that merely comparing the areas served by MCI's fiber ring and Ameritech's tandem was insufficient as MCI's lack of authority to serve every exchange would lead to the conclusion that the MCI fiber ring does not cover the same geographic area as Ameritech's tandem switch. *MCI Telecommunications*, 79 F.Supp.2d at 791.

tandem. (Tr. p. 81, ls. 20-25). TCG's proposal runs afoul of the compensation scheme envisioned by the First Report and Order wherein the rates would "vary" based upon "additional costs." If no additional costs are incurred, it is fundamentally unfair for SWBT to pay the tandem rate.

The reality of the network also directly impacts the issue of fairness in the compensation scheme. As TCG indicated in its testimony, if TCG is awarded the tandem rate, there is no place SWBT will be able to go to avoid paying the tandem rate for terminating traffic to a CLEC customer. (Talbot-Rebuttal, p. 22, ls. 02-04). SWBT's situation is very unlike TCG's, in that TCG can directly connect to SWBT end-offices and avoid paying SWBT the tandem rate. SWBT cannot directly connect to TCG's end-offices to avoid the tandem price. (Lockett-Direct, p. 04-05, ls. 19-01).

Once again, TCG/AT&T demands better treatment than it is willing to afford SWBT under the terms proposed here. SWBT requests the Arbitrator and Commission deny TCG's request for the Tandem Rate.

**SWBT's Last Best Offer ("LBO") NA Issue 1.1 and RC Issue 15:**

The KCC should determine that not every TCG switch performs tandem functionality nor is every TCG switch identified in the LERG as an access tandem. Therefore every TCG switch will not be considered a tandem switch. Where it is determined that TCG's switch is a legitimate tandem switch, then SWBT should be offered the ability to trunk directly to TCG end offices, so that SWBT may have the option, like TCG, to avoid the paying of tandem switching and tandem transport elements of reciprocal compensation.

**Issue 1.2: Must TCG utilize its collocation space to house two way interconnection trunks for interconnection with SWBT or should the trunks terminate on TCG's switch?**

SWBT's position on this issue is clear. TCG is not required to utilize collocation space for interconnection trunks in any SWBT central office. (Tr. p. 56, ls. 01-04). As SWBT witness Jayroe testified, TCG has a number of options available to it for interconnection. For example, TCG could lease facilities from SWBT, another third party or establish a mid-span fiber meet. (Tr. p. 56, ls. 04-08; Jayroe-Direct, pp. 08-09, ls. 19-14). Mr. Jayroe further testified that in the one TCG interconnection with which he was personally familiar, TCG was afforded all of the aforementioned options and chose to place their point of interconnection in their collocation space in SWBT's central office. (Tr. p. 56, ls. 08-14).

TCG is not required to utilize its collocation space to house two-way interconnection trunks for interconnecting with SWBT. TCG may avail itself of many other options available for interconnection.

**SWBT's Last Best Offer ("LBO") NA Issue 1.2:**

Where the parties establish direct end office trunking, TCG should share the costs for the facilities between the SWBT tandem and SWBT end office. TCG may bear its share of the costs by terminating the facilities in its collocation space or through some other negotiated method.

**Issue 2: Should local and intraLATA toll traffic between the parties use one-way or two-way trunk groups?**

SWBT has proposed that all local interconnection trunks for local and intraLATA toll traffic, including tandem and direct end office trunks, be two-way unless both parties

agree to implement one-way trunking. (Jayroe-Direct, p. 11, ls. 15-17). SWBT's position on this issue is based on three premises. First, a two-way trunk group is more efficient and can carry more traffic than a one-way trunk. (Tr. p. 56, ls. 17-19; Jayroe-Direct, p. 11-15, ls. 19-10). As SWBT interconnects with more CLECs, switch ports and the efficiency of interconnection trunk switch ports become very important to all concerned. (Tr. p. 56, ls. 17-23). Second, where facilities are shared or jointly provisioned, a two-way trunk route on the facility makes sense. (Tr. pp. 56-57, ls. 24-10). The use of two-way trunks reduces the total number of trunks required to carry a particular traffic load, in turn reducing the associated costs of trunk terminations and facilities. (Jayroe-Direct, p. 15, ls. 01-05). Third, a jointly provisioned, shared facility with two-way trunking would allow TCG to have ordering and administrative control over the facility, both trunking and facility assignments. (Tr. p. 57, ls. 11-21; Jayroe-Direct, p. 15, ls. 11-15).

In response, TCG argued that 47 CFR 51.301(f) presumes that one-way trunking is the default method and that it was the CLEC's sole discretion to have an option for two-way trunking. (Tr. p. 22-23, ls. 20-05). SWBT disagrees with TCG's reading of the one-sentence provision. If anything, the provision indicates that two-way trunking is preferred and where technically feasible, an ILEC shall provide it upon request.

The FCC has just recently issued another Order in which it affirms that two-way trunking is required to meet the interconnection obligations of the Act.<sup>13</sup> In the FCC's

---

<sup>13</sup> *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 Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, FCC 00-238, CC Docket No. 00-65, Released June 30, 2000 [hereinafter the "Texas 271 Order"] at pp. 30-31, ¶69.

Order approving the Application of SWBT to provide interLATA services in the State of Texas, the FCC found that SWBT had met the obligations under the Act to provide interconnection trunking by SWBT's provisioning of two-way trunking to CLECs. Specifically, the FCC noted "as of October, over 75% of the trunks provisioned in Texas were two-way trunks."<sup>14</sup> The FCC further stated in the Texas 271 Order that "[r]efusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. The provisioning of two-way trunking arrangements is among the obligations that the Commission concluded in the *Local Competition Order* demonstrated an incumbent LEC was providing interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations. *Local Competition First Report and Order*, 11 FCC Rcd at 15612-613, paras. 217-220; see also 47 C.F.R. Section 51.305(f)."<sup>15</sup>

TCG's interconnection architecture today is a midpoint architecture with a shared facility and two-way trunking. (Tr. p. 58, ls. 07-16). That arrangement is standard in the industry and meets the obligations of the Act as interpreted by the FCC. That arrangement also maximizes network efficiency for all telecommunications providers, including other CLECs. The Arbitrator and the Commission should affirm SWBT's proposal on this issue and order the continued use of two-way trunk groups for local and intraLATA toll traffic exchanged between the parties.

---

<sup>14</sup> *Id.*, p. 31, ¶69.

<sup>15</sup> Texas 271 Order at p. 31, fn. 143.

### **SWBT's Last Best Offer ("LBO") NA Issue 2:**

Trunking for local and intraLATA toll traffic will be two-way in order to maximize network efficiency.

**Issue 3: If the KCC affirms SWBT's network architecture for interconnection with TCG, what method should be used to determine the proportion of interconnection facilities that will be provided by each party?**

SWBT's position on this issue is relatively simple. If the Arbitrator and the Commission affirm the use of SWBT's network architecture, SWBT believes each party's end users mutually benefit from the interconnection of the networks. Accordingly, SWBT agrees to share the facilities cost equally with TCG. Despite the fact that traffic balance may shift over time as each interconnection matures, SWBT believes that it is appropriate for each party to share this cost. (Tr. pp. 57-58, ls. 22-06; Lockett-Direct, p. 5, ls. 04-10).

### **SWBT's Last Best Offer ("LBO") NA Issue 3:**

The interconnection facilities should be provided in an approximately equal amount by each party, reflecting that each party's end users derive approximately equal value from the exchange of traffic.

**Issue 4: If the KCC affirms TCG's network architecture for interconnection with SWBT, should each party bear its own costs to convert from the existing interconnection arrangements to the interconnection arrangements described in the resulting interconnection agreement?**

With regard to this issue SWBT believes that neither party should be held hostage by the other party's changing business plans. (Tr. pp. 50-51, ls. 25-02). Accordingly, if one party seeks a unilateral change in the existing network

interconnection architecture, then that party should bear the cost of any rearrangements. (Tr. pp. 50, ls. 22-25; Lockett-Direct, p. 5, ls. 19-20). SWBT would be required to do translations work, as well as trunk design work, to change from two-way trunking to one-way trunking under TCG's proposal. Facility rearrangement would also be required to implement separate facilities from the joint facility in place today. (Tr. p. 58, ls. 17-22). The network cost of adopting TCG's architecture could be significant. (Id. at l. 24).

SWBT requests the Arbitrator adopt SWBT's network architecture and sharing of costs proposed therewith. In the event, however, that the Arbitrator grant's TCG's requested rearrangement of existing trunking arrangements, the Arbitrator should assess the entire cost of that rearrangement to TCG.

**SWBT's Last Best Offer ("LBO") NA Issue 4:**

The parties will share the cost of conversion when there is mutual agreement that the existing network interconnection architecture shall be changed. If one party seeks a unilateral change in the existing network interconnection architecture, then that party shall bear the cost of any rearrangements.

**Issue 6: Are all IXC's required to interconnect with SWBT through provisions of the access tariff to get access to SWBT customers?**

Issue 6 is not an issue properly before the Arbitrator or the Commission in an arbitration of a local interconnection agreement under the Act. Issue 6 does not deal with an issue of interconnection for the exchange of local traffic, it is specifically concerned with switched access services. (Lockett-Direct, p. 6, ls. 07-08). To the extent TCG's proposals are inconsistent with federal or state access tariffs, the tariffs

should control. (Lockett-Direct, p. 6, ls. 08-09). SWBT does not oppose TCG acting as an IXC or access tandem and from their switch transferring interexchange carrier traffic to SWBT. (Tr. p. 110, ls. 08-10). As with any IXC service, SWBT believes that is an access service and not a local service subject to this arbitration. (Id. at ls. 10-12). The appropriate compensation for SWBT would be terminating access charges. (Id. at ls. 12-13). SWBT opposes any suggestion that when TCG acts on behalf of an IXC such as AT&T, carrying that IXC traffic, it becomes local traffic subject to reciprocal compensation for local traffic. (Tr. p. 110, ls. 15-18).

TCG witness Swift agreed with SWBT and stated that TCG did not intend to attempt to transform IXC access traffic into local traffic subject to reciprocal compensation for local traffic. (Tr. p. 110, ls. 19-21). To the extent there was discussion of meet-point billing with regard to this issue, that discussion was limited to the issue of trunking and the combination of traffic on those trunks. (Id. at ls. 14-16). SWBT, however, continues to believe it is an access issue that need not be addressed by the Arbitrator or the Commission on the grounds it is governed by the applicable access tariffs. SWBT requests the Arbitrator and Commission concur in its assessment of the issue as framed by TCG and deny TCG's proposal.

**SWBT's Last Best Offer ("LBO") NA Issue 6:**

SWBT will not be required to accept interexchange carrier traffic through a third party.

**Issue 10: Should TCG negotiate an alternate form of interconnection if SWBT does not choose the option of Space License in the future? Should Space License charges only apply to future arrangements?**

TCG should be required to negotiate an alternative form of interconnection if SWBT does not choose the option of Space License in the future. (Jayroe-Direct, p. 9, ls. 18-21). Where SWBT is given other options for local interconnection, Space License is appropriate. (Tr. p. 88, ls. 09-13). TCG should not, however, be allowed to refuse other methods of interconnection and force SWBT to have Space License as the only available form of interconnection. (Jayroe-Direct, p. 10, ls. 03-05). Where Space License is the only form of interconnection offered to SWBT, TCG should be required to waive all fees and charges associated with it. (Jayroe-Direct, ls. 05-07).

While SWBT does agree that Space License is appropriate with other options for local interconnection, SWBT does not agree that it should be forced to pay Space License for existing access facilities that may terminate on TCG's premises. (Jayroe-Direct, p. 10, ls. 08-10). Where AT&T/TCG already have a point of presence ("POP") established and if SWBT has a facility there to serve the POP, SWBT does not believe it should be required to pay for Space License. (Tr. p. 88, ls. 13-18).

**SWBT's Last Best Offer ("LBO") NA Issue 10:**

TCG must negotiate some other form of interconnection if SWBT does not choose to take Space License. The Space License charges would apply only to future negotiated arrangements and do not apply to locations where SWBT currently utilizes existing access facilities for transport of local interconnection traffic.

## **RECIPROCAL COMPENSATION ISSUES**

SWBT strongly believes many of the issues raised by TCG in this section are inappropriate for arbitration in this setting, as they are access charge compensation issues, not local interconnection issues. As SWBT will show in the following sections, TCG's proposals are aimed at exempting TCG, and its parent company, AT&T, from the intrastate access tariffs that apply to intraLATA traffic transported between local calling areas. Further, SWBT believes that TCG/AT&T seeks to be over-compensated for local exchange traffic. SWBT opposes TCG's proposal for many reasons, but foremost among those is the fact that TCG would be singled out for special treatment as compared to other competitive local exchange carriers, interexchange carriers and independent telephone companies operating within the state of Kansas by an arbitration award exempting TCG from the existing tariffed intraLATA access compensation requirements. SWBT believes such a result would be contrary to both the Act, and the orders of the FCC and KCC.

### **Issue 1:     What prices should apply to intraLATA toll calls terminated by parties over interconnection trunks?**

Issue 1 is not an issue properly before the Arbitrator or the Commission in an arbitration of a local interconnection agreement. Issue 1 does not deal with the issue of reciprocal compensation for local traffic, but rather it is specifically concerned with intraLATA toll calls. The FCC, in its First Report and Order, unequivocally stated that

as a legal matter, . . . transport and termination of local traffic are different services than access service for long distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed

by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic.<sup>16</sup>

We conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area . . . . Access charges were developed to address a situation in which three carriers – typically the originating LEC, the IXC, and terminating LEC – collaborate to complete a long distance call. . . . By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. . . . We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.<sup>17</sup>

[S]tate commissions have the authority to determine what geographic areas should be considered “local areas” for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions’ historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges.<sup>18</sup>

The geographic “local area” for reciprocal compensation should be consistent with State Commissions’ historical practice of defining local service areas. The KCC has never previously determined that the appropriate geographic area for local calling would be an entire LATA. (Tr. p. 74, ls. 05-07). The issue of intraLATA compensation is thus not an appropriate issue for arbitration pursuant to Sections 251 and 252 of the Act. TCG casts the issue in terms such as “interconnection trunks”, but doing so

---

<sup>16</sup> First Report and Order at ¶ 1033. (Emphasis added).

<sup>17</sup> *Id.* at ¶ 1034. (Emphasis added).

<sup>18</sup> *Id.* at ¶ 1035. (Emphasis added).

does not change the nature of an intraLATA toll call. The appropriate price to be applied for terminating intraLATA traffic that is transported between local calling areas is determined from the appropriate access tariff. (Tr. p. 73, ls. 20-24). The Arbitrator and the Commission must determine that the appropriate price to be applied for terminating intraLATA toll traffic is the appropriate party's intrastate access service tariffed rate.

**SWBT's Last Best Offer ("LBO") RC Issue 1:**

Interstate and intrastate intraLATA toll service traffic compensation will be at terminating access rates for Message Telephone Service and originating access rates for 800 Service, including the Carrier Common Line charge where applicable, as set forth in each party's appropriate Interstate or Intrastate Access Service Tariff, but not to exceed the compensation contained in the ILEC's tariff in whose exchange area the end user is located.

**Issue 2: Should a LATA-wide reciprocal compensation rate be established if TCG's proposal for network architecture is adopted?**

A LATA-wide reciprocal compensation rate should not be established and TCG's proposal for network architecture should not be adopted. A LATA-wide rate is not appropriate for all traffic.

TCG witness Swift testified that TCG does not believe the FCC mandated "that the local area definition for wholesale needed to be the same as the local area for retail." (Tr. p. 36, ls. 14-16; p. 35, ls. 19-22). However, Ms. Swift's testimony is in contradiction to the language of the First Report and Order, which indicates the FCC's intent to include new entrants (CLECs) within the scope of its ruling on the issue of

reciprocal compensation. In fact, the language of the order indicates the FCC's intent to cast its net wide when applying the requirement of section 251(b)(5).

[S]ection 251(b)(5) obligations apply to all LECs in the same state-defined local exchange service areas, including neighboring incumbent LECs that fit within this description. . . . [N]either the plain language of the Act nor its legislative history limits this subsection to the transport and termination of telecommunications traffic between new entrants and incumbent LECs.<sup>19</sup>

Contrary to TCG's assertions, state-defined local calling areas are mandatory and do apply to a wholesale relationship and competitive carriers.

SWBT further disagrees with Ms. Swift's testimony that TCG's proposal is cost based. (Tr. p. 74, ls. 14-24). In fact, SWBT believes that TCG's proposed LATA-wide calling area would result in TCG being over compensated for truly local calls. (Tr. p. 74, ls. 24-25).

What TCG's proposal really means is that SWBT could be required to transport TCG's traffic all the way across Kansas, from Colby to Topeka, within the same LATA and pay terminating compensation to TCG with no reimbursement for that cost. (Tr. p. 75, ls. 01-21; p. 91, ls. 09-13). TCG's proposal is truly dealing with intraLATA toll traffic. (Tr. p. 76, ls. 05). TCG witness Mr. Talbott, upon questioning by the Arbitrator, could not disagree with SWBT's characterization of TCG's proposal. (Tr. p. 77, ls. 14-18). SWBT does not believe it is appropriate for the Arbitrator or the Commission to consider anything in this proceeding that would eliminate the application of access charges. (Tr. p. 91, ls. 03-05). TCG can offer larger calling areas to its end-users if it so chooses; but

---

<sup>19</sup> First Report and Order at ¶ 1037.

TCG cannot twist the requirements of the law in order to cause SWBT to compensate TCG for its business arrangements. (Tr. p. 76, ls. 16-18).

No LATA-wide reciprocal compensation rate should be established by the Arbitrator or Commission in this proceeding. The First Report and Order makes clear that the Act "preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic."<sup>20</sup>

**SWBT's Last Best Offer ("LBO") RC Issue 2:**

The rates for the termination of traffic should be based on the costs associated with the termination of the type of traffic being terminated. Costs for the transport and termination of traffic differs based on the traffic type, or the jurisdictional nature of the traffic. A LATA-wide rate for all traffic is not appropriate.

**Issue 4:      What is the appropriate terminating compensation arrangement when local traffic is originated by or terminated to a TCG customer and transited by SWBT?**

Section 251(a) of the Act states that "each telecommunication carrier has the duty . . . to establish reciprocal compensation arrangements for the transport and termination of telecommunications."<sup>21</sup> Nothing in the Act requires any incumbent LEC to establish these billing arrangements for CLECs. "All parties that originate traffic which transits SWBT's network for termination to a third party are required to have their own agreement with the third party." (Hopfinger-Direct, p. 7, ls. 07-08). TCG, however, is

---

<sup>20</sup> First Report and Order at ¶ 1033.

<sup>21</sup> 47 U.S.C. § 251(a)(5).

wrongly attempting to make SWBT responsible for billing and compensation arrangements between third party carriers.

Neither the Act, nor FCC or KCC rules and regulations require SWBT to be responsible for such arrangements between third party carriers. For local traffic that transits SWBT's network, SWBT will bill the originating carrier the transit rate contained in the originating carrier's interconnection agreement. (Id. at ls. 10-12). For any local traffic that transits SWBT's network, the originating and terminating parties are responsible for establishing any "Compensation Agreement" to govern their relationship. (Id. at ls. 12-15). Since TCG has been in business for some time, under the Act TCG should already have agreements in place addressing intercompany compensation with those third parties. Accordingly, SWBT requests the Arbitrator and Commission deny TCG's proposal and find that TCG is to enter into its own agreements with third parties for the termination of local traffic transited by SWBT.

**SWBT's Last Best Offer ("LBO") RC Issue 4:**

All parties that originate traffic which transits SWBT's network for termination to a third party will have their own agreement with that third party. The terminating party and the transit provider will bill their respective portions of the charges directly to the originating party, and neither the terminating party nor the transit provider will be required to function as a billing intermediary.

**Issue 5:     What compensation rate should be applied to traffic terminated by TCG or SWBT if TCG's proposed network architecture is not adopted?**

If TCG's proposed network architecture is not adopted, the appropriate compensation rate to be applied to traffic terminated by TCG or SWBT, for legitimate local exchange traffic, are those rates previously determined by the KCC in the Generic UNE Cost Docket, KCC Docket No. 97-SCCC-149-GIT. (Hopfinger-Direct, p. 8, ls. 01-03). The appropriate applicability of these rates under different interconnection arrangements will be as found in SWBT's Appendix Reciprocal Compensation. (Id. at 05-07). If mutually agreed upon by the parties, a bill and keep arrangement will be the basis for compensation for all wireline local traffic. (Id. at 07-09).

**SWBT's Last Best Offer ("LBO") RC Issue 5:**

The parties agree that the rates that apply in a reciprocal compensation arrangement are those that have been determined in the generic cost docket. (Docket No. 97-SCCC-149-GIT) The cost-based rates for the termination of intraLATA toll traffic can be found in each party's appropriate Interstate or Intrastate Access Service Tariff. The appropriate applicability of these rates under different interconnection arrangements will be as found in SWBT's appendix Reciprocal Compensation. If mutually agreed upon by the parties, a bill and keep arrangement will be the basis for compensation for all wireline local traffic as well as all ISP traffic.

**Issue 6:     Should bill and keep apply to all originating and terminating local traffic whenever TCG serves the end user using unbundled local switching?**

SWBT opposes TCG's bill and keep proposal as it is not truly "Bill and Keep" for all wireline local traffic since it only address one specific type of traffic and not all local traffic. (Hopfinger-Direct, p. 9, ls. 04-12). SWBT believes local calls made from unbundled local switching ("ULS") purchased by TCG should be subject to the same reciprocal compensation rate that applies to all other local calls. (Id. at 01-03). TCG's proposal would result in SWBT only being able to recover its costs for the termination of traffic if the call is originated from a TCG facilities-based switch. (Id. at 04-08). Further, TCG's proposal would obligate SWBT to pay a third-party CLEC reciprocal compensation when a call originating from an unbundled switch is connected to a customer served by the third party CLEC. (Hopfinger-Direct, p. 9, ls. 13-22). This is neither appropriate or required by the Act . TCG's proposal would allow it to avoid paying the appropriate compensation on calls to any other LEC or CLEC. TCG's proposal is unreasonable and inequitable and should not be adopted by the Arbitrator or the Commission.

**SWBT's Last Best Offer ("LBO") RC Issue 6:**

When TCG serves an end user using unbundled local switching, the compensation arrangement for that traffic will be handled no differently than that from an end user using TCG's own switch.

**Issue 9:     What records should be required for the purpose of billing reciprocal compensation?**

The exchange of originating Category 92-99 records is the existing basis for billing reciprocal compensation in Kansas. (Murphy-Rebuttal, p. 14, ls. 01-03). Further, contrary to TCG's proposal, the Ordering and Billing Forum ("OBF") has not adopted any standards applicable to intercompany compensation for intraLATA toll or local traffic. (Id., p. 12, ls. 11-20; Tr. p. 68-69, ls. 21-01). Instead, the exchange of Category 92-99 records is the industry standard used for intraLATA toll and local compensation in Kansas and other SWBT states. (Murphy-Rebuttal, p. 14, ls. 01-03). If a call goes through an IXC, Category 11 records and a completely different billing system are used. (Tr. p. 68, ls. 15-18). SWBT cannot currently bill local and intraLATA toll compensation using Category 11 records. (Tr. p. 69, ls. 06-09). It would require a significant change in SWBT's billing system to use Category 11 records. (Tr. p. 71, ls. 11-15).

SWBT witness Murphy also testified that the 92-99 record process is not used solely with CLECs. (Tr. p. 92, ls. 14-15). Additionally, he testified that AT&T, TCG's parent company, is exchanging 92-99 records within the five-state SWBT region. (Id. at ls. 07-13). It is not appropriate to change the existing compensation system that would affect numerous parties, such as United Telephone, and other ILECs and CLECs, not just TCG in an arbitration with TCG. (Tr. p. 92, ls. 15-19).

Likewise TCG's proposal to switch from the use of originating records to terminating records for billing purposes relies heavily on the perceived auditing benefit of having originating records. (Tr. p. 42, ls. 11-13). Ms. Swift contends the 92-99 process is fraught with opportunity for errors. (Tr. p. 42, ls. 09-10). However, following her testimony to its conclusion, in the case of TCG, no record audit opportunity would

exist in light of her testimony that TCG's switch is not yet capable of passing the calling party number ("CPN") used to identify the originator of a call. (Tr. p. 93, ls. 07-09). If no CPN is passed, how would SWBT, or TCG for that matter, know who to bill when using terminating records? (Id. at ls. 10-12).

The Arbitrator and the Commission should order the continued use and exchange of the Category 92-99 records between SWBT and TCG for the purpose of billing reciprocal compensation in Kansas, which is the industry-wide practice.

**SWBT's Last Best Offer ("LBO") RC Issue 9:**

The exchange of originating Category 92-99 records is the basis for billing reciprocal compensation in Kansas.

**Issue 10: If TCG's proposal on transit calls is not accepted, should SWBT be responsible for ensuring that TCG receives record (billing) data from the third party carrier?**

First and foremost, TCG's proposal on transit calls should not be adopted in this proceeding. SWBT is not obligated by the Act or any order of the FCC or KCC to perform the billing or collection functions suggested by TCG. (Murphy-Rebuttal, p. 9, ls. 05-07; Hopfinger-Rebuttal, p. 13, ls. 07-09)). Likewise, it is not necessary for SWBT to perform this function in order for TCG to compete effectively in the telecommunications marketplace. (Id. at ls. 07-08).. The Act makes clear that every local exchange carrier, including TCG, has a duty to establish its own reciprocal compensation arrangements for the transport and termination of telecommunications.<sup>22</sup> (Hopfinger-Rebuttal, p. 13, ls. 09-10). The obligation to bill and compensate rests with the

---

<sup>22</sup> 47 U.S.C. § 251(b)(5).

originating and terminating carriers, as the transiting carrier SWBT will bill its respective portion of the charges directly to the originating party but it is not obligated to function as TCG's billing and collection agent. (Murphy-Rebuttal, p. 9, ls. 18-22). Additionally, SWBT does not have a billing system in place to perform such a billing and collection function for TCG and does not wish to perform those functions. (Id. at ls. 12-14). SWBT is proposing to retain processes that are in place today regarding billing, recording and data exchange for transit traffic. Contrary to TCG's arguments, requiring TCG to comply with the Act, like every other ILEC and CLEC, will not slow the development of competition in Kansas. (Hopfinger-Rebuttal, pp. 13-14, ls. 17-09).

SWBT recognizes that at the hearing in this matter TCG witness Swift reiterated, with regard to this issue, that "we have withdrawn our request that Southwestern Bell bill on our behalf." (Tr. p. 99, ls. 22-23). Instead, she attempted to recast the issue in the form of one not previously presented and, thus, not appropriate for consideration by the Arbitrator or Commission in this proceeding. In light of TCG's testimony, SWBT respectfully requests the Arbitrator and Commission find that under the Act TCG, not SWBT, is responsible for entering into agreements with third party carriers to ensure they receive billing data from that third party carrier.

**SWBT's Last Best Offer ("LBO") RC Issue 10:**

CLECs originating traffic are required to send summarized originating call records to all parties on the call path. SWBT is not required to function as a billing intermediary or clearinghouse for TCG. The transiting party and terminating party will bill their respective portions of the charges directly to the originating party. SWBT agrees to

send Calling Party Number ("CPN") while performing as a transiting provider only if it is received from the originating party.

**Issue 11: On long distance calls originating or terminating to TCG customers, should TCG receive the switched access rate element of the transport interconnection charge?**

Once again, SWBT's position is that the issue stated here is an access charge issue that is not appropriately considered in an arbitration of a local interconnection agreement. (Tr. p. 72, ls. 09-11; Hopfinger-Direct, p. 14, ls. 10-12). As was also previously noted, the FCC in its First Report and Order held that "[t]raffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges."<sup>23</sup> Ms. Swift's own testimony notes the issue deals with interstate and intrastate toll calls. (Swift-Direct, p. 16, ls. 06-07). SWBT believes access charges, as contained in the company's approved access tariffs, should apply to long distance calls that are originated by or terminated to end user customers. (Hopfinger-Direct, p. 14, ls. 07-09).

SWBT believes this is an access charge issue not an issue to be considered in the arbitration of a local interconnection agreement. Therefore, SWBT requests the Arbitrator dismiss Issue 11, or in the alternative determine that access charges, as contained in the company's approved access tariffs, should apply to long distance calls that are originated by or terminated to end user customers.

---

<sup>23</sup> First Report and Order at ¶ 1035. (Emphasis added).

**SWBT's Last Best Offer ("LBO") RC Issue 11:**

The transport interconnection charge will be applied to originating and terminating traffic based upon the applicable switched access rates.

**Issue 12: What is the appropriate compensation rate for intraLATA 8YY traffic?**

Once again, SWBT's position is that the issue stated here is an access charge issue that is not appropriately considered in an arbitration of a local interconnection agreement. (Tr. p. 72, ls. 12-13; Hopfinger-Direct, p. 14, ls. 10-12). TCG urges that reciprocal compensation should be paid if the intraLATA call is terminated without the need to hand it off to an IXC. (Swift-Direct, p. 14, ls.06-10). The involvement of an IXC in the intraLATA 8YY traffic is not relevant. SWBT believes, consistent with the FCC's First Report and Order (discussed above), that the appropriate access charges should apply to all intraLATA toll traffic, including 8YY traffic. (Hopfinger-Direct, p. 14, ls. 15-16).

SWBT believes this is an access charge issue and not an issue to be considered in the arbitration of a local interconnection agreement. Therefore, SWBT requests the Arbitrator dismiss Issue 12, or in the alternative determine that the parties applicable Access tariffs govern all intraLATA traffic, including intraLATA 8YY traffic.

**SWBT's Last Best Offer ("LBO") RC Issue 12:**

8YY traffic delivered over the Local/IntraLATA trunks will be compensated as toll calls, with the appropriate rates contained in each party's Intrastate Access Service Tariff.

**Issue 13: If TCG uses SWBT's network (transit call) to originate a call to a third party cellular customer, what is TCG's obligation to bill and collect its customers under a calling party pays arrangement?**

This issue, like many others previously raised by TCG is an attempt to skirt the Act's requirement for the establishment of third party agreements for the payment of reciprocal compensation. SWBT believe the traffic discussed is no different than any other third party carrier and the same transiting traffic rules should apply. If SWBT's network is used to "transfer traffic to another carrier, the same provisions should apply in that the carrier that originated the traffic should have an arrangement with the carrier receiving the traffic and that Southwestern Bell will be compensated for the transiting." (Tr. p. 78, ls. 07-15).

In addition to testifying that TCG's calling party pays proposal is not in operation anywhere in the United States (Tr. p. 78, ls. 19-22), TCG witness Swift reiterated with regard to this issue, as well as Issue 10, that "we have withdrawn our request that Southwestern Bell bill on our behalf." (Tr. p. 99, ls. 20-23). She added that, based upon SWBT witness Hopfinger's testimony, with regard to this issue that "I don't think we have an issue because I don't think that [TCG's] interpretation of what the issue was there was the transiting issue." (Tr. p. 100, ls. 09-13). SWBT believes the issue as framed is a transiting issue and TCG should be required to comply with the Act and establish third party billing arrangements for the payment of reciprocal compensation. SWBT has no obligation under the Act to perform that function for TCG.

TCG's witness, after stating she did not believe disagreement existed in the context of a transiting issue, recast the question as one of whether "if the cellular party is expecting the land line user to be paid, then there has to be an exchange between

the cellular party and land line company. " (Tr. p. 100, ls. 13-16). TCG's position is that they should not be held liable for any costs if the cellular party has not tried to establish an arrangement with TCG to provide billing. (Tr. p. 100, ls. 16-19). "If the cellular carrier wants TCG to provide such services, those arrangements would be between the cellular carrier and TCG." (Swift-Direct, p. 14, ls. 21-22). TCG will not hold SWBT liable in that situation. (Tr. p. 100, ls. 20-21).

Based upon the testimony of TCG's witness there does not appear to be an issue presented for the Arbitrator or Commission to resolve. The obligations at issue rest with TCG. However, SWBT believes it must be made clear that TCG is to abide by the requirements of the Act concerning third party billing arrangements for reciprocal compensation and that SWBT has no obligation to perform those functions for them when transiting traffic. In addition, SWBT requests the Arbitrator find that TCG's proposal cannot result in otherwise unenforceable terms or conditions that would purport to prohibit SWBT from billing for transiting charges regardless of whether TCG and the third party cellular carrier have entered into the necessary and required billing arrangements.

**SWBT's Last Best Offer ("LBO") RC Issue 13:**

TCG is required to establish compensation arrangements with all third party carriers, including cellular carriers, before using SWBT's tandem to complete transit calls to the third party carrier. SWBT will bill TCG the appropriate transiting rate located in the pricing appendix on a per minute of use basis. TCG shall indemnify SWBT against any and all charges levied by such third party carriers and any attorney fees and expenses.

**Issue 14: Where TCG is not sending calling party number on originating traffic, what method should be used to determine the charges for that traffic?**

As indicated in the testimony of SWBT witness Murphy, given the differences in rates between local reciprocal compensation and switched access, the passing of CPN should be deemed a reasonable request. (Murphy-Rebuttal, p. 15, ls. 01-02).

Accordingly, SWBT has proposed a sensible approach to billing calls with and without CPN. When the percentage of calls passed by a carrier with CPN is greater than 90 percent, those calls without CPN will be billed as either local traffic or intraLATA toll traffic in direct proportion to the minutes of use ("MOU") of the calls exchanged with CPN. (Lockett-Direct, p. 9, ls. 04-10). When the percentage of calls passed with CPN is less than 90 percent, the calls passed without CPN will be billed as Switched Access. (Id. at ls. 11-13).

In response to SWBT's proposal, TCG witness Swift stated in her rebuttal that any carrier not passing CPN to an interconnecting carrier would be "in direct violation of FCC rules" and that TCG certainly expected SWBT to be in compliance. (Swift-Rebuttal, p. 15, ls. 10-12). Ms. Swift had also previously testified that "[w]here the parties are exchanging traffic using SS7, the likelihood that calling party number ("CPN") will not be available is quite minimal." (Swift-Direct, p. 15, ls. 07-08). Further, she belittled SWBT's stated concern regarding arbitrage in the failure to pass CPN. (Swift-Rebuttal, p. 15, ls. 14; Tr. p. 39, ls. 17-19).

Ironically, at the arbitration hearing in this matter, SWBT was told by Ms. Swift and TCG, for the first time, that TCG's Lucent switches deployed in the Kansas City area allegedly "cannot pass CPN." (Tr. p. 40, ls. 17-40). Further, they may not be able

to pass it until sometime in the fourth quarter of 2000, if then. (Tr. pp. 40-41, ls. 24-02). Considering Ms. Swift's prior sworn testimony, it would now appear that TCG intends to be the exception to the rule requiring the passage of CPN. It is hardly fair and equitable to allow certain CLECs to knowingly deploy equipment that cannot pass CPN and allow them to pay local traffic reciprocal compensation rates when in fact the bulk of the traffic may be intraLATA toll.

SWBT's proposal regarding the passage of CPN is a reasonable and fair method of determining the charges for traffic passed without CPN. SWBT requests the Arbitrator and the Commission adopt its proposal on this issue.

**SWBT's Last Best Offer ("LBO") RC Issue 14:**

Where SS7 connections exist, if the percentage of calls passed with calling party number (CPN) is greater than 90%, all calls exchanged without CPN information will be billed as local or intraLATA toll traffic in direct proportion to the minutes of use exchanged with CPN information. If the percentage of calls passed with CPN is less than 90%, all calls passed without CPN will be billed as intraLATA switched access.

**Issue 15: Should TCG be allowed to charge the tandem rate to SWBT for calls originated on the SWBT network and terminated on TCG's network?**

See the previous discussion Network Architecture Issue 1 for a complete discussion regarding this issue.

**Issue 16: Must SWBT at TCG's sole discretion be required to receive Transit Traffic from TCG?**

This issue, as framed here and on the Disputed Issues List filed with the Commission on February 21, 2000, as to whether SWBT must be "required to receive"

transit traffic from TCG, differs from Ms. Swift's characterization of whether TCG "may offer" its Transit Traffic Services to SWBT. (Swift-Direct, p. 16, ls. 14-15). The difference in this language is very important. However, both SWBT witness Hopfinger and TCG witness Swift testified that SWBT is not required to receive transit traffic from TCG. (Hopfinger-Direct, p. 16, l. 15; Swift-Direct, p. 16, l. 13). TCG cannot require SWBT to accept transit traffic from TCG that originates from a third party carrier and deny SWBT any rights to arrange a direct interconnection agreement with the third party carrier. (Hopfinger-Direct, p. 16, ls. 15-17). Likewise, TCG has no right to interject itself into SWBT's efforts to establish interconnection agreements that do not require TCG to transit traffic. (Id. at ls. 19-20). Further, SWBT cannot be required to subscribe to the proposed transiting service that TCG may at some unknown future date decide to offer. (Id. at pp. 16-17, ls. 20-01).

SWBT requests the Arbitrator and Commission determine that SWBT cannot be required to accept transit traffic from TCG at TCG's sole discretion. Further, SWBT requests a determination that SWBT shall not be required to subscribe to any transiting service offered by TCG and that TCG shall not interject itself into any effort by SWBT to establish direct interconnection agreements with third party carriers that do not require TCG to transit traffic.

**SWBT's Last Best Offer ("LBO") RC Issue 16:**

All parties wishing to terminate traffic on SWBT's network shall have their own interconnection agreement with SWBT for such purpose.

#### **IV. CONCLUSION**

The proposals brought forward by TCG in this proceeding attempt to address issues, specifically access-related issues that are well beyond the scope of a local interconnection agreement. SWBT believes the Arbitrator and Commission should deny TCG's attempt to single itself out for special treatment by attempting to exempt itself from existing federal and state access tariffs and access requirements through this proceeding. SWBT also believes that TCG's proposals are designed to promote the inappropriate application of the Act's reciprocal compensation methodology. As a result, TCG would be over-compensated for reciprocal compensation of local traffic.

SWBT remains willing and able to provide TCG with those network elements and interconnection arrangements required by the Act, the FCC and the KCC, in order to facilitate TCG's ability to do business and compete in the state of Kansas as a local exchange carrier. However, SWBT expects to be fairly and appropriately compensated for the network elements, interconnection arrangements and access services that it provides. SWBT believes its proposals and positions in this proceeding are consistent with the goals and requirements of the Act and will achieve a fair and equitable result for both parties. Accordingly, SWBT respectfully requests the Arbitrator and Commission adopt the positions put forward by SWBT in this proceeding.

Respectfully submitted,

/s/ Bruce A. Ney

APRIL J. RODEWALD (KS#99007)

BRUCE A. NEY (KS#15554)

MICHELLE B. O'NEAL (KS#70461)

220 E. Sixth Street, Room 515

Topeka, Kansas 66603-3596

(785) 276-8435 3413

ATTORNEYS FOR SOUTHWESTERN

BELL TELEPHONE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the SWBT's Post Hearing Brief was sent via U.S. Mail or hand-delivered on this 12<sup>th</sup> day July, 2000.

Eva Powers  
Assistant General Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027

Mark Witcher  
AT&T  
919 Congress Avenue, Suite 900  
Austin, TX 78701-2444

Dana Bradbury Green  
Robert A. Fox  
Foulston & Siefkin LLP  
1515 Bank of America Tower  
534 Kansas Avenue  
Topeka, KS 66603

/s/ Bruce A. Ney

Bruce A. Ney