

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

In the Matter of

Application by SBC Communications Inc.,  
Southwestern Bell Telephone Company,  
and Southwestern Bell Communications  
Services, Inc. d/b/a Southwestern Bell Long  
Distance for Provision of In-Region,  
InterLATA Services in Oklahoma

CC Docket No. \_\_\_\_\_

To: The Commission

**BRIEF IN SUPPORT OF APPLICATION BY SBC COMMUNICATIONS INC.,  
SOUTHWESTERN BELL TELEPHONE COMPANY, AND  
SOUTHWESTERN BELL LONG DISTANCE FOR PROVISION OF  
IN-REGION, INTERLATA SERVICES IN OKLAHOMA**

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## **EXECUTIVE SUMMARY**

The Telecommunications Act of 1996 represented a giant step toward removing legal barriers to providing local telephone services and allowing anyone to compete. The Act also imposed the virtually unprecedented requirement that incumbent local exchange carriers (“LECs”) devote their personnel and facilities to assisting entry by competitors.

For several years prior to passage of the Act, Southwestern Bell had supported federal and state legislation to permit fair competition in the local exchange. Since the legislation’s passage, Southwestern Bell has worked diligently to fulfill its new responsibilities. In its traditional five-state service area, Southwestern Bell has negotiated and signed 89 agreements with 50 different competitors, including Sprint, ICG, Brooks Fiber, and numerous other companies that seek to capitalize on the opportunities presented by the 1996 Act. Southwestern Bell also has spent millions of dollars to revamp its operations to comply with the Act. Among other things, Southwestern Bell has unbundled its local network, offered retail services at a discount for resale, and made state-of-the-art electronic operations support systems available to competitors.

Despite the extraordinary burdens placed upon it, Southwestern Bell supported the 1996 Act because it was balanced. Congress sought to open all telecommunications markets to competition. In particular, the Act established a mechanism by which greater competition in local telephone services will go hand-in-hand with greater competition in interLATA services. Southwestern Bell is shouldering its statutory burdens and it will continue to do so. As a result, the local exchange market in Oklahoma has been opened and competition has an opportunity to

flourish. Now it is the public's turn, and Southwestern Bell's turn, to benefit from full competition in long distance in Oklahoma.

In Oklahoma, Southwestern Bell has satisfied all statutory prerequisites to obtaining in-region, interLATA relief. First, pursuant to the Act, the Oklahoma Corporation Commission ("OCC") has approved Southwestern Bell's interconnection agreements with six different local competitors. These include Brooks Fiber, which in January 1997 became the first competitor in Oklahoma to commence providing local exchange service to both residential and business customers and to offer such service exclusively or predominantly over its own network. The terms available to Brooks Fiber satisfy the Act's "competitive checklist," as this Brief and the supporting materials demonstrate.

In addition, Southwestern Bell filed a statement of generally available terms and conditions for interconnection and access in Oklahoma ("Statement"), which the OCC allowed to take effect on March 16, 1997. The Statement meets all the statutory and regulatory requirements associated with the Act's fourteen-point checklist. Southwestern Bell thus doubly satisfies the requirements of sections 271(c) of the Communications Act.

Southwestern Bell and all its subsidiaries and affiliates will operate in accordance with the structural and non-structural safeguards of section 272 and the Commission's implementing regulations upon receiving interLATA authority.

Despite Southwestern Bell's full compliance with the statutory and regulatory safeguards, some may argue that entry into interLATA services should be contingent on a threshold level of local competition or market-share loss. Congress explicitly rejected this approach. Once a Bell company complies with the 1996 Act's prerequisites for interLATA entry, competitors — not the

Bell company — determine the extent, type, and timing of local exchange competition. For example, large incumbent interexchange carriers might put off plans to provide facilities-based local competition, and operate solely as resellers, if they thought this would keep Bell companies out of long distance. Similarly, local competitors will not compete for the business of those low-volume and rural customers a Bell company is required to serve below cost pursuant to state or federal rate orders. Such entry strategies reveal the vulnerability of Bell companies in their local business, not any limits on competitors.

Competitors in Oklahoma can compete against Southwestern Bell now, either on a facilities basis or as resellers (for instance by taking advantage of the 19.8 percent discount rate for wholesale services established by the Statement). Indeed, Oklahoma was the first State after passage of the 1996 Act to issue rules that open the local exchange to competition, and Southwestern Bell has been a leader in responding to the needs of competitors. Under the 1996 Act, these opportunities for local competitors in Oklahoma are a trigger for Southwestern Bell's entry into interLATA services in that State. Congress did not intend that long distance carriers could enter the local exchange while continuing to profit from entry barriers into their own core market. Rather, Congress wanted to accelerate competition in both local services and long distance by concurrently dropping barriers to entry in these previously separate markets.

Southwestern Bell's entry into interLATA services in Oklahoma would serve the public interest even if the interLATA market were perfectly competitive. Nevertheless, it is important to note that, across the country, interLATA markets exhibit healthiest competition in those areas, such as Connecticut and two small "corridors" in New Jersey, where all companies have been

permitted to compete. This contrasts with nationwide trends, where basic residential interstate rates have gone up by over 20 percent since 1994, notwithstanding sharp cost reductions from new technologies and a 10 percent drop in access charges from 1994 to 1996.

Southwestern Bell can use its brand name, reputation for providing reliable, high-quality telephone service, and network expertise to inject competition into interLATA services in Oklahoma, particularly for the business of ordinary residential callers. Southwestern Bell likewise will be able to offer “one-stop shopping,” thereby enhancing competition in this emerging area. Southwestern Bell will be a committed, effective new entrant into the interLATA business in Oklahoma, and Oklahoma consumers will benefit from this new competition for all telecommunications services.

By a conservative estimate, immediate interLATA entry by Southwestern Bell in Oklahoma would result in the creation of an additional 10,000 jobs and an increase of more than \$700 million in the Gross State Product by the year 2006. In addition, as a result of incidental manufacturing relief, Southwestern Bell will be freed to put its expertise as a user of telecommunications equipment fully to work, leading to better and lower-cost products.

These concrete benefits can be realized without any threat of harm to competition or consumers. Federal and state regulatory safeguards fully address speculative concerns about possible cost misallocation or discrimination. Indeed, this Commission has already found that its rules will be effective in these areas. Southwestern Bell also will start with zero market share in a business in which the incumbents have vast resources, well-developed advantages, and high sunk costs, factors that make its accumulation of market power inconceivable.

Consumers have benefitted whenever the Bell companies or other local carriers have been allowed to enter markets related to local telephone service, including interLATA services, cellular services, and information services. In addition, Southwestern Bell has an extensively documented, thirteen-year record of providing access and interconnection to long-distance carriers and wireless providers on a non-discriminatory basis. This not only shows the efficacy of existing equal access rules, but also establishes a baseline that will allow detection of any attempt to favor or disfavor a particular competitor.

Also worth noting are the interexchange carriers' actions in the marketplace, which speak more persuasively than their words. If, for example, AT&T really believed that LECs could get away with discriminatory access arrangements, it would not have invested billions of dollars in wireless systems that are configured to utilize such interconnection.

Free entry into interLATA and intraLATA services will make both markets more competitive and best serve consumers, just as Congress foresaw. Consistent with the 1996 Act, Southwestern Bell has done its part to allow local competition in Oklahoma. Now the Commission should do its part to implement the congressional design. It should approve this application because Southwestern Bell has satisfied all the requirements for interLATA entry in Oklahoma, and because doing so will allow consumers in Oklahoma to realize the full benefits of competition.

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Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (“1996 Act” or “Act”), SBC Communications Inc. and its subsidiaries Southwestern Bell Telephone Company (“SWBT”) and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (“SBLD”) — collectively, “Southwestern Bell” — seek authority for SBLD to provide in-region, interLATA services (including services treated as such under 47 U.S.C. § 271(j)) in the State of Oklahoma.<sup>1</sup> Southwestern Bell has satisfied each of the three requirements for approval of this

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<sup>1</sup> Southwestern Bell currently intends to offer in-region, interLATA services in Oklahoma only through SBLD. However, all references to SBLD should be understood to encompass any affiliate of SWBT that operates consistent with this application’s representations regarding SBLD’s future activities and statutory compliance.

application under section 271(d)(3). Part I of this Brief makes preliminary showings required by the Commission. Part II more fully explains that Southwestern Bell has satisfied the local competition requirements of section 271(c). By virtue of a negotiated agreement that has been approved by the OCC, SWBT provides a facilities-based, competing provider of business and residential service with interconnection and network access that satisfies the competitive checklist. SWBT also satisfies the checklist by offering interconnection and access through its Statement, which the OCC has allowed to take effect. Part III confirms that Southwestern Bell will abide by the structural and non-structural safeguards of section 272, as well as the Commission's implementing regulations. Part IV demonstrates that approving this application is consistent with the public interest, convenience, and necessity.<sup>2</sup>

## **INTRODUCTION AND MANDATORY STATEMENTS**

The 1996 Act overturns regulatory compacts formed generations ago. As holders of exclusive franchises, LECs historically were the sole providers of telephone services to their customers. They enjoyed freedom from local exchange service competition and the opportunity to obtain a reasonable return on their investment. In exchange, regulators determined LECs' ability to offer services and the prices they charged.

Congress established a new deregulatory compact through the 1996 Act, based on the principle that competition across all markets, not regulation, best serves the public interest. Congress required the states to allow local service competition. 47 U.S.C. § 253(a). Then it addressed economic and technical barriers to entry, by ordering incumbent LECs affirmatively to

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<sup>2</sup>. The Anti-Drug Abuse Act certifications required under 47 C.F.R. § 1.2002 follow this Brief.

assist competitors in entering local markets by providing interconnection, access to unbundled network elements, and services for resale. 47 U.S.C. §§ 251-252.

On the other side of the coin, Congress included incumbent LECs, and particularly the Bell companies, among those eligible to benefit from the new regime of open competition. New section 271 of the Communications Act represents a bargain by which the Bell companies will be freed on a state-by-state basis from restrictions that previously attached to their former monopoly position, once they have taken the mandated steps to give up their monopoly and have implemented safeguards precluding exercise of local market power.

In living up to its obligations under the 1996 Act, SWBT has devoted thousands of employee hours to negotiating in good faith with actual and potential competitors of all description. SWBT's 89 interconnection agreements are the tangible result of these efforts. See Zamora Aff. ¶ 22. On top of this, SWBT has invested millions of dollars to make its network accessible to competitors. SWBT has upgraded its equipment and systems to provide at least the level of network access and unbundling required under the 1996 Act and Commission orders. This includes not merely revamping SWBT's network equipment and software to accommodate competitive local exchange carriers ("CLECs"), see, e.g., Deere Aff. ¶¶ 8-25, 48-56 (describing interconnection arrangements and certain unbundling), but also developing entirely new services, organizations, interfaces, and operating procedures for the benefit of competitors. For instance, SWBT has established a Local Service Provider Center ("LSPC") and a Local Service Provider Service Center ("LSPSC") with the sole mission of providing competitors access to SWBT's facilities and services on a non-discriminatory basis. See Kramer Aff. (LSPC); Lowrance Aff.

(LSPSC). Functioning interfaces allow competitors the same level of access to operations support systems (“OSS”) SWBT has, with the same speed. See Ham (OSS) Aff.

Southwestern Bell has done everything Congress expected as a condition of entry into interLATA services. Indeed, one of SWBT’s competitors in Oklahoma recently proclaimed, “**IT’S HISTORY!!** The days of Southwestern Bell’s monopoly on local phone service are over.” Wheeler Aff. Sched. 2, at 25a (Brooks Fiber letter). Under Congress’ plan for full competition across telecommunications markets, the time for total interLATA competition in Oklahoma has come.

**A. Statement Regarding Status of Interconnection Agreements**

In Oklahoma, SWBT personnel have devoted thousands of work-hours to concluding negotiations with competitors and drafting and implementing the resulting agreements. See generally Zamora Aff. Their efforts thus far have produced sixteen negotiated interconnection and resale agreements, of which six have been approved by the OCC pursuant to section 252(e) of the Communications Act. Zamora Aff. ¶ 24; Stafford Aff. ¶¶ 13-14. All of these agreements were reached through negotiations, without arbitration. SWBT’s OCC-approved agreements are with Brooks Fiber Communications (“Brooks Fiber”),<sup>3</sup> Dobson Wireless, Inc., ICG Telecom Group, Inc. (“ICG”), Sprint Communications (“Sprint”), US Long Distance Inc. (“USLD”), and

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<sup>3</sup> Brooks Fiber Communications of Oklahoma and Brooks Fiber Communications of Tulsa separately executed a single agreement with SWBT. The “Brooks Fiber Agreement” dated August 29, 1996, was approved by the OCC on October 22, 1996. See App. Vol. III, Tab 2.

Western Oklahoma Long Distance (“WOLD”).<sup>4</sup> These agreements, and the OCC orders approving them, are reproduced in Volume III of the Appendix to this Brief.<sup>5</sup> Eight additional agreements have been submitted to the OCC and are awaiting OCC approval.<sup>6</sup>

Each of SWBT’s signed agreements was negotiated in good faith. Each constitutes evidence of Southwestern Bell’s compliance with the 1996 Act. To establish satisfaction of section 271’s requirements, however, this Brief relies only upon those agreements that have been approved by the OCC.

On December 12, 1996, the OCC rendered its final decision in Cause No. PUD 960000218, a compulsory arbitration initiated by AT&T Communications of the Southwest, Inc. (“AT&T”) pursuant to Section 252(b) of the 1996 Act.<sup>7</sup> The OCC’s final decision in that case, approving in part and modifying in part the Arbitrator’s Report and Recommendations, further defined SWBT’s obligation to interconnect with competing CLECs in the State of Oklahoma. SWBT’s Statement for Oklahoma is consistent with the terms of this decision. SWBT and AT&T

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<sup>4</sup> The OCC approved the “USLD Agreement” and the “Dobson Wireless Agreement” on December 23, 1996; it approved the “WOLD Agreement” on February 6, 1997; the “Sprint Agreement” and the “ICG Agreement” were approved on April 3, 1997. Stafford Aff. ¶ 14.

<sup>5</sup> The agreements are provided in the same form in which they were filed with and approved by the OCC. Appendix Volume III also contains a copy of SWBT’s agreement with Sterling International Funding d/b/a Reconex, which currently is pending before the OCC.

<sup>6</sup> These agreements are with Caprock Communications, Chickasaw Telecommunications, Comm South Company, Fast Connections, Intermedia Communications, Preferred Carrier Services, Reconex, and U. S. Telco. Stafford Aff. ¶ 13. SWBT also has entered into interconnection agreements with TIE Communications and Capital Telecommunications. At TIE’s and Capital’s request, however, those agreements are not currently pending before the OCC. *Id.* ¶ 13 & n.1.

<sup>7</sup> A copy of the OCC’s final decision in the AT&T arbitration and a copy of the Arbitrator’s Report and Recommendation are included in Appendix Volume III, at Tab 9.

currently are negotiating an interconnection agreement implementing the OCC's decision.

Zamora Aff. ¶ 28.<sup>8</sup>

There are no pending judicial actions arising from SWBT's negotiated interconnection agreements or the AT&T arbitration.

. **Statement Identifying How SWBT Meets the Requirements of Section 271(c)(1)**

Brooks Fiber commenced providing telephone exchange service to residential and business customers in Oklahoma on January 15, 1997. Brooks Fiber qualifies as a facilities-based local service provider not only in the ordinary sense, but also under the narrow definition set out in subsection 271(c)(1)(A). See infra Part II(A)(1). SWBT is providing Brooks Fiber interconnection and access to SWBT's network pursuant to the parties' negotiated, OCC-approved agreement. SWBT thus may file this application pursuant to subsection 271(c)(1)(A). See id.

SWBT also is authorized to file this application pursuant to section 271(c)(1)(B). On January 15, 1997, SWBT filed its Statement with the OCC. The Statement sets out the terms and conditions under which SWBT offers to provide access to its network, interconnection, and resale opportunities on a non-discriminatory basis to any requesting CLEC, in accordance with the Act and the Commission's rules. See App. Vol. III, Tab 1; see also § 252(f). The OCC allowed SWBT's Statement to take effect as of March 17, 1997. With the Statement in effect, SWBT is

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<sup>8</sup> SWBT recently requested mediation to aid those negotiations. AT&T then requested that the OCC adopt AT&T's position on all disputed issues in the implementation negotiations. SWBT has moved to dismiss that filing as untimely and improper under the Act.

able to apply for interLATA relief in Oklahoma under subsection 271(c)(1)(B) in the event this Commission finds that SWBT has received no timely request for access and interconnection from any qualifying CLEC, including Brooks Fiber, whose request would bar such a filing. See infra Part II(A)(2).

**C. Statement Regarding OCC Proceedings**

On February 18, 1997, an administrative law judge established a procedural schedule regarding the OCC's consideration of Southwestern Bell's future section 271 application pursuant to section 271(d)(2)(b). Aside from Southwestern Bell, only six parties — AT&T (joined in part by MCI), Sprint, Brooks Fiber, Cox Communications, and the Oklahoma Attorney General — filed comments in that proceeding. The record of the OCC's proceeding through April 3, 1997, is reproduced in Appendix Volume IV to this Brief.

**D. Statement Regarding Efforts to Narrow the Issues in Dispute**

The OCC's section 271 proceeding has given all interested parties the opportunity to identify disputed issues concerning Southwestern Bell's application. In addition, Southwestern Bell contacted all carriers with which it is negotiating or has negotiated a local interconnection agreement for Oklahoma in an effort to determine whether they intend to oppose SWBT's application and, if so, whether a meeting might help to narrow any issue in dispute. See App. Vol. II, Tab 1 (letters). Some carriers who filed comments in the OCC proceeding have indicated that they wish to meet to discuss potential areas of dispute in the FCC docket, and at least one carrier affirmatively has indicated it has no objection to Southwestern Bell's application. See App. Vol. II, Tab 2 (AT&T and Annox letters). Southwestern Bell will schedule meetings with



those carriers and report to the Commission any developments that bear upon the status of this application. No carriers, other than some carriers involved in the OCC docket, have indicated an intention to oppose Southwestern Bell's FCC application for interLATA entry in Oklahoma.

**II. SWBT AFFORDS COMPETITORS NETWORK ACCESS AND INTERCONNECTION AS REQUIRED UNDER SECTION 271(c)**

Subsection 271(d)(3)(A) of the Communications Act measures whether a Bell company seeking in-region, interLATA authority has met the Act's preconditions for providing or generally offering network access and interconnection, as set out in section 271(c).<sup>9</sup> SWBT's satisfaction of this test ensures that any CLEC that wishes to provide local services in Oklahoma can do so.

**. SWBT Has Satisfied the Requirements of Section 271(c)(1)**

*1. SWBT Satisfies Section 271(c)(1) by Virtue of its Provision of Access and Interconnection to Brooks Fiber*

Subsection 271(c)(1)(A) permits a Bell company to apply for interLATA relief in a state when it provides interconnection and network access to one or more qualifying, facilities-based CLECs; that is, to competitor(s) that provide telephone exchange service (excluding exchange access) to residential and business customers and offer such service "either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange

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<sup>9</sup> Southwestern Bell recognizes that the Commission has no power now to grant relief on Southwestern Bell's belief that section 271, along with other provisions of the 1996 Act that single out and impose burdens on the BOCs by name, constitutes an unconstitutional bill of attainder, and also violates both separation of powers and equal protection principles. Accordingly, Southwestern Bell hereby preserves these arguments in the event that an appeal from the Commission's decision is necessary.

service facilities in combination with the resale of the telecommunications services of another carrier.” 47 U.S.C. § 271(c)(1)(A).

Brooks Fiber, a CLEC unaffiliated with SWBT, represents that it has received authority to “provid[e] all types of intrastate switched services, including switched local exchange (i.e., dial-tone) service” in Oklahoma.<sup>10</sup> Brooks Fiber further represents that it actually furnishes local exchange service to both residential and business customers in Tulsa and Oklahoma City pursuant to its interconnection agreement with SWBT, and began doing so in mid-January 1997. Brooks Fiber OCC Comments at 2; OCCHearing Tr. at 125-26 (Feb. 13, 1997), reproduced in App. Vol. IV, Tab 8.

SWBT is aware that Brooks Fiber continues to sign up current SWBT customers as new subscribers. Wheeler Aff. ¶ 8. There is no requirement that a qualifying CLEC under subsection 271(c)(1)(A) serve any minimum number of customers. Congress rejected all metric tests of the actual level of competition in favor of a clear statutory “test of when markets are open.” 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler). Senator Kerrey, for instance, proposed an amendment that would have changed section 271(c)(1) to provide that “a Bell operating company may provide interLATA services in accordance with this Section only if that company has reached interconnection agreements under Section 251 with . . . telecommunications carriers capable of providing a substantial number of business and residential customers with” service. 141 Cong. Rec. S8310, S8319 (daily ed. June 14, 1995). That

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<sup>10</sup> Initial Comments of Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications of Tulsa, Inc., at 1 (“Brooks Fiber OCC Comments”) (App. Vol. IV, Tab 23).

proposed amendment was defeated, as was a similar House proposal.<sup>11</sup> Brooks Fiber thus fully satisfies subsection 271(c)(1)(A)'s "residential and business subscribers" test.

Under section 271(c)(1)(A), a qualifying CLEC's local service "may be offered . . . either exclusively over [the CLEC's] own telephone exchange service facilities or predominantly over [its] own telephone exchange service facilities in combination with the resale of the telecommunications services" of Southwestern Bell. Brooks Fiber not only "offer[s]" service over its own network — thereby fulfilling this requirement — but actually furnishes service to customers exclusively over that network. Brooks Fiber OCC Comments at 2.

Brooks Fiber's General and Local Exchange Tariffs, on file with and approved by the OCC, state that Brooks Fiber will provide telephone exchange service using its own fiber optic cable and switching facilities. See App. Vol. II, Tab 3, at §§ 2.1.1 & 4. Brooks Fiber's local network in Tulsa includes 221 route miles of fiber and a Lucent 5ESS central office switch. Brooks Fiber OCC Comments at 2; see Wheeler Aff. ¶ 14. In Oklahoma City, Brooks Fiber owns and operates a 44-mile network and a second Lucent 5ESS switch. Brooks Fiber OCC Comments at 2; see Wheeler Aff. ¶ 7. In both Tulsa and Oklahoma City, Brooks Fiber has obtained local/intraLATA trunks from SWBT that connect its facilities to SWBT facilities. Butler Aff. ¶¶ 4-7.

Brooks Fiber uses its Lucent switches to perform all network switching. Id. ¶¶ 5-7; see Brooks Fiber OCC Comments at 2. As of March 11, 8 of Brooks Fiber's 21 business customers

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<sup>11</sup> See 141 Cong. Rec. H8454 (daily ed. Aug. 4, 1995) (statement of Rep. Bunn) (noting House's rejection of threshold test, which would have required CLECs to offer local services to 10% of customers).

in Oklahoma were served “via direct on-net connections,” over the switched fiber networks described above. Brooks Fiber OCC Comments at 2.<sup>12</sup> Brooks Fiber thus, by its own account, serves business customers exclusively over its existing network. Brooks Fiber also offers service to residential customers in this fashion (although as of mid-March 1997, it actually served residential customers only through resale). Brooks Fiber OCC Comments at 2; see id. at 3 (resale “a secondary method”). These facts demonstrate that Brooks Fiber is a qualifying carrier under subsection 271(c)(1)(A).

Even if Brooks Fiber did not serve customers entirely over facilities not obtained from SWBT, but instead served all of its customers in part over T-1 circuits leased from SWBT, Brooks Fiber would still satisfy the “predominantly” facilities-based requirement. In that case, Brooks Fiber would complete calls within its network using no switching or trunking facilities obtained from SWBT. Local exchange facilities can be broken down into three principal network elements: local loops, local transport, and local switching. Since Brooks Fiber only takes at most one of these elements from SWBT (i.e., T-1 circuits to serve as local loops), the test of predominance is met.<sup>13</sup> Furthermore, as to the leased T-1 circuits themselves, the statute does not require that a qualifying CLEC have legal title to “its own” facilities. It is enough that the

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<sup>12</sup> Eleven business customers were connected to a Brooks Fiber network using T-1 facilities leased from SWBT. One business customer received ISDN service furnished by Brooks Fiber on a resale basis. Id.

<sup>13</sup> Congress recognized that new competitors are unlikely to have their own “fully redundant network[s]” and, at least at the outset, may need to purchase “[s]ome facilities and capabilities (e.g., central office switching)” from the incumbent LEC. Conference Report at 148. Legislators intended that these carriers would be treated as facilities-based competitors for purposes of Bell company interLATA entry. Id.

facilities are dedicated solely to the CLEC's use, as under a lease arrangement. The plain language of subsection 271(c)(1)(A) in fact distinguishes a CLEC's "own telephone exchange service facilities," on the one hand, from "resale of the telecommunications services of another carrier," on the other (emphasis added). This language fits with the point of the "predominantly" facilities-based requirement, which was simply to screen out "a competitor offering service exclusively through the resale of the BOC's telephone exchange service." S. Rep. 230, 104<sup>th</sup> Cong., 2d Sess. 148 (1996) ("Conference Report") (emphasis added).

Brooks Fiber thus serves both business and residential customers in Oklahoma and offers its service exclusively or predominantly over facilities it owns or obtains from a party other than SWBT. The facilities-based competition requirement of subsection 271(c)(1)(A) is satisfied.

The Brooks Fiber Agreement has been approved by the OCC. See App. Vol. III, Tab 2. As described in Part II(B) below, this agreement "specifies the terms and conditions under which [SWBT] is providing access and interconnection to its network facilities for the network facilities" of Brooks Fiber. § 271(c)(1)(A). Accordingly, SWBT's implemented agreement with Brooks Fiber satisfies all the requirements of subsection (A).

2. *SWBT also Satisfies Section 271(c)(1) by Virtue of its Statement*

As a counterpoint to the carrier-specific focus of subsection (A), subsection (B) allows a Bell company to satisfy the requirements for interconnection and network access by offering terms and conditions to CLECs generally, through a statement of terms and conditions. This opportunity "ensure[s] that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria

set out in new section 271(c)(1)(A) has sought to enter the market.” Conference Report at 148.

Subsection (B) reflects Congress’ recognition that actual, facilities-based local service competition may not occur as soon as it is possible, and that consumers would suffer if such competition were compulsory before Bell companies could enter long distance in their home regions.

Congress was aware that deployment of competing local networks is beyond the incumbent Bell company’s control. See Conference Report at 148 (noting that competitors likely will not deploy fully redundant networks initially). Indeed, if interexchange carriers thought they could keep Bell companies from competing in long distance by themselves providing only resold local services, they might well avoid facilities-based entry altogether. Strategic local entry by interexchange carriers, unaccompanied by a chance for interLATA entry by the incumbent Bell company, would undo Congress’ decision that there should be symmetrical opportunities. As this Commission has explained, the 1996 Act

links the effective opening of competition in the local market with the timing of BOC entry into the long distance market, so as to ensure that neither the BOCs nor the existing interexchange carriers could enjoy an advantage from being the first to enter the other’s market.<sup>14</sup>

Interexchange carriers and others have the opportunity to provide local services in competition with Southwestern Bell today; some are taking advantage of it. Congress intended that this opportunity would be the trigger for Southwestern Bell’s entry into long distance, so that

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<sup>14</sup> First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Dkt. No. 96-149, FCC 96-940 at ¶ 8 (rel. Dec. 24, 1996) (“Non-Accounting Safeguards Order”).

consumers could benefit from competition across the formerly separate markets that is full, as well as fair.

In accordance with these congressional goals, subsection 271(c)(1)(B) ensures that competitors' decisions regarding facilities-based local entry will not substantially delay greater long-distance competition. Subsection (B) allows the Bell companies to apply after December 8, 1996 for interLATA entry based upon an effective "statement of the terms and conditions that the company generally offers to provide . . . access and interconnection." This route is available where no CLEC that is a qualifying, facilities-based telephone exchange competitor for purposes of subsection (A) "has requested" access and interconnection. § 271(c)(1)(B). To prevent interLATA entry under subsection (B), however, the requesting local competitor may not simply anticipate building facilities and seek interconnection in anticipation of that day. Rather, it must actually be "such provider" described in subsection (A). *Id.*; see 141 Cong. Rec. H8425, H8458 (daily ed. Aug. 4, 1995) (statement of Rep. Tauzin) ("Subparagraph (B) uses the words 'such provider' to refer back to the exclusively or predominantly facilities based [local service] provider described in subparagraph (A)").

Southwestern Bell thus may submit this application pursuant to subsection (B) if the Commission should find that: (1) no CLEC, including Brooks Fiber, qualifies as a facilities-based provider of business and residential local service within the definition of subsection

271(c)(1)(A); or (2) no CLEC so qualified prior to the 3-month filing “window” Congress provided in subsection (B);<sup>15</sup> or (3) Southwestern Bell otherwise complies with the requirements of subsection (B).

. **SWBT Is Providing Interconnection and Access in Compliance with the Act’s “Competitive Checklist”**

Subsection 271(d)(3)(A) allows a Bell company to satisfy the final part of Congress’ test for open local markets — the competitive checklist — by relying upon “access and interconnection provided pursuant to subsection (c)(1)(A)” or “access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B).” § 271(d)(3)(A)(i), (ii). A Bell company’s decision as to how it will satisfy section (c)(1) does not narrow its options for showing compliance with the checklist. Regardless of how it fulfills the requirements of subsection (c)(1), the applicant may rely upon a statement of terms and conditions, or state-approved agreements, or both, to show compliance with the checklist. This accords with the reality that CLECs can gain access to checklist elements under SWBT’s Statement as well as under the terms of their own negotiated agreements and, by virtue of “most favored nation”

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<sup>15</sup> Subsections (A) and (B) are not mutually exclusive. While subsection (B) is available during a specific time period — when “no such provider [described in (A)] has . . . requested access and interconnection . . . [by] the date that is 3 months before the date the [BOC] seeks interLATA authorization” § 271(c)(1)(B) — subsection (A) is available at any time that its requirements are met. If a Bell company that has an effective statement of terms and conditions also has implemented a state-approved agreement with a qualifying CLEC, but that CLEC only qualified, or requested access, within the prior three months, then the Bell company may apply for interLATA entry under subsection (A) and subsection (B). That is the case here, because Brooks Fiber commenced its facilities-based service on January 15 of this year.



(“MFN”) clauses, under the terms of other CLECs’ OCC-approved agreements as well. See also § 251(i).<sup>16</sup>

Of course, Brooks Fiber and other CLECs likely will not need or want to take every checklist item from SWBT. This presents no obstacle to showing compliance with the checklist. In the first place, all checklist items are offered to CLECs in Oklahoma under SWBT’s Statement. Furthermore, a Bell company “provides access” to its facilities and services through an interconnection agreement when the CLEC has a contractual right to obtain the facilities and services, whether or not they are taken. This follows from Congress’ specification that Bell companies must provide access to network facilities and services under an interconnection agreement — not necessarily the facilities and services themselves — as a condition of interLATA entry. Likewise, it accords with Congress’ use of the term “provide,” which means, inter alia, “make available.”<sup>17</sup> Indeed, the House and Senate conferees on the 1996 Act expected that the

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<sup>16</sup> If a CLEC that has an OCC-approved interconnection agreement with SWBT should request, via its MFN clause, to obtain some item from the Statement or another CLEC’s OCC-approved agreement, SWBT anticipates that it and the CLEC would promptly create and sign a contract addendum for filing and approval by the OCC. The addendum would be patterned exactly after the applicable language of the Statement or the second OCC-approved agreement, including all terms and conditions associated with the desired item. If a CLEC in Oklahoma lacking an interconnection agreement with SWBT wishes to obtain any item(s) from SWBT’s Statement, SWBT anticipates that it and the CLEC would promptly create and sign a contract for filing and approval by the OCC. The contract would be patterned exactly after the applicable language of SWBT’s Statement, including all terms and conditions associated with that item(s) and any general language necessary to have a complete agreement (e.g., term of the contract, definitions of key words and phrases, etc.).

<sup>17</sup> Random House Unabridged Dictionary 1556 (2d ed. 1993) (App. Vol II, Tab 4); see American Heritage Dictionary 997 (2d College ed. 1985) (same) (App. Vol II, Tab 4). In common usage, for example, a host who passes around hors d’oeuvres at a party has “provided” food, even if his guests choose not to indulge. So too may a Bell company “provide” access to (for example) interoffice trunks, without regard to whether a particular CLEC ultimately chooses to use those

presence of a competitor that buys only some network elements, but not others, from the Bell company would allow the Bell company to seek interLATA authority. See supra n.13 & accompanying text.

The nonsensical consequences of interpreting the Act as requiring competitors actually to take all checklist items confirm the error of this approach.<sup>18</sup> The more complete a competitor's network, the less it needs from the incumbent. A competitor's ability to compete without relying upon the incumbent to obtain a particular facility or service signals, if anything, greater competition in the local market. Furthermore, if actually furnishing all fourteen items were the standard, incumbent interexchange carriers that enter the local exchange on a facilities basis might be able to keep a Bell company out of the interLATA business simply by refusing to utilize a particular checklist service or feature.

Against this background, it is demonstrated below that SWBT has satisfied all fourteen checklist requirements in Oklahoma not only through the comprehensive offerings of its Statement, but also through its OCC-approved agreements with Brooks Fiber and other CLECs.

*Checklist Items (1) & (2): Interconnection and Access to Network Elements*

Subsections 271(c)(2)(B)(i) and (ii) require SWBT to provide interconnection with its network facilities and access to unbundled network elements, in accordance with the requirements of sections 251(c)(2), 251(c)(3), and 252(d)(1) of the Communications Act. Sections 251(c)(2)

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trunks.

<sup>18</sup>. See Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U.S. 315, 333 (1938) (courts should "construe statutes so as to avoid results glaringly absurd"); In re Nofziger, 925 F.2d 428, 434 (D.C. Cir. 1991) (same).

and 252(d)(1) require SWBT to provide interconnection: (A) “for the transmission and routing of telephone exchange service and exchange access;” (B) “at any technically feasible point;” (C) “that is at least equal in quality” to what SWBT provides itself; (D) “on rates, terms and conditions that are just, reasonable, and nondiscriminatory;” and (E) based upon cost plus a “reasonable profit.” Sections 251(c)(3) and 252(d)(1) require SWBT to provide access to unbundled network elements: (A) “at any technically feasible point;” (B) “on rates, terms and conditions that are just, reasonable, and nondiscriminatory;” and (C) based upon cost plus a “reasonable profit.”

In the Local Interconnection Order,<sup>19</sup> the Commission adopted rules interpreting the interconnection requirements of section 251(c)(2). These rules require SWBT to make interconnection available for unbundled access to, at a minimum, the following independent network elements: local loops; the network interface device (“NID”); switching; interoffice transmission facilities; signaling networks and call-related databases; operations support systems (“OSS”) functions; and operator services and directory assistance facilities. 47 C.F.R. § 51.319.

**1.** SWBT’s Statement satisfies sections 251(c)(2), 251(c)(3), and 252(d)(1) and applicable Commission regulations by offering local interconnection, of equal quality, at any technically feasible point, at cost-based rates.

Section II.B of the Statement provides several alternative methods of interconnection, including physical collocation, virtual collocation, and SONET-based interconnection. SWBT

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<sup>19</sup> First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996) (“Local Interconnection Order”).

will provide other technically feasible methods of interconnection upon request pursuant to section II.B.4 of the Statement. The details of SWBT's mid-span fiber interconnection and physical collocation offerings are set out in Appendix NIM to the Statement. Physical collocation is provided in a manner consistent with Commission rules and the OCC's decision on collocation issues in the AT&T arbitration. Statement § II.B.2; see Deere Aff. ¶¶ 16-18, 20. Virtual collocation and SONET-based interconnection are offered in accordance with SWBT's interstate access service tariff, Tariff F.C.C. No. 73.<sup>20</sup> See Deere Aff. ¶ 20. Interconnection is available at the line side or trunk side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to unbundled network elements. Id. ¶ 14.

To ensure equal quality, interconnection with CLECs will be accomplished using the same facilities, interfaces, technical criteria, and service standards as SWBT uses for its own internal operations. Id. ¶ 25 However, CLECs also have the option of requesting interconnection that is of greater or lesser quality, if technically feasible. Statement § II.B.4. In addition, requesting carriers may interconnect with SWBT using facilities leased from SWBT. Deere Aff. ¶ 22. Or, a CLEC that is already collocated in a SWBT central office may use that collocation arrangement for local exchange interconnection. Id.

Appendix NIM to the Statement details available trunking arrangements from the CLEC to SWBT (for traffic originated by the CLEC), and from SWBT to the CLEC (for traffic terminated over the CLEC's network). SWBT will use standard Bellcore trunk traffic

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<sup>20</sup> To the extent that the Commission's virtual collocation requirements exceed the terms of Tariff F.C.C. No. 73, SWBT will of course abide with all applicable requirements.

engineering methods to ensure that all interconnection trunking is managed in the same manner as SWBT's own trunk groups. See Statement App. ITR § E; Deere Aff. ¶¶ 26-34.

As more fully demonstrated in the Affidavits of Dale Kaeshoefer and William Deere, the Statement also makes available to CLECs the full range of unbundled network elements identified in the Commission's rules in a manner consistent with the Act. Appendix UNE details SWBT's offerings of unbundled network elements. SWBT provides requesting CLECs non-discriminatory access to network elements on an unbundled basis at any technically feasible point. See Statement App. UNE § 2.0. Elements specifically provided for in the Statement include elements associated with NIDs, local loops, local and tandem switching, operator services and directory assistance, interoffice transport, signaling networks and call-related databases, and cross-connects.

Statement App. UNE §§ 3.0 through 11.0.

Additional network elements not specifically provided for in the Statement are available through SWBT's Bona Fide Request ("BFR") process, where technically feasible. Deere Aff. ¶¶ 57-60; Kaeshoefer Aff. ¶¶ 33-35. This process, described in section 2.16 of Appendix UNE to the Statement, allows CLECs to request modifications to existing network elements, as well as additional elements. SWBT will conclude a preliminary analysis of the technical feasibility of the request and prepare a preliminary report for the requesting carrier within thirty days of receiving the request, except in extraordinary circumstances. Statement App. UNE § 2.16.5. If the CLEC authorizes further development, SWBT will, within a maximum of ninety days from receipt of authorization, provide a final quote that will include proposed price and implementation terms.

Id. § 2.16.8. The CLEC may cancel its request at any time but remains responsible for SWBT's reasonable development costs incurred up to cancellation Id. § 2.16.3.

As set out in Appendix UNE, SWBT does not impose any limitations, restrictions, or requirements on requests for or use of an unbundled network element that are inconsistent with the Act or Commission rules or would impair a CLEC's ability to provide telecommunications service in the manner it intends. See 47 C.F.R. § 51.309(a); Deere Aff. ¶¶ 35-56; Kaeshoefer Aff. ¶¶ 28, 37. SWBT provides access to the facilities or functionality of an unbundled network element separately from access to other elements and for a separate charge as directed by section 51.307(d) of the Commission's rules. See Kaeshoefer Aff. ¶ 27; Deere Aff. ¶ 40. While allowing CLECs to obtain exclusive use of an unbundled network facility and to use the features, functions, or capabilities for a set period of time, Deere Aff. ¶ 43; Kaeshoefer Aff. ¶ 29, SWBT nevertheless retains the obligation to maintain, repair, or replace unbundled network elements. See 47 C.F.R. § 51.309(c); Statement App. UNE § 2.5; Kaeshoefer Aff. ¶ 29. Indeed, SWBT's LSPC enables CLECs to place maintenance and repair orders by telephone or directly through electronic data interfaces, twenty-four hours a day, seven days a week. See Kramer Aff. (discussing LSPC); Ham (OSS) Aff. ¶¶ 36-38 (discussing OSS systems for maintenance and repair).

The Statement also addresses the rates at which interconnection and unbundled access will be provided. Consistent with the Commission's recognition that interim rates are a practical necessity (see Local Interconnection Order ¶¶ 22, 767), SWBT included in its Statement the interim rates that were approved by the OCC in the AT&T arbitration. See Cause No. PUD

960000218, Order 407704, at 4, adopting the November 13, 1996 Report and Recommendations, at 20 (App. Vol. II, Tab 9). Generally, these rates were derived based on a forward-looking cost study, or by adopting tariffed or contractual rates that are themselves cost-based.<sup>21</sup> Kaeshoefer Aff. ¶¶ 18-19; Moore Aff. ¶¶ 8-25 (describing cost studies).<sup>22</sup> The same approach was followed with respect to rates for elements that were not included in the AT&T arbitration.

2. CLECs such as Brooks Fiber may avail themselves of the above-described Statement provisions. In addition, however, SWBT's OCC-approved interconnection agreements independently allow Brooks Fiber to obtain the first two checklist items. The Brooks Fiber Agreement enables Brooks Fiber to interconnect with each SWBT access tandem and each SWBT local tandem (or end office subtending that local tandem). See Brooks Fiber Agreement, § II.A.1.a. The Agreement specifically describes the unbundled loop, loop cross connect, switched port, local switching and local switched transport elements SWBT will furnish upon request. See Brooks Fiber Agreement, Appendix UNC at 1. SWBT also agrees that "[u]pon request . . . [it] shall provide" additional network components. Brooks Fiber Agreement, § VIII. The rates specified in the Brooks Fiber Agreement, which were negotiated prior to the AT&T arbitration, are in most cases the same as or lower than the rates provided for in the Statement.

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<sup>21</sup> SWBT's Statement includes rates for items such as access to Common Channel Signaling/Signaling System 7 and unbundled transport which are equivalent to rates found in SWBT's access tariffs. For interstate services, the Commission has allowed these rates to go into effect and, as determined by the Commission, they are currently at or close to economic cost levels. See Local Interconnection Order, ¶¶ 782, 821 & n.1947, 825.

<sup>22</sup> To avoid delay in setting rates, SWBT used TELRIC-based cost studies consistent with the Commission's pricing rules despite the Eighth Circuit's stay of those rules. In doing so, SWBT has not waived any legal right to have prices reflect actual costs.

The Brooks rates and terms are available to other CLECs on a non-discriminatory basis under section 252(i) of the Communications Act. See Kaeshoefer Aff. ¶ 10.

In addition, the Brooks Fiber Agreement contains an MFN clause that requires SWBT to make available to Brooks Fiber either all the terms SWBT makes available to another CLEC pursuant to an OCC-approved interconnection agreement, or specific provisions of an OCC-approved agreement that relate to interconnection rates, access to unbundled network elements, resale, collocation, number portability, access to rights-of-way, cellular traffic, white pages, operator services, or directory assistance. Brooks Fiber Agreement, § XXIV; see Kaeshoefer Aff. ¶ 10. For example, Brooks Fiber will have access to the terms of the ICG and Sprint Agreements, which require SWBT to provide access, upon request and to the extent technically feasible, to additional unbundled network elements in accordance with the 1996 Act. See ICG Agreement, § 9.3.1. Exhibit A, Network Element and Interconnection Bona Fide Request, § 1 (App. Vol. III, Tab 4); Sprint Agreement, Attach. 6, § 2.0 (App. Vol. III, Tab 5).

The access and interconnection available to Brooks Fiber is equal in quality to that SWBT provides to itself and meets the same technical criteria and standards used for a comparable arrangement in SWBT's network. Kaeshoefer Aff. ¶¶ 24, 36; Deere Aff. ¶ 25. Access also is being provided on terms that are just, reasonable, and nondiscriminatory as required by section 251(c)(2)(D). Kaeshoefer Aff. ¶ 24. The rates in the Brooks Fiber Agreement for Network Interconnection were found by the OCC to be just, reasonable and nondiscriminatory.<sup>23</sup> Moreover, by virtue of its MFN clause, Brooks Fiber has access to the provision of the ICG

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<sup>23</sup>. Cause No. PUD 960000256, Order No. 406237, at 3, 4-5 (App. Vol III, Tab 2).



Agreement that states that SWBT will (1) provide unbundled network elements in accordance with section 252(d), ICG Agreement, § 9.3.1, and (2) price additional, unbundled network elements according to the requirements of Section 252(d)(1) unless the parties explicitly and mutually agree otherwise. Id. at p. 59; ICG Agreement, Exhibit A, Network Element and Interconnection Bona Fide Request, § 1. Brooks Fiber also could invoke the rates of the Sprint Agreement, which are the same as those found in SWBT's Statement and are consistent with the OCC's Order in the AT&T arbitration. See Sprint Agreement, Attach. 6, Appendix Pricing—UNE.

3. SWBT's unbundling of OSS functions bears particular mention. Pursuant to its Statement and agreements, SWBT provides CLECs with "at least equivalent electronic access" to its OSS functions, by giving them precisely the same electronic interfaces that SWBT provides "to itself, its customers, or other carriers."<sup>24</sup> SWBT also has developed alternative interfaces for CLECs that do not want to employ any of the methods SWBT's retail service representatives use, lack the resources to utilize electronic interfaces, or have their own applications or graphic user interfaces.

SWBT began the planning process for providing nondiscriminatory access to its OSS functions in the Fall of 1995. SWBT has performed extensive work in developing new interfaces, enhancing front-end systems, and modifying its back-office systems to accommodate the needs of CLECs. SWBT has set up and is operating its Local Service Provider Service Center and a Local Service Provider Center, which collectively provide CLECs a single point of contact for purposes

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<sup>24</sup> Second Order on Reconsideration, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Dkt No. 96-98, FCC 96-476 at ¶ 9 (rel. Dec. 13, 1996).

of pre-ordering, ordering, provisioning, maintenance and repair, and billing as they relate to resold services, interconnection, and unbundled network elements. Lowrance Aff. ¶¶ 6-14; Kramer Aff. ¶¶ 6-16. In addition, SWBT has established a Remote Access Facility to provide CLECs with direct electronic access to OSS functions through either a dial-up or private-line connection. Ham (OSS) Aff. ¶¶ 9-13. Finally, SWBT has created a Help Desk to assist CLECs with any questions or problems encountered while electronically accessing SWBT's OSS functions. Ham (OSS) Aff. ¶¶ 13-17. As of January 1997, SWBT had spent \$7.4 million on these efforts. For 1997, SWBT has budgeted approximately \$18 million. See Ham (OSS) Aff. ¶ 9; Lowrance Aff. ¶ 6; Kramer Aff. ¶ 8.

SWBT offers CLECs multiple ways to access its OSS functions, to suit their particular business needs. First, SWBT provides CLECs with precisely the same access that is available to SWBT's retail service representatives. SWBT also offers CLECs several alternative forms of access to each OSS function, which provide electronic access on a dial-up or direct connection basis without manual intervention. Ham (OSS) Aff. ¶¶ 18-35. Finally, CLECs can deal with the LSPSC and LSPC on a manual basis by telephone, and also may deal with the LSPSC by facsimile. Lowrance Aff. ¶ 12; Kramer Aff. ¶¶ 12-14. CLECs thus can choose the interfaces that best meet their needs, whether completely manual or electronic, or a combination thereof.

For pre-ordering, SWBT offers CLECs a choice of three electronic "real time" interfaces — Easy Access Sales Environment ("EASE"), Verigate, and DataGate. See Statement App. OSS § 2; Ham (OSS) Aff. ¶¶ 20-25, 53-55.

- EASE is the on-line system that is currently used by SWBT's own retail service representatives in pre-ordering for both residence and business customers. It is

available to CLECs for pre-ordering resold services. EASE has processed as many as 91,000 SWBT retail service orders in a single day.

- Verigate is a SWBT graphic user interface operating on Windows™, designed for CLECs that do not want to use EASE, but also do not want to develop their own graphic user interface. It provides pre-ordering capabilities for resold services and unbundled network elements. Verigate became operational in 1996 and performed 3,552 transactions per month as of December 1996.
- DataGate is a SWBT gateway providing CLECs that have their own graphic user interface with pre-ordering capabilities for resold services and unbundled network elements. DataGate currently is used to process an average of 350,000 transactions per day.

For ordering and provisioning, SWBT currently provides CLECs with a choice of two electronic interfaces — EASE and an Electronic Data Interchange (“EDI”) gateway. See Statement App. OSS § 3.0; Ham (OSS) Aff. ¶¶ 26-35, 51.

- EASE is currently used by SWBT’s own retail service representatives in ordering and provisioning for both residence and business customers.
- EDI is an electronic interface, conforming to national standards, that enables CLECs to construct and submit orders utilizing their own graphic user interface. It is available to CLECs for ordering and provisioning resold services, as well as unbundled network elements for which national standards have been written (*i.e.*, local loops, switch ports, and interim number portability). Ham (OSS) Aff. ¶ 29. SWBT will incorporate ordering and provisioning capabilities for other unbundled network elements into its EDI gateway as soon as national standards are defined and approved. SWBT’s EDI gateway can handle up to 50,000 transactions per hour. It was built to support requests for resold services based on receipt of 100,000 resale service requests per quarter and to support requests for unbundled network elements based on receipt of nearly 300,000 requests during 1997.
- SWBT is developing for CLECs a third interface, the Local Service Request EXchange (“LEX”) system, which will be available during the second quarter of 1997. LEX is a graphic user interface operating on Windows™ that also is based upon national standards. LEX will enable CLECs that do not have an EDI capability to create and submit service orders electronically.

Once orders have been entered and accepted for processing by SWBT, CLECs may check the status of those orders through “Order Status,” a fixture of the SWBT Toolbar. The Toolbar (formerly referred to as Customer Network Administration or “CNA”) is a SWBT-developed graphic user interface that enables CLECs to access its “back-office” systems in order to pull up service order requests and check on their status. Ham (OSS) Aff. ¶¶ 38, 55-57. SWBT’s business customers and interexchange carriers currently use the Order Status fixture of the Toolbar to check on the status of service orders and to verify their completion.

For maintenance and repair, SWBT provides CLECs with a choice of two electronic interfaces. These are Trouble Administration (“TA”) from the SWBT Toolbar and Electronic Bonding Interface (“EBI”). See Statement App. OSS § 4; Ham (OSS) Aff. ¶¶ 36-38, 57.

- TA is currently used by SWBT’s business customers and interexchange carriers. It has been enhanced to enable CLECs electronically to submit and check on trouble reports, initiate mechanized loop tests and receive test results for resold plain old telephone service (“POTS”) lines without initiating a trouble report. TA also will provide trouble history for those POTS lines.
- EBI is an electronic interface conforming to national standards, which enables CLECs to submit trouble reports and receive trouble status updates and closure information. EBI processed approximately 288,000 transactions in 1996.

For billing, SWBT provides CLECs with a choice of four electronic interfaces. See Statement App. OSS § 5; Ham (OSS) Aff. ¶¶ 39-44.

- Bill Plus™ is essentially a paper bill in electronic format. CLECs can receive their monthly bill on a diskette or downloaded to their computer systems, and can manipulate the data contained on the bill.
- EDI provides CLECs with direct access to SWBT’s Customer Record Information System, so that they can receive in an electronic format the data that would appear on their paper bill for resold services. SWBT will also provide CLECs, on a negotiated basis, with direct access to its Carrier Access Billing System through

EDI, to receive in electronic format the data that would appear on a paper bill for unbundled network elements.

- CNA is used by SWBT's own business customers and long distance carriers.<sup>25</sup> It provides CLECs with on-line access to the billing information for both resold services and unbundled network elements that would appear on a paper bill, and enables them to perform a variety of activities with their billing information.
- The fourth interface, Usage Extract Feed, provides CLECs electronically with daily information on the usage billed to their accounts, in a format that conforms to the national standard Exchange Message Record standard.

Southwestern Bell's provision of OSS to its competitors meets or exceeds all requirements of the Act and the Commission's implementing regulations. It affords CLECs access for all functions that is at least equal to the access SWBT personnel themselves have. Southwestern Bell's extraordinary commitment of time and resources to OSS unbundling fully satisfies all requirements for in-region, interLATA entry.

*Checklist Item (3): Nondiscriminatory Access to Poles, Ducts, Conduits, and Rights-of-Way*

Section 271(c)(2)(B)(iii) directs SWBT to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way it owns or controls at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act. SWBT has provided access to telecommunications carriers and cable television systems in accordance with section 224 since long before enactment of the 1996 Act and it continues to do so today.

**1.** SWBT's Statement confirms that "[u]pon request, SWBT shall provide non-discriminatory access to the poles, ducts, conduits, and rights-of-way it owns or controls" on

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<sup>25</sup> CNA for billing will be migrated to the SWBT Toolbar by the third quarter of 1997. Ham (OSS) Aff. ¶ 43.

standard terms that are just and reasonable. Statement at 13. The procedures and methods by which SWBT provides nondiscriminatory access are found in Appendix POLE to the Statement. As described in the accompanying Affidavit of James Hearst, these procedures meet all statutory and Commission requirements. Hearst Aff. ¶¶ 19-81. SWBT is currently furnishing telecommunications carriers (including CLECs, interexchange carriers, cable companies, and other competitors) with access to approximately 33,000 duct feet of conduits and ducts and 116,000 poles in the State of Oklahoma. Id. ¶ 4.

The formulas, methodology, and procedures used by SWBT in determining the rates to be charged for such access were established by the Commission. See Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCC Rcd 4387 (1987), recon., 4 FCC Rcd 468 (1989). The Commission requires a LEC to charge rates determined under the Commission's formula, established by the relevant state authority, or set through negotiations with cable operators. See Hearst Aff. ¶¶ 5-10 (discussing § 224); 2 FCC Rcd at 4387 ¶ 2; 4396-97 ¶ 71; 4 FCC Rcd at 472 ¶ 39. In accordance with these permitted procedures, SWBT's Statement adopts rates that were established by the OCC in the AT&T arbitration. Hearst Aff. ¶¶ 74-81. The rates adopted by the OCC for use of SWBT's poles and conduits are consistent with the requirements of section 224. Id.

2. In addition to providing such nondiscriminatory access under its Statement, SWBT has bound itself contractually to make available to Brooks Fiber nondiscriminatory access to SWBT's poles, ducts, conduits, and rights-of-way in accordance with the provisions of section 224. Brooks Fiber Agreement § VII. By virtue of its MFN clause, Brooks Fiber also is able to obtain

the rates provided for in SWBT's other OCC-approved agreements. Under the ICG Agreement, SWBT must provide ICG with access to the poles, ducts, conduits, and rights-of-way it owns or controls at rates, terms, and conditions that are consistent with section 224 and "at least as favorable as those contained in any SWBT . . . pole attachment agreement." ICG Agreement § 16.0.

*Checklist Item (4): Unbundled Local Loops*

Section 271(c)(2)(B)(iv) requires SWBT to provide local loop transmission from the central office to the customer's premises unbundled from local switching or other services. As noted in Part II(A), supra, both SWBT's Statement and its agreement with Brooks Fiber make local loop transmission available on an unbundled basis in compliance with section 51.319 of the Commission's rules. Standard unbundled local loops available to CLECs include two- and four-wire loops supporting analog and digital communication. See Deere Aff. ¶ 62; Kaeshoefer Aff. ¶ 41.

*Checklist Item (5): Unbundled Local Transport*

Section 271(c)(2)(B)(v) requires SWBT to provide local transport from the trunk side of SWBT's switch unbundled from switching or other services. Local transport facilities allow communications between wire centers or switches. Kaeshoefer Aff. ¶ 43; Deere Aff. ¶ 64. As discussed above, SWBT's Statement and the Brooks Fiber Agreement make common and dedicated interoffice transport available as unbundled network elements. See Kaeshoefer Aff. ¶¶ 44-45; Deere Aff. ¶¶ 67-71. Indeed, Brooks Fiber currently is using intraLATA/local trunks obtained from SWBT in Oklahoma. Butler Aff. ¶ 4.

*Checklist Item (6): Unbundled Local Switching*

Section 271(c)(2)(B)(vi) requires SWBT to provide local switching unbundled from transport, local loops, or other services. The Commission's rules require further unbundling of local and tandem switching capabilities. 47 C.F.R. § 51.319(c)(2).

1. SWBT's Statement meets all of these requirements. Kaeshoefer Aff. ¶¶ 46-49; Deere Aff. ¶¶ 72-80; Statement App. UNE § 5.0. Under the Statement, CLECs can obtain line-side and trunk-side facilities as well as the features, functions, and capabilities of the switch. *Id.* § 5.1. Available elements include the basic switching functions of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. In addition, CLECs have access to the same basic capabilities that are offered to SWBT retail customers (such as dial tone, signaling, operator services, and directory assistance) and to all vertical features the switch is capable of providing. Access to unbundled local switching is provided through switch ports, with three standard ports available to CLECs and other port types available through the BFR process. *See id.* § 5.9 (offering analog line port, ISDN basic rate interface port, and ISDN primary rate interface trunk side port). SWBT will transfer the customer's local service in the same interval it transfers customers between interexchange carriers if the transfer requires only a software change. *See* 47 C.F.R. § 51.319(c)(ii). Tandem switching is available pursuant to section 6.0 of Appendix UNE.

2. The Brooks Fiber Agreement also provides unbundled access to local switching. Brooks Fiber Agreement, App. UNC at 1. In addition, by virtue of its MFN clause Brooks Fiber has access to all of the specific switching arrangements that SWBT makes available to other CLECs pursuant to an OCC-approved agreement. These include those set out in the Sprint



Agreement, which gives Sprint (and therefore Brooks Fiber) access to, among other things, “all vertical features that the switch is capable of providing, including . . . any technically feasible customized routing functions.” Sprint Agreement, Attach. 6 at § 5.1; but see Sprint Agreement § 4.2 (calling for revision of terms in accordance with appellate decisions regarding implementation of Local Interconnection Order).

*Checklist Item (7): Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services*

Section 271(c)(2)(B)(vii) directs SWBT to provide nondiscriminatory access to 911 and E911 services, directory assistance (“DA”) services, and operator call completion services.

1. SWBT’s Statement satisfies these obligations. The affidavits of Richard K. Keener, Dale Kaeshoefer, and William Deere describe in detail the services being offered by SWBT under the Statement. See Keener Aff. ¶¶ 7-30; Kaeshoefer Aff. ¶¶ 50, 51; Deere Aff. ¶¶ 82-86. The Statement provides CLEC customers, on a nondiscriminatory basis, the type of 911 and E911 access selected by the local government in their area. Deere Aff. ¶ 82.

The Statement’s DA provisions allow CLECs to obtain nondiscriminatory access to DA and DA call completion services. Statement § VI.E. Under Appendix Direct, SWBT offers CLECs the opportunity to access the same directory listing information that is available to SWBT’s DA operators. App. Direct § 1. SWBT will make such direct access available to requesting telecommunications carriers on an individual-case basis (“ICB”) as indicated in

Appendix Pricing Schedule (at 4).<sup>26</sup> SWBT will provide the above DA services with no unreasonable dialing delays.

SWBT's operator call completion services include fully- and semi-automated call processing, operator-assisted call processing, line status verification, busy line interrupt, operator transfer service, emergency call handling, CLEC-specific branding, and rate information. App. OS. As with DA services and pursuant to Commission rules, SWBT will brand operator services in the CLEC's name. Statement OS § II.I. Rates for these operator services are listed in Appendix Pricing Schedule. SWBT will provide the services with no unreasonable dialing delays.

SWBT did not have the technical capability to offer branding of DA and operator services for resellers when the Commission issued its Local Interconnection Order in August, 1996. Keener Aff. ¶¶ 16-19. In the AT&T Arbitration, the parties agreed that SWBT should complete implementation of this capability by June 30, 1997. Id. SWBT has installed the necessary software well before that deadline, and now is able to make reseller branding available. Id. ¶ 18. SWBT also offers branding of DA and operator call completion services to facilities-based CLECs. Id. ¶ 17.

2. The Brooks Fiber Agreement similarly obligates SWBT to provide nondiscriminatory access to 911 and E911 services. See Brooks Fiber Agreement, § VI.A. This contractual obligation is spelled out in considerable detail in an addendum to the Brooks Fiber Agreement entitled "Appendix 911." The Brooks Fiber Agreement further provides Brooks Fiber with nondiscriminatory access to DA services and operator call completion services. See Brooks Fiber

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<sup>26</sup> All non-ICB services either have a cost-based rate or are currently offered at no charge; ICB services will have cost-based rates.

Agreement, § VI.D, App. DA. SWBT has agreed to provide Brooks Fiber with nondiscriminatory access to various other operator services, including Line Status Verification and Busy Line Interrupt. See Brooks Fiber Agreement, § VI.F, App. OS. SWBT is currently furnishing 911 services, DA services, and operator call completion services pursuant to the Agreement. Keener Aff. ¶¶ 9, 14; Kaeshoefer Aff. ¶ 50.

*Checklist Item (8): White Pages Directory Listings*

Section 271(c)(2)(B)(viii) requires SWBT to provide White Pages directory listings for the customers of competing CLECs.

1. SWBT's Statement satisfies this requirement. See Baker-Oliver Aff. ¶¶ 9-24. It makes available White Pages listings for customers of both resellers and facilities-based carriers, as if they were SWBT customers. Statement § VI.C & App. WP; see Baker-Oliver Aff. ¶¶ 5-14. The listing options include enhanced residential listing products such as Signature listing, Lines of Distinction, and Personality Logos. Baker-Oliver Aff. ¶ 10. SWBT will intersperse CLEC listings with the listings of SWBT customers, unless the CLEC prefers to have its customers listed in a separate section of the White Pages directory. Statement App. WP § I.D.

The Statement offers delivery of a copy of the White Pages directly to the customers of resellers and, at the option of a facilities-based CLEC, either to the CLEC or directly to its customers. Statement App. WP § III.A; Baker-Oliver Aff. ¶ 12. In addition, CLECs themselves may choose to be included on an informational page listing carrier-specific contact information. Statement App. WP § I.G; Baker-Oliver Aff. ¶ 13.

2. The Brooks Fiber Agreement also provides nondiscriminatory access to SWBT's White Pages directory listing and distribution services. See Brooks Fiber Agreement, § VI.C App. WP. In Appendix WP to the Brooks Fiber Agreement, SWBT has agreed to include the listings of Brooks Fiber's customers in its White Pages directories and to deliver directories to those customers. See also Brooks Fiber Agreement, App. Resale at 13. SWBT also has agreed to furnish Brooks Fiber an informational page in the White Pages directory and to include Brooks Fiber's specific information (i.e., business office, residence office, repair bureau, etc.) on an "index-type" informational page. Brooks Fiber Agreement, App. WP § I.G. at 2.

*Checklist Item (9): Nondiscriminatory Access to Telephone Numbers*

Pursuant to section 271(c)(2)(B)(ix), SWBT must provide CLECs with nondiscriminatory access to telephone numbers for assignment to their customers until telecommunications numbering administration guidelines, plans, or rules are established. SWBT has met this requirement. In fulfilling its role as the Central Office Code Administrator within its five-state operating service area, SWBT has followed industry-established guidelines promulgated under the auspices of the Commission. Adair Aff. ¶¶ 11-22.

SWBT's Statement continues this practice, guaranteeing compliance not only with section 271(c)(2)(B)(ix), but also with any guidelines issued by the Commission until such time as numbering administration is taken over by a neutral third party. Statement § IV; Adair Aff. ¶¶ 21-22; Kaeshoefer Aff. ¶ 54. SWBT also has participated in the Commission's North American Numbering Council and supported its efforts to transfer number administration functions to a neutral third party. Adair Aff. ¶¶ 20-22.

SWBT has agreed with Brooks Fiber that, to the extent that it serves as the Central Office Code Administrator for the Brooks Fiber's service areas in Oklahoma, it will work with Brooks Fiber in a neutral and nondiscriminatory manner, consistent with regulatory requirements, with respect to Brooks Fiber's requests for the assignment of central office codes ("NXXs") for purposes of assigning telephone numbers to Brooks Fiber's customers. See Brooks Fiber Agreement § IV.B. As of April 1, 1997, SWBT had assigned 11 central office codes to CLECs in the State of Oklahoma, Adair Aff. ¶ 18, including a number of codes to Brooks Fiber. Id.

*Checklist Item (10): Nondiscriminatory Access to Databases and Associated Signaling Necessary for Call Routing and Completion*

Section 271(c)(2)(B)(x) requires SWBT to provide CLECs with nondiscriminatory access to databases and associated signaling necessary for call routing and completion. The Commission's implementing regulations also require SWBT to provide nondiscriminatory access to signaling networks and call-related databases. 47 C.F.R. § 51.319(e). SWBT exceeds this requirement by providing unbundled access to signaling and various databases as noted in the discussion of checklist item (2), above.

In particular, SWBT's Statement provides unbundled access to its Toll Free Calling (800 and 888) Database on non-discriminatory terms. Appendix 800 to the Statement offers CLECs optional number translation, call validation, and call routing features in addition to stand-alone database access. See Statement App. 800 §§ I, II.B. The Brooks Fiber Agreement likewise provides the requisite access to the Toll Free Calling database. Brooks Fiber Agreement App. SS7 Attach. 6.

*Checklist Item (11): Interim Number Portability*

Section 271(c)(2)(B)(xi) requires SWBT to provide CLECs with interim number portability (“INP”), either through remote call forwarding (“RCF”), direct inward dialing (“DID”), or other comparable arrangements, until the Commission issues regulations pursuant to section 251 to ensure permanent number portability. See also 47 C.F.R. §§ 42.3(a), (b), 42.7(a), 42.9; Baker-Oliver Aff. ¶¶ 15-22. Implementation of permanent number portability is scheduled to begin in Oklahoma in the third quarter of 1998. Kaeshoefer Aff. ¶ 59.

1. SWBT’s Statement provides INP in compliance with SWBT’s statutory and regulatory obligations. See Baker-Oliver Aff. ¶¶ 15-22; Kaeshoefer Aff. ¶¶ 57; Deere Aff. ¶ 112. SWBT offers CLECs a choice of RCF or DID arrangements. Statement App. Port §§ II.E, II.F. When a CLEC assigns to its end-user one of its own telephone numbers, SWBT’s switches continue to route calls that are dialed to the customer’s old SWBT telephone number to the end-user. Baker-Oliver Aff. ¶ 16. SWBT intends to seek recovery of the costs of providing INP accordance with Commission rules when final, effective rules are in place. Statement App. Port § II.G; Kaeshoefer Aff. ¶ 58. In the interim, SWBT will track INP costs and may true-up and back-bill CLECs depending on how cost recovery issues ultimately are resolved. Statement App. Port § II.G; Kaeshoefer Aff. ¶ 58; Deere Aff. ¶ 115. SWBT has also requested proceedings before the OCC to determine a method of interim cost recovery. Kaeshoefer Aff. ¶ 58.

2. SWBT makes INP available to Brooks Fiber pursuant to the Brooks Fiber Agreement. Kaeshoefer Aff. ¶ 59; Brooks Fiber Agreement, § IX, App. PORT. Through its MFN clause, Brooks Fiber also has access to number portability arrangements that SWBT makes available to any other CLEC under an OCC-approved interconnection agreement. See, e.g., ICG Agreement,

§ 14.1 (SWBT to provide INP using RCF and DID); Sprint Agreement Attachments 14 (same) & 12 (compensation). Brooks Fiber has received INP for “several customers.”<sup>27</sup>

*Checklist Item (12): Local Dialing Parity*

Section 271(c)(2)(B)(xii) requires SWBT to provide CLECs with nondiscriminatory access to services and information that are necessary to allow local dialing parity in accordance with section 251(b)(3). See also 47 C.F.R. § 51.207 (equal number of digits). The Commission has noted its expectation “that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251.” Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Dkt No. 96-98, FCC 96-333, at ¶ 71 (rel. Aug. 8, 1996).

As described above, SWBT’s Statement and its agreement with Brooks Fiber offer requesting CLECs access to the information necessary to implement local dialing parity, as well as nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings with no unreasonable dialing delays. Kaeshoefer Aff. ¶¶ 60-62; Deere Aff. ¶¶ 116-118. Indeed, the Brooks Fiber Agreement guarantees that “when customers of SWBT and

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<sup>27</sup> Reply Comments of Brooks Fiber Communications of Oklahoma, Inc. and Brooks Fiber Communications of Tulsa, Inc. at 2 (OCC filed Mar. 25, 1997) (App. Vol. IV, Tab. 28). Before the OCC, Brooks Fiber cited incidents in which its customers temporarily did not receive incoming calls through call forwarding. As Southwestern Bell has explained, this problem was caused by Brooks Fiber’s mistaken submission of orders to SWBT’s retail business office rather than to the LSPSC, which handles CLEC orders. This error appears to be an isolated event. SWBT has made extraordinary efforts to ensure that its ordering procedures are easy to follow and familiar to CLECs. Indeed, SWBT gave Brooks Fiber written materials and undertook face-to-face meetings and instruction for this purpose. See Reply Comments of Southwestern Bell Telephone Company in Support of Commission Endorsement of Full InterLATA Competition in Oklahoma at 54-55 (OCC filed Mar. 25, 1997) (App. Vol. IV, Tab 27).

Brooks have the same exchange boundaries, these customers will be able to dial the same number of digits when making a 'local' call." Brooks Fiber Agreement, § VI. B., VI.B.1; See Kaeshoefer Aff. ¶ 61. By virtue of its MFN clause, Brooks Fiber also has access to other OCC-approved agreements and their dialing parity provisions. See, e.g., Sprint Agreement § 49.1 (guaranteeing dialing parity and equal call quality); USLD Agreement, § VI. B., (App. Vol. III, Tab 7) ICG Agreement, §§ 15.1, 15.2, (guaranteeing dialing parity in accordance with the Act).

*Checklist Item (13): Reciprocal Compensation for the Exchange of Local Traffic*

Section 271(c)(2)(B)(xiii) requires SWBT to agree, under section 251(d)(2), to just and reasonable terms and conditions that provide for mutual and reciprocal recovery by SWBT and the CLEC of the costs associated with transporting and terminating calls that originate on the other carrier's network. SWBT's Statement fulfills this checklist requirement. Statement § III. SWBT offers reciprocal rates for both tandem office-based and end office-based transport and termination of local traffic originating on the other carrier's network, in accordance with section 252(d)(2) and the Commission's stayed pricing rules. Kaeshoefer Aff. ¶¶ 63-64; Moore Aff. ¶¶ 8-25 (discussing cost studies). SWBT also has fully complied with this statutory requirement in its interconnection agreement with Brooks Fiber and other OCC-approved agreements to which Brooks Fiber has access. See Brooks Fiber Agreement, § III; see also USLD Agreement, § III; ICG Agreement, §§ 5.3.2, 5.3.3; Sprint Agreement, Attach. 12 § 3.0 (reciprocal compensation). SWBT and Brooks Fiber currently exchange traffic under a reciprocal compensation arrangement. Kaeshoefer Aff. ¶ 146.

*Checklist Item (14): Resale*



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

1. SWBT’s Statement offers LSP wholesale rates for any services that SWBT offers to its retail customers, with the exception of those excluded from resale requirements under Commission regulations. See Statement App. Resale § 1; Kaeshoefer Aff. ¶ 65. Consistent with 47 C.F.R. § 51.603(b), the services SWBT makes available for resale are “equal in quality, subject to the same conditions, and provided with the same provisioning time intervals” as the services SWBT provides to other customers, including end users. Kaeshoefer Aff. ¶ 64. These services are identical to the services SWBT furnishes its own retail customers, and CLECs are able to sell these services to the same customers as SWBT in the same manner. SWBT is offering services for resale with no unreasonable or discriminatory conditions or limitations.

SWBT is offering these services at wholesale rates that are equal to the retail rates less the portion thereof attributable to any marketing, billing, collection, or other costs that will be avoided by SWBT. Following the issuance of the Commission’s Local Interconnection Order, SWBT performed an avoided cost study that complied with Commission’s rules, including those later stayed by the Eighth Circuit. Moore Aff. ¶ 25. In the AT&T arbitration, the OCC adopted

a 19.8 percent discount based upon this cost study and AT&T's own avoided cost study. See Cause No. PUD 960000218, Order No. 407704, at 4, adopting the November 13, 1996 Report and Recommendations of the Arbitrator, at 18-19. Kaeshoefer Aff. ¶ 65; Moore Aff. ¶ 25. SWBT's Statement incorporates the OCC's 19.8 percent discount rate for resellers. Moore Aff. ¶ 25.

2. The Brooks Fiber Agreement permits Brooks Fiber to resell SWBT's telephone exchange services. See Brooks Fiber Agreement, § X, and Appendix RESALE. By virtue of its MFN clause, Brooks Fiber also has access to resale at the 19.8 percent discount established by the OCC and included in various OCC-approved agreements. See Kaeshoefer Aff. ¶ 10. SWBT is currently furnishing resale services to Brooks Fiber. Kaeshoefer Aff. ¶ 66; Brooks Fiber OCC Comments at 2 (ISDN service).

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In sum, SWBT has fully implemented the competitive checklist through its Statement and also is making available all checklist items under the Brooks Fiber agreement and the other OCC-approved agreements that it incorporates. SWBT thus has opened its local markets in Oklahoma to competition to the full extent required by Congress in section 271.

### **III. SOUTHWESTERN BELL SATISFIES THE REQUIREMENTS OF SECTION 272**

Section 271(d)(3)(B) requires the Commission to find that "the requested authorization will be carried out in accordance with the requirements of section 272 [of the Act]." Section 272 in turn establishes specific separate affiliate requirements and non-discrimination safeguards to

ensure that a Bell operating company does not improperly advantage an affiliate's entry into the interLATA business.

**A. SBC Has Established a Separate, Section 272 Affiliate to Provide In-Region InterLATA Services**

To meet the requirements of section 272, SBC has established an affiliate, SBLD, that is separate from SWBT, Pacific Bell, and Nevada Bell (SBC's affiliated local exchange companies and BOCs).<sup>28</sup> As described below and established through the affidavits of Karol Sweitzer, Kathleen Larkin, and Elizabeth A. Ham (272), SBLD will provide in-region, interLATA services originating in Oklahoma in conformity with section 272 and with the Commission's Non-Accounting Safeguards Order and Accounting Safeguards Order.<sup>29</sup> SBLD is a duly formed and existing corporation organized under the laws of the State of Delaware and is a wholly-owned subsidiary of SBC. SWBT is a duly formed and existing corporation organized under the laws of the State of Missouri and is a wholly-owned subsidiary of SBC. SWBT, Pacific Bell, and Nevada Bell own no stock of SBLD; correspondingly, SBLD owns no stock of SWBT, Pacific Bell, or

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<sup>28</sup> SBC recently completed its merger with Pacific Telesis Group, and accordingly became affiliated with two additional BOCs, Pacific Bell and Nevada Bell. Affidavits of appropriate Pacific Bell and Nevada Bell witnesses (John Gueldner and James Riley, respectively), together with an affidavit of a Pacific Bell Communications, Inc. ("PBCOM") witness (Betsy Bernard) have been incorporated into this Application. As is demonstrated in these affidavits, SBLD (and to the extent required, PBCOM) will comply with the requirements of section 272 and the Commission's rules fully with respect to Pacific Bell and Nevada Bell.

<sup>29</sup> Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Dkt. No. 96-150 (rel. Dec. 24, 1996). To the extent that the Commission promulgates additional rules relating to the classification of Bell company in-region, interLATA providers as nondominant or dominant carriers, Southwestern Bell will, consistent with its right of appeal, comply with those rules.

Nevada Bell. SBLD is a separate corporate entity from SWBT, Pacific Bell, and Nevada Bell.

Sweitzer Aff. ¶ C(2)(a).

SBLD, either directly or through its subsidiaries,<sup>30</sup> currently provides direct-dialed interstate and intrastate, intraLATA and interLATA message telecommunications services, calling-card, and operator services originating in some states other than Arkansas, California, Kansas, Missouri, Nevada, Oklahoma, or Texas. See Sweitzer Aff. ¶ C(2)(b). These services are marketed primarily to customers of SBLD's wireless services affiliates under the "Cellular One" brand. SBLD provides no "in-region" telecommunications services of any kind as of the date of this application.

SBC may from time to time reorganize, merge, or otherwise change the form of SBLD or PBCOM, or create or acquire additional interexchange subsidiaries. At the time they offer interLATA services, any resulting subsidiaries or affiliates that provide interLATA services will be separate from SWBT, Pacific Bell, and Nevada Bell and will meet the requirements of section 272 of the 1996 Act, as well as applicable state and federal regulations. See Sweitzer Aff.; Ham (272) Aff. Any affiliate of SBC that SBC may later create or acquire to provide interLATA services similarly will be separate from SWBT, Pacific Bell, and Nevada Bell, and in all respects will comply with section 272.

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<sup>30</sup> These subsidiaries are Southwestern Bell Communications Services—Illinois, Inc, Southwestern Bell Communications Services—Indiana, Inc., Southwestern Bell Communications Services—New York, Inc., Southwestern Bell Communications Services—Maryland, Inc., and Southwestern Bell Communications Services—Massachusetts, Inc.

**B. SWBT and SBLD Will Comply with the Structural and Transactional Requirements of Section 272(b)**

Section 272(b) establishes five structural and transactional requirements for any separate affiliate established to conduct: manufacturing activities authorized under 47 U.S.C. § 273(a); origination of interLATA telecommunications services (other than incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g), out-of-region services described in section 271(b)(2), or previously authorized activities described in section 271(f) and interLATA information services, other than electronic publishing (as defined in section 274(h)) and alarm monitoring services (as defined in section 275(e)). SWBT and SBLD will comply with all of these requirements, as follows.

1. Section 272(b)(1) provides that the required separate affiliate “shall operate independently from the Bell operating company.” In the Non-Accounting Safeguards Order, the Commission concluded that section 272(b)(1) “imposes requirements beyond those listed in sections 272(b)(2)-(5).” Non-Accounting Safeguards Order ¶ 156. The Commission further concluded that operational independence requires that:

- (a) the BOC and its section 272 affiliate be precluded from jointly owning switching or transmission facilities or the land or buildings where those facilities are located;
- (b) “a section 272 affiliate [be precluded] from performing operating, installation, and maintenance functions associated with the BOC's facilities”; and
- (c) “a BOC or any BOC affiliate, other than the section 272 affiliate itself, [be precluded] from performing operating, installation, or maintenance functions associated with the facilities that the section 272 affiliate owns or leases from a provider other than the BOC with which it is affiliated.”

Id. ¶ 158. SWBT and SBLD will operate independently under this standard.

As set forth in the Sweitzer Affidavit, SBLD anticipates that it will be a reseller as well as facilities-based provider of interLATA long-distance services and products. SBLD already has installed four Northern Telecom DMS250 long-distance switches and one Northern Telecom DMS 300 switch. SBLD will operate and maintain these switches. Any other SBLD switching or transmission equipment or facilities will be operated, installed, and maintained by SBLD personnel or by non-SBC-affiliated entities. SBLD will be responsible for and will directly coordinate the development of its network. In addition, SBLD will perform its own network design and network engineering functions. SBLD also will perform its own interoffice facility/circuit provisioning activities, including the operation of a center for facility assignment and design, message trunk design, and data network design. SBLD will perform its own trunking and routing functions, including trunk group design and routing/disaster planning. Sweitzer Aff. ¶ D(2)(c)(i).

SBLD will provide many of its own operations support systems. It will not obtain any such systems from SWBT or a non-section 272 affiliate of SWBT if such systems would constitute operating, installation, or maintenance functions prohibited under the Non-Accounting Safeguards Order. Further, SBLD will provide its own network operations functions and perform its own customer service design functions. Sweitzer Aff. ¶ (D)(2)(c)(i).

SBLD will develop and tariff its own products and services at the state and federal levels and prepare its own regulatory filings. Sweitzer Aff. ¶ (D)(2)(d). SBLD will also coordinate the marketing of those products and services, although it will use both SBLD and non-SBLD marketing and sales channels to accomplish the distribution of its products and services. Id.

SBLD will perform its own accounting and finance functions. Id. Among the accounting and finance functions that SBLD will perform will be its maintenance of separate books of account, its establishment and maintenance of asset tracking and project accounting, development and administration of cost accounting and pricing models, establishment of financial requirements for the billing system, and accounting for international settlements. Id.

In the Non-Accounting Safeguards Order, the Commission prohibited, as an aspect of operational independence, joint ownership of switching or transmission facilities or the land or buildings where those facilities are located. Non-Accounting Safeguards Order ¶ 162. SWBT and SBLD do not jointly own property of any kind, and any property these companies own together in the future will be owned in accordance with Commission rules. Sweitzer Aff. § D; Ham (272) Aff. ¶ 2(a)(i). At the same time, SBLD may “negotiate with [SWBT] on an arm's length and nondiscriminatory basis to obtain transmission and switching facilities, to arrange for collocation of facilities, and to provide or to obtain services other than [operating, installation, and maintenance].”<sup>31</sup>

In accordance with the Commission's regulations relating to operational independence and nondiscrimination, SWBT has undertaken to identify and discontinue the provision to SBLD of any services the Commission has determined to be impermissible or subject to a nondiscrimination requirement under the Act. Ham (272) Aff. ¶ 2(a)(ii).

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<sup>31</sup>. Non-Accounting Safeguards Order ¶ 158. As set forth above, SBLD presently has four interexchange switches sited on premises leased from SWBT. Sweitzer Aff. ¶ D(2)(i). These switches are not currently interconnected with SWBT exchange access facilities. In September of 1996, prior to the promulgation of the Commission's rules, SWBT offered the same siting arrangements to SBLD's future competitors. See Ham (272) Aff. ¶ 2(a)(ix).

Upon commencing in-region operations, SBLD intends to purchase exchange access from SWBT, among other providers. In conformity with the Non-Accounting Safeguards Order, SBLD also may obtain other telecommunications services or unbundled network elements from SWBT, and SWBT may obtain telecommunications services from SBLD. To the extent the Commission's rules permit, SBLD may obtain operating, installation, or maintenance services associated with SWBT's telecommunications services, facilities, or unbundled network elements. Non-Accounting Safeguards Order ¶¶ 158, 164. Sweitzer Aff. § D.

SBLD and SWBT may also share directly administrative and other services, including marketing services, that are not "operating, installation, or maintenance" of switching or transmission facilities. Non-Accounting Safeguards Order ¶¶ 164-69, 183. To the extent SWBT provides these services to SBLD, and to the extent that those shared services are non-marketing in nature, SWBT will make them available on a non-discriminatory basis. Ham (272) Aff. 2(a)(vii).

SBLD and SWBT may each obtain administrative or joint marketing services from a common "services affiliate." If obtained from a services affiliate, administrative services may be provided to SBLD and SWBT on an exclusive basis. Any joint marketing services may be obtained on an exclusive basis, regardless of whether they are obtained from a services affiliate or from SWBT. All such services will be accounted for in accordance with all applicable affiliate transaction rules. See Non-Accounting Safeguards Order ¶¶ 180-83; see also Sweitzer Aff. ¶ D(2)(d); Larkin Aff. § C; Ham (272) Aff. ¶ 2(a)(vii).



2. Section 272(b)(2) provides that the separate affiliate must “maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the [BOC] of which it is an affiliate.” SBLD and SWBT comply with this requirement and will continue to comply in the future. SBLD’s books, records, and accounts have been established in accordance with Generally Accepted Accounting Principles. Both SBLD’s and SWBT’s books, records, and accounts have been and will be maintained in accordance with the Commission’s regulations. Sweitzer Aff. § E; Larkin Aff. § C; see 47 U.S.C. § 272(b)(2). To date, all transactions between SBLD and SWBT have been recorded in compliance with the Commission’s existing Part 32 and 64 requirements. When the rule changes adopted in the Accounting Safeguards Order become applicable, all transactions between SBLD and SWBT will comply with its accounting requirements. See Sweitzer Aff. § E; Larkin Aff. § C.

3. Section 272(b)(3) requires that the separate affiliate “have separate officers, directors, and employees from [an affiliated] Bell operating company.” SBLD complies with this obligation, and will continue to do so. Sweitzer Aff. § F.

4. Section 272(b)(4) prohibits the separate affiliate from obtaining “credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company.” Id. SBLD fully complies with this requirement in that neither SBLD nor any of its affiliates has co-signed any contract or made any other arrangement with, or on behalf of, SBLD that would allow a creditor to obtain recourse to SWBT’s assets in the event of a default. Neither SBLD, nor any of its affiliates, will do so in the future. See Sweitzer Aff. § G.

5. Section 272(b)(5) requires that the separate affiliate “conduct all transactions with the Bell operating company of which it is an affiliate on an arm’s length basis with any such transactions reduced to writing and available for public inspection.” SBLD and SWBT have complied with the Commission’s affiliate transaction rules and will comply with section 272(b)(5) and the Commission’s rules in the future. See Sweitzer Aff. § H; Sweitzer Aff. § C.

**C. SWBT Will Comply with the Nondiscrimination Safeguards Set Forth in Section 272(c)(1)**

Section 272(c)(1) provides that “[i]n its dealings with its [required] affiliate . . . [SWBT] may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards.”<sup>32</sup> In accordance with section 272(c), SWBT will provide to its section 272 affiliates the same goods, services, facilities, and information at the same rates, terms, and conditions as are available to unaffiliated entities.<sup>33</sup> Ham (272) Aff. ¶ E(1)(a)(i). SWBT will make and implement provisioning, procurement, and standard-setting decisions without regard to whether the other party is a section 272 affiliated entity. Ham (272) Aff. ¶ E(1)(a)(ii); see Non-Accounting Safeguards Order ¶ 212.

**D. SWBT and its Affiliates, Including SBLD, Will Comply with the Audit Requirements of Section 272(d)**

Section 272(d) requires that:

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<sup>32</sup> The section 272(c) nondiscrimination requirements do not apply to joint marketing authorized by section 272(g). See § 272(g)(3).

<sup>33</sup> For example, SWBT now offers billing and collection services to unaffiliated entities. If SWBT offers these services in the future, SWBT will offer them to SBLD on the same rates, terms, and conditions that are offered to non-affiliates.

a company required to operate a separate affiliate under this section shall obtain and pay for a joint federal/State audit every 2 years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under subsection (b).

SWBT and its section 272 affiliates, including SBLD, will comply with this audit requirement and the rules adopted in the Accounting Safeguards Order. Sweitzer Aff. § J; Larkin Aff. § D.

**E. SWBT Will Provide Facilities and Services in Conformity with the Nondiscrimination Requirements Set Forth of Section 272(e)**

SWBT will comply with the requirements of section 272(e) for so long as those requirements are in effect. SWBT will fulfill requests from unaffiliated entities for installation and repair of telephone exchange and exchange access services within the same intervals in which it fulfills such requests from SBLD. SWBT will not provide services, facilities, or information relating to exchange access service to SBLD unless non-affiliated providers of interLATA services are provided such services, facilities, or information on the same terms and conditions given to SBLD. When SBLD obtains exchange access from SWBT, SWBT will charge SBLD an amount for access that is no less than the amount charged to any unaffiliated interexchange carriers for such service. SWBT will provide permitted interLATA or intraLATA facilities or services to SBLD only if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions; further, these facilities or services will be provided only under proper cost allocation methodologies. Ham (OSS) Aff. § F.

SWBT will use the same facilities, systems, and procedures to provide services to SBLD that it uses to provide comparable services to similarly situated unaffiliated carriers. Any operations support system or interface SWBT offers to SBLD for these functions will be offered

to other providers of interLATA services in a given market on comparable rates, terms, and conditions. Id.<sup>34</sup>

**F. SBLD and SWBT Will Comply with the Joint Marketing Provisions of Section 272(g)**

Section 272 authorizes BOCs and their required affiliates to engage in joint marketing and sale of services and provides that such joint marketing and sales “shall not be considered to violate the nondiscrimination provisions of subsection (c).” § 272(g)(3). SBLD will not “market or sell [SWBT] telephone exchange services . . . unless [SWBT] permits other entities offering the same or similar service to market and sell its telephone exchange services.” § 272 (g)(1). In addition, SWBT will not market and sell SBLD’s interLATA service within any of its in-region states until SBLD “is authorized to provide interLATA services” in a particular state. § 272(g)(2); see Sweitzer Aff. § I; Ham (272) Aff. § G. SWBT also will comply with the Commission’s requirements with respect to marketing on in-bound calls for new local exchange service. See Non-Accounting Safeguards Order ¶ 292. In addition, SBLD and SWBT will comply with the customer information privacy requirements of section 272 and any related rules or regulations issued by the Commission. Ham (272) Aff. ¶ E(1)(a)(xi), (xii).

**IV. SBLD’S INTERLATA ENTRY WILL PROMOTE COMPETITION, FURTHER THE PUBLIC INTEREST, AND SATISFY SUBSECTION 271(d)(3)(B)**

The final element of the Commission’s section 271 analysis is a determination whether Southwestern Bell’s interLATA entry in Oklahoma “is consistent with the public interest,

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<sup>34</sup> Although SWBT reserves its rights with regard to the Commission’s Further Notice of Proposed Rulemaking, CC Docket 96-149, ¶¶ 362 et seq., and any clarification, reconsideration, or appeal of any resulting order, SWBT will comply with any regulations ultimately resulting from that proceeding.

convenience and necessity.” § 271(d)(3)(C). The remainder of this Brief demonstrates that SBLD’s provision of interLATA services in Oklahoma meets this public interest test. SBLD’s entry will secure significant benefits for the public, in the form of lower prices and higher-quality telecommunications services. This is clear from: (1) the demonstrated ability of incumbent LECs to infuse interLATA and other telecommunications markets with competition in the instances in which they have been permitted to compete; (2) Southwestern Bell’s ability to do the same in Oklahoma; and (3) the implausibility of any countervailing negative effect on competition.

. **The Public Interest Inquiry**

The Commission’s public interest review must be conducted within applicable statutory boundaries. As the Supreme Court has held, “the use of the words ‘public interest’ in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation.” NAACP v. FPC, 425 U.S. 662, 669 (1976). In particular, while the 1996 Act relies upon regulators to ensure that markets are open to new entrants, it does not authorize them to use the section 271 process as a vehicle for implementing their policy preferences regarding the shape of local competition. Instead, Congress sought to promote rapid Bell company entry — a “principal goal” of the 1996 Act (Local Interconnection Order ¶ 3) — by instructing the Commission to conduct a public interest inquiry that is guided and constrained by years of precedent under section 214(a) of the 1934 Act.

1. *SBLD’s Entry Is Presumptively Beneficial*

Congress intended to incorporate prior Commission precedent by using the phrase “public interest, convenience, and necessity” in section 271(d)(3). See McDermott Int’l., Inc. v.

Wilander, 498 U.S. 337, 342 (1991) (absent “contrary indication” those interpreting statutory terms must assume that “Congress intended it to have its established meaning”). The Senate Commerce Committee, which first drafted the public interest provision of section 271, explained that “[t]he public interest, convenience, and necessity standard is the bedrock of the 1934 Act, and the Committee does not change that underlying premise through the amendments contained in this bill.”<sup>35</sup> Indeed, the public interest language of the Act is based upon “[a] test which has been a test utilized by [the] Commission ever since or almost ever since its creation.”<sup>36</sup>

Under the governing Commission precedent, the entry of an additional provider of interLATA services in Oklahoma presumptively will further the public interest. The Commission has explained that section 214 “must be construed” to contain a presumption that both competitive entry and “the provision of new technologies and services” serve the public interest.<sup>37</sup> Thus, the Commission has consistently maintained an open entry policy for interexchange markets

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<sup>35</sup> See, e.g., S. Rep. No. 23, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess. 44 (1995); see also Conference Report at 149 (“the conference agreement adopts the basic structure of the Senate bill concerning authorization of BOC entry by the Commission”).

<sup>36</sup> 141 Cong. Rec. S8165 (daily ed. June 12, 1995) (statement of Senator Gorton); see also 141 Cong. Rec. S7895 (daily ed. June 7, 1995) (statement of Sen. Hollings) (“we have used the original Communications Act of 1934 as amended, for the simple reason that over the 60 plus years we now have a complex body of law, special rulings, interpretations of legal expressions and requirements”).

<sup>37</sup> Second Report and Order, MTS-WATS Market Structure Inquiry, 92 F.C.C.2d 787, 790-91, 803-05, ¶¶ 7-8, 46-49 (1982); Time Warner Entertainment Co. and U S West Communications, 8 FCC Rcd 7106, 7107-08, ¶10 (1993) (applying statutory presumption of 47 U.S.C. § 157(a), which encourages the provision of new technologies and services to the public). As required by case law interpreting section 214, the Commission has found that competition in interLATA markets “would benefit the public interest.” MTS-WATS Market Structure Inquiry, 92 F.C.C.2d at 807-09, ¶¶ 53-59; see generally FCC v. RCA Communications, Inc., 346 U.S. 86 (1953), and Hawaiian Tel. Co. v. FCC, 498 F.2d 771 (D.C. Cir. 1974).

on the ground that new entrants enhance competition and that “competitive entry” serves the public interest.<sup>38</sup> This presumption of public benefit has been applied to incumbent LECs seeking to provide interexchange service to their local customers.<sup>39</sup>

SBLD will be a new entrant into the interLATA market in Oklahoma and will offer new services, such as bundled packages of local and long distance. To defeat this Application on public interest grounds, therefore, opponents would have to demonstrate with clear and convincing evidence that SBLD’s entry will harm consumers.<sup>40</sup> In fact, however, they will only be able to show that SBLD’s provision of interLATA services in Oklahoma will increase competition and thereby benefit consumers.

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<sup>38</sup>. MTS-WATS Market Structure Inquiry, 92 F.C.C.2d at 790-91, ¶¶ 7-8; see MTS-WATS Market Structure Inquiry, 81 F.C.C.2d 177, 201-02, ¶ 103 (1980) (Commission will “refrain from requiring new entrants to demonstrate beneficial effects of competition in the absence of a showing that competition will produce detrimental effects”); cf. Market Entry and Regulation of Foreign-Affiliated Entities, 11 FCC Rcd 3873, 3878, ¶ 10 (1995) (“competition directly advances the public interest”); Washington Utils. & Transp. Comm’n v. FCC, 513 F.2d 1142, 1155, 1168 (9<sup>th</sup> Cir.) (upholding FCC order that “general policy in favor of entry of new carriers in the specialized communications field would serve the public interest”), cert. denied sub nom. National Ass’n of Regulatory Comm’rs v. FCC, 423 U.S. 836 (1975).

<sup>39</sup>. Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, 2 FCC Rcd 6600, 6604 ¶ 30 (1987) (citing MTS-WATS Market Structure Inquiry, 81 F.C.C.2d at 186); see Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Serv. off of the Island of Puerto Rico, 8 FCC Rcd 63, 63, 66, ¶¶ 1, 15 (1992) (reaffirming earlier decision).

<sup>40</sup>. See Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, 2 FCC Rcd at 6604 ¶ 30 (Commission has “placed a burden on any entity opposing entry by a new carrier into interstate, interexchange markets to demonstrate by clear and convincing evidence that [additional] competition would not benefit the public”) (emphasis added); see also 47 U.S.C. § 157(a) (those opposing the proposed use of new technologies or services must “demonstrate that such proposal is inconsistent with the public interest”).

2. *Congress Rejected Efforts to Make InterLATA Entry Contingent on Actual Local Competition.*

Congress not only instructed the Commission to apply existing public interest criteria to section 271 applications, but also declared other sorts of review to be off limits. Specifically, Congress prohibited the FCC from imposing a local competition requirement of the sort that Congress itself rejected.

This restriction is clear from Congress' explicit rejection of proposals such as the "actual and demonstrable competition" approach initially backed by Senator Hollings, Senator Kerrey's proposed "substantial number of customers" test, and the "10 percent of customers" standard suggested in the House.<sup>41</sup> It also is found in the language of section 271(c)(4), which provides that "the Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)" (emphasis added). The checklist requirements are the mechanism by which Congress ensured that Bell companies will have opened their local markets to competitors by the time they provide in-region interLATA services; Congress viewed satisfaction of these requirements, and only these requirements, as the appropriate threshold test for full Bell company entry into long distance markets.<sup>42</sup>

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<sup>41</sup>. See 141 Cong. Rec. S7972, S8009 (daily ed. June 8, 1995) (statement of Sen. Hollings); 141 Cong. Rec. S8310, S8319 (daily ed. June 14, 1995) (Kerrey amendment); 141 Cong. Rec. H8425, H8454 (daily ed. Aug. 4, 1995) (statement of Rep. Bunn) (10% test).

<sup>42</sup>. See 142 Cong. Rec. S688 (daily ed. Feb. 1, 1996) (statement of Sen. Hollings) (Bell companies must "open their networks to competition prior to their entry into long distance") (emphasis added); 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (noting rejection of "actual competition" test in favor of checklist approach).



Section 271(c)(1)(B) confirms that entry into the local exchange is not a prerequisite to Bell company entry into in-region interLATA markets. This section, the Conference Report explains, “is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market” by the entry decisions of facilities-based CLECs. Conference Report at 148. The Commission therefore must reject any attempts by incumbent interexchange carriers or others to make this proceeding a referendum on the extent of local competition in Oklahoma. Southwestern Bell’s opponents cannot properly oppose this application based on tests for open local markets that depart from the ones Congress established in section 271.<sup>43</sup>

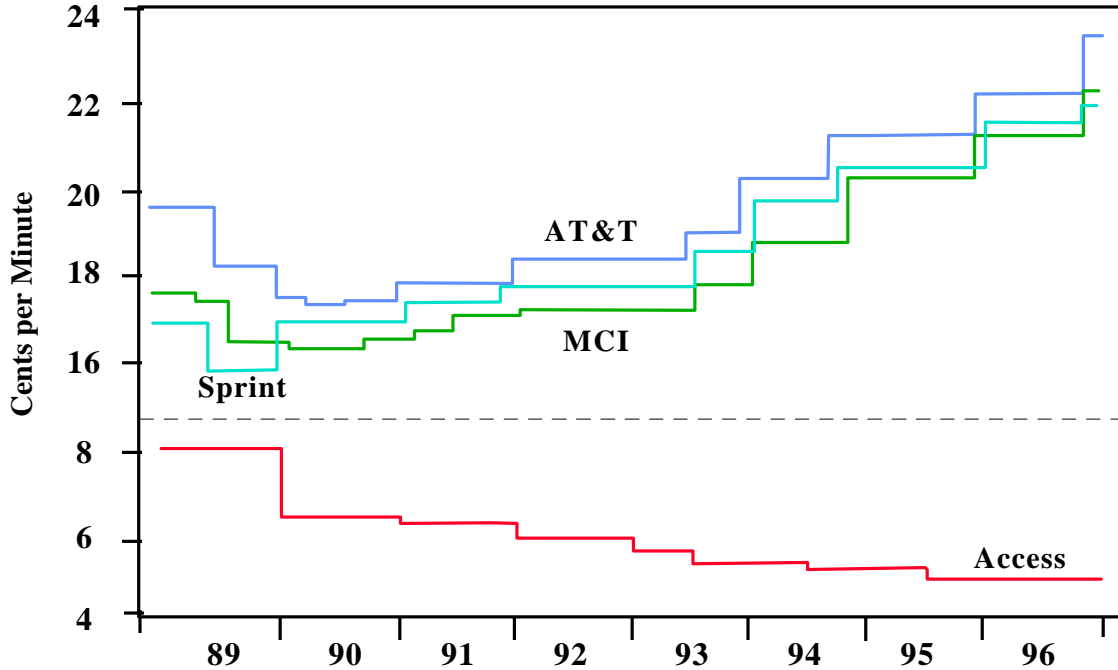
**B. The Current State of Competition**

The entry of a new competitor able to realize scale and scope economies in providing long distance in Oklahoma would further the public interest regardless of the state of competition in the interexchange market. Even if the interexchange market were fully competitive, Southwestern Bell’s entry into that market would be in the public interest. Southwestern Bell need not demonstrate the perfect or imperfect nature of competition in any market in order for the Commission to conclude that Southwestern Bell’s entry into long distance in Oklahoma will benefit consumers.

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<sup>43</sup>. The Department of Justice is not similarly constrained when consulting with the Commission pursuant to section 271(d)(2)(A). The Acting Assistant Attorney General for Antitrust in fact has indicated that he will use a test different from the one this Commission must apply. See Joel I. Klein, Preparing for Competition in a Deregulated Telecommunications Marketplace, Speech before the Glasser Legalworks Seminar (Mar. 11, 1997) (App. Vol. II, Tab 5). Specifically, it appears the Antitrust Division intends to set a standard of “open” local markets that departs from section 271(c)(1) and the checklist. Id. at 8-9. While that is the Department’s prerogative, any departure from the test established by Congress will diminish the relevance of the Department’s views in this proceeding.

**Recent Trends in Long Distance Rates and Exchange Access Charges\***



\*Source: The WEFA Group, The Economic Impact of Immediate Competition in Long Distance in Oklahoma.

The Commission, however, is aware that the interexchange market is not perfectly competitive. AT&T, MCI and Sprint have repeatedly raised their basic long distance rates in recent years. See generally AT&T Reclassification, 11 FCC Rcd at 3313 ¶ 81 (noting 16% increase since 1991, “with much of the increase occurring since January 1, 1994”). Again and again, they have announced virtually identical price increases, typically within days of one another.<sup>44</sup> In February 1996, for example, AT&T raised rates by 4.3 percent; within a few weeks, MCI announced that it would raise its rates by 4.9 percent and Sprint announced a 5 percent

<sup>44</sup> See Affidavit of Alfred E. Kahn and Timothy J. Tardiff (“Kahn Aff.”) ¶ 20 (AT&T rate increases); see also AT&T Reclassification, 11 FCC Rcd at 3313 ¶ 81 (“[E]ach time AT&T has increased its basic rate, MCI and Sprint have quickly thereafter matched the increase.”).

hike.<sup>45</sup> Sprint then raised its long distance rates twice in November 1996 (by 3 percent and then 2 percent), prompting AT&T to increase its rates by 5.9 percent and MCI to raise its own by 4.9 percent, both effective December 1.<sup>46</sup> In all, AT&T's basic residential interstate rate has gone up by over 20 percent since 1994. Kahn Aff. ¶ 20.

The long distance carriers' price increases have occurred despite declining costs. Long distance carriers' unit costs of supplying service are falling by about 6-7 percent per year due to improvements and cost reductions in fiber optic electronics and switches.<sup>47</sup> On top of these declines, AT&T, MCI and Sprint have benefitted from reductions in access charges, which are by far the largest cost component of interexchange carriers' costs. WEFA Report at 9. From 1994 to 1996 alone, access charges declined by about 10 percent. Kahn Aff. ¶ 14; see also WEFA Rep. at 11 (access charges falling by about 3% to 4% per year).

By raising prices despite these significant cost reductions, AT&T, MCI, and Sprint have increased significantly their already high price-cost margins, particularly for residential and small business service. See Paul W. MacAvoy, The Failure of Antitrust and Regulation to Establish Competition in Long-Distance Telephone Services 117-120 (1996) ("MacAvoy Study").

Professor MacAvoy calculates that for MTS/WATS telephone service, the long distance carriers'

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<sup>45</sup> See Paula Squires, Deregulation Fails to Stop Rising Long Distance Rates, Richmond Times Dispatch, Dec. 8, 1996, at E1 (App. Vol. II, Tab 8); Bloomberg Bus. News, MCI Raising Rates with Rivals, L.A. Times, Nov. 30, 1996, at D3 (App. Vol. II, Tab 9); AT&T Bumps Up Rates Before RBOC Long-Distance Entry, Report on AT&T, Feb. 26, 1996 (App. Vol. II, Tab 10).

<sup>46</sup> See Paula Squires, supra.

<sup>47</sup> WEFA Rep. at 11 ; see also Reply Affidavit of Professor Jerry Hausman at ¶ 14, United States v. Western Elec. Co., No. 82-1092 (DOJ filed June 30, 1995) ("Hausman MTV Reply Aff.") (estimating 6% decrease per year) (App. Vol. II, Tab 11).

price-cost margins rose from under 55 percent in 1987 to near 70 percent in 1994. See MacAvoy Study at 117, 118 Fig. 5-1; see also Kahn Aff. ¶¶ 14-15 (discussing AT&T markups). MCI and Sprint are reducing the gap between their prices and AT&T's, so that the price-cost margins of the three major carriers have converged at the same time rates have increased. See MacAvoy Study at 102, 117-20. Consistent with this closing of ranks, MCI and Sprint no longer are taking market share from AT&T. See Schmalensee Aff. ¶ 9.

The long distance carriers traditionally have cited discount plans in response to such price data. Yet many high-volume callers do not use a discount plan and low-volume callers are not even eligible for them. In 1995, for example, over 80 percent of AT&T's residential long distance customers were required to pay full, undiscounted toll rates.<sup>48</sup> Moreover, AT&T and MCI recently have scaled back their discount plans even further, ensuring that fewer customers are eligible for lesser discounts.<sup>49</sup>

While the Commission staff has concluded that the rates offered through discount plans fell between 1991 and 1995 (while basic rates rose), Detariffing Order at ¶ 123, that does not take

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<sup>48</sup> Schmalensee Aff. ¶ 18; see also MacAvoy Study at 125 (60% of AT&T residential customers ineligible for discounts); AT&T Reclassification, 11 FCC Rcd at 3312-13, ¶ 79 (discounted traffic as percentage of all Basket 1 traffic).

<sup>49</sup> In August 1995, AT&T revoked its 25-30 percent discounts for callers with monthly bills exceeding \$10 and replaced it with a plan that provides only a 10 percent discount to customers whose monthly bills are between \$10 and \$25. See "True Savings" Ends: AT&T Offers New Discount Plan, Drops "True Savings" as Competition Ebbs, Communications Daily, Aug. 22, 1995, at 3 (App. Vol. II I, Tab 12). AT&T's 30 percent discount is now available only for callers whose monthly bills exceed \$50. See Telecommunications Research and Action Center, Tele-Tips, Saving Money on Your Long Distance Bill, Sept. 1996, at 8 ("TRAC") (App. Vol. II, Tab 13). MCI has similarly trimmed the level of discounts in its Friends and Family plan. Telephony, Communications Daily, Sept. 5, 1995, at 4 (noting change in offerings) (App. Vol. II, Tab 14); TRAC at 8 (same offerings today as after change).

account of declining costs. Dean MacAvoy calculates that from 1989 to 1994 price-cost margins for major discount plans — AT&T’s Reach Out America, MCI’s Prime Time Day and Friends and Family I, and Sprint’s Sprint Plus and Sprint Select plans — averaged 97 percent, 95 percent, and 90 percent, respectively, of the carriers’ price-cost margins for undiscounted service. Id. Discount plans thus do little to reduce profit margins — even when they are used.

Nor do large advertising expenditures and customer “churn” suggest a different pattern. When price/cost margins climb (and gaining a new customer becomes relatively more profitable), providers commonly increase their efforts to attract customers through advertising. Hausman MTV Reply Aff. ¶ 10 & n. 12. Although the major carriers’ advertising may cause some customers to change networks, these consumers receive little advantage from the switch; they “are still paying an above competitive price, but from a new long distance carrier.” Id. ¶ 10.

Recent flat-rate promotions also do not mark a departure from longstanding pricing patterns. In 1996, AT&T introduced a new flat rate of 15 cents per minute, which is higher than its standard evening rate; AT&T acknowledges that its plan does not cut prices for typical residential callers, who place most of their calls in the evenings and on weekends.<sup>50</sup> MCI has set its own flat rate within one-half cent of AT&T’s; Sprint frames these plans with a two-tiered plan offering peak rates of 25 cents per minute and off-peak rates of 10 cents.<sup>51</sup> These plans have failed to reduce the cost of long distance calling for most customers. The consumer price index

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<sup>50</sup> See Roy Furchgott, Spending It: Dialing for Dollars, with Competing Flat-Rate Plans, N.Y. Times, Sept. 29, 1996, section 3 at 8 (App. Vol. II, Tab 15).

<sup>51</sup> See AT&T Calls MCI Flat Pricing More Than a Coincidence, Newsbytes, Sept. 30, 1996 (App. Vol. II, Tab 16).

for interstate toll calls rose by almost 4 percent during 1996, with no decline in any month. Kahn Aff. ¶ 14; WEFA Rep. Figure 3.

The major carriers have in the past claimed that customers who spend less than \$3 per month are served below cost, but have not provided any record support for that claim.<sup>52</sup> Even if the claim were true, moreover, it would not explain why the large group of profitable customers with monthly bills of \$3-10 must pay full, undiscounted basic rates. See Kahn Aff. ¶¶ 22-23. And the incumbent's argument only highlights the need for competition to place pressure upon all carriers to lower operational and marketing costs.

There may be methodological controversies about the proper measures of price, cost, and profit in long distance. Yet there can be no genuine dispute that the interexchange market will be more competitive when the legal barrier to Southwestern Bell's entry is removed — in the same way that barriers to entering the local exchange have been removed.

### **C. SBLD's Entry into the InterLATA Market Will Promote Competition**

The benefits of SBLD's entry in Oklahoma are plain when one considers both the demonstrated ability of other incumbent LECs to infuse long distance markets with competition, as well as the particular attributes of Southwestern Bell.

#### *Evidence of Competition Where LECs Have Been Allowed to Offer Long Distance.*

The concrete benefits that have resulted where incumbent LECs have been permitted to offer long distance services prove the likely benefits of SBLD's entry.

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<sup>52</sup> See, e.g., Statement of John W. Mayo on behalf of AT&T Communications of the Southwest ¶ 47; AT&T Reclassification, 11 FCC Rcd at 3311, ¶ 76; see also Detariffing Order ¶ 123 (noting that competition appears to be especially weak for the business of low-volume callers).

Long Distance Service in the New Jersey Corridors. The MFJ permitted NYNEX and Bell Atlantic to provide interstate interLATA services to in-region customers in two small geographic corridors running from New York City and Philadelphia into New Jersey. See United States v. Western Elec. Co., 569 F. Supp. 990, 1018-19, 1023 (D.D.C. 1983). In these corridors, NYNEX and Bell Atlantic have set their prices well below those of the major carriers. Kahn Aff. ¶ 52. According to AT&T's figures, for instance, Bell Atlantic's corridor rates are as much as one-third lower than AT&T's.<sup>53</sup>

AT&T petitioned the Commission for authority to reduce its long distance rates for New Jersey customers in these corridors precisely because it faces more intense competition there than elsewhere. See AT&T Waiver Petition at 1, 5. MCI followed suit, petitioning the Commission "so that [MCI] likewise will be in a position to benefit consumers by being able to compete effectively against Bell Atlantic and AT&T."<sup>54</sup> In their petitions, both AT&T and MCI frankly admitted that consumers in these corridors are better off than consumers who cannot obtain long distance service from the incumbent Bell company.<sup>55</sup>

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<sup>53</sup>. AT&T Corp.'s Petition for Waiver and Request for Expedited Consideration, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26, Attachment A (filed Oct. 23, 1996) ("AT&T Waiver Petition") (App. Vol. II, Tab 17).

<sup>54</sup>. MCI Comments at 1, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 (filed Nov. 18, 1996) ("MCI Comments") (emphasis added) (App. Vol. II, Tab 18).

<sup>55</sup>. See AT&T Waiver Petition at 5 (consumers in the corridors, unlike other areas, "benefit from the highest degree of competition possible"); MCI Comments at 3 ("fully support[ing]" AT&T's "arguments").

Competition in Connecticut. SNET's brief history as an interstate carrier in Connecticut serves as another dramatic example of the likely effects of Southwestern Bell's entry in Oklahoma. Since 1994, SNET has offered interstate long distance services to its local customers. The result has been lower rates for Connecticut consumers, on intrastate as well as interstate calls. On average, SNET has set its interstate rates 15-25 percent below AT&T's undiscounted rates. Kahn Aff. ¶ 53.

AT&T thus asked the Commission for authority to reduce its long distance rates in Connecticut even as it raises them in other states where Bell companies are barred from providing interLATA service.<sup>56</sup> Being unable to lower its interstate long distance rates in Connecticut without doing so elsewhere,<sup>57</sup> however, AT&T answered SNET's advances with intrastate toll promotions targeted at customers who use AT&T for interstate service as well.<sup>58</sup> SNET has countered in classic competitive fashion, with new intrastate and interstate promotions.<sup>59</sup> Throughout this competitive tussle, SNET has shown both a willingness and ability to compete

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<sup>56.</sup> See AT&T Comments, Market Definition, Separations, Rate Averaging and Rate Integration, at 29, Policy and Rules Concerning the Interstate, Interexchange Marketplace & Implementation of Section 254(g), CC Dkt. No. 96-61 (FCC Apr. 19, 1996) ("AT&T Rate Averaging Comments") (App. Vol. II, Tab 19); AT&T Corp.'s Petition for Reconsideration, Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Dkt. No. 96-61, at 2-5 (Sept. 16, 1996) (App. Vol. II, Tab 20).

<sup>57.</sup> See AT&T Petition for Reconsideration at 4; AT&T Rate Averaging Comments at 29.

<sup>58.</sup> William Hathaway, AT&T Making New Rate Offer in Connecticut, The Hartford Courant, May 17, 1996, at F1 (App. Vol. II, Tab 21) (5 cents per minute flat rate on intrastate calls).

<sup>59.</sup> Susan Jackson, A Telecom Yankee Defends its Turf, Business Week, Oct. 28, 1996, at 167 (App. Vol. II, Tab 22) (one-second billing increments and free interstate calls).



for low-volume AT&T customers who have been ignored by MCI and Sprint: whereas its share of revenues is 20 percent, its share of customers is half-again as high.<sup>60</sup>

Wireless Long Distance. In 1991, the Bell companies requested that the MFJ be modified to allow them to provide long distance in conjunction with wireless services. AT&T, which dominated the wireless long distance market prior to Bell company entry,<sup>61</sup> opposed the Bell companies' request on the grounds that it would harm, rather than promote, competition.<sup>62</sup> AT&T was exactly wrong: Bell company entry has increased competition and lowered prices. Southwestern Bell, for instance, offers customers of its cellular affiliate a single flat rate of 20 cents per minute for all wireless long distance calls, which compares favorably with the rates charged by competing carriers.

In each of these examples, there is one constant. Contrary to the self-interested claims of incumbents, Bell company entry into interLATA services has benefitted competition and consumers. In fact, the internal documents of AT&T and MCI show that when off the public stage, their employees concede that Bell company provision of in-region, interLATA services will intensify competition and lower long distance prices.<sup>63</sup>

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<sup>60.</sup> Id.

<sup>61.</sup> See Competitive Impact Statement, 59 Fed. Reg. 44,166, 44,169 (1994) (citing AT&T market share of 70% in local markets).

<sup>62.</sup> AT&T's Opposition to RBOCs' Motion to "Exempt" Wireless Services from Section II of the Decree at 55-56, United States v. Western Electric Co., No. 82-0192 (DOJ Apr. 27, 1992) (App. Vol. II, Tab 23).

<sup>63.</sup> Joint Brief of Applicants Pacific Telesis Group and SBC Communications Inc. at 120-26, Matter of the Joint Application of Pacific Telesis Group ("Telesis") and SBC Communications Inc. ("SBC") for SBC to Control Pacific Bell, App. No. 96-04-038 (Cal. PUC Dec. 20, 1996)

2. *SBLD Is Well Positioned to Increase Competition in Oklahoma*

SBLD will bring important assets to the interLATA market that will enable it to compete effectively. Southwestern Bell is an established telecommunications carrier that has honed its marketing as a cellular carrier in Oklahoma, as well as a provider of other competitive offerings, such as exchange access to business customers, Centrex service, customer premises equipment, and directories. Because it has billing, collection, and administrative systems in place, Southwestern Bell would have relatively low start-up costs in these areas, a factor that is especially important in serving lower-volume customers.<sup>64</sup> These are the same sorts of efficiencies on which AT&T relied when securing approval to acquire McCaw, Applications of Craig O. McCaw and AT&T, 9 FCC Rcd 5836, 5885, ¶ 83 (1994), aff'd subnom., SBC Communications Inc. v. FCC, 56 F.3d 1484 (D.C. Cir. 1995), and that British Telecom and MCI are currently putting forward as a reason to approve their merger.<sup>65</sup>

The familiar “Southwestern Bell” brand name also will make SBLD a strong competitor to the major incumbents. Independent market research indicates that, in 1995, 3 out of 4 SWBT customers rated the company as “very good” or “good” in the categories of customer service and service reliability/product quality — high ratings that are virtually the same as those for incumbent

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(“Merger Br.”) (public version reproduced in App. Vol. II, Tab 13). These documents were obtained by Southwestern Bell and the Department of Justice in the course of state proceedings on SBC’s merger with Pacific Telesis Group. In accordance with the governing confidentiality rules, they are not being provided to the Commission with this Brief (App. Vol. II, Tab 24).

<sup>64</sup>. See generally Kahn Aff. ¶¶ 29-31, 34; cf. Non-Accounting Safeguards Order ¶ 178 (allowing sharing of services other than operation, installation, and maintenance of facilities).

<sup>65</sup>. Applications and Notification, Merger of MCI and British Telecommunications, GN Docket No. 96-245, at 11 (filed Dec. 2, 1996) (App. Vol. II, Tab 25).

interexchange carriers. Schmalensee Aff. ¶ 27. This strong brand name and reputation in the telecommunications field in Oklahoma should lower SBLD's marketing costs as compared to other potential new entrants, positioning SBLD as a serious competitor from the first day of its entry.<sup>66</sup>

SBLD's strength as a new entrant will be especially pronounced with relatively low-usage callers who are current SWBT customers. See Kahn Aff. ¶¶ 29, 34. These customers are part of a low-volume market segment that, by all accounts, is "neglected in the competition among interexchange carriers."<sup>67</sup> The failure of the three large carriers to market services to this group leads many residential and small business customers to choose AT&T out of inertia, despite its higher prices.<sup>68</sup>

Likewise, the ability of SBLD and SWBT to offer bundled service offerings and "one stop shopping" will allow them to challenge the current incumbents by supplying high-quality

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<sup>66</sup>. See Schmalensee Aff. ¶ 34; Applications of Craig O. McCaw, 9 FCC Rcd at 5871-72, ¶ 57 (1994) (finding that AT&T acquisition of McCaw would serve public interest due to AT&T's brand name, financial strength, marketing experience, and technological know-how), aff'd sub nom. SBC Communications Inc v. FCC, 56 F.3d 1484 (D.C. Cir. 1995); see also Non-Accounting Safeguards Order ¶ 183 (allowing affiliates to share marketing services).

<sup>67</sup>. Schmalensee Aff. ¶ 18; see Detariffing Order ¶ 123 (long distance carriers compete more vigorously for high-volume customers than low-volume customers).

<sup>68</sup>. AT&T's national market shares were 58 percent of revenues, but 70 percent of access lines at the end of 1994, showing that it is disproportionately chosen by lower-volume customers. FCC, Trends in Telephone Service at Tables 29 and 31 (March 1997); see Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, 5889, ¶ 50 (1991) (AT&T's market share is "significantly lower" for business services than residential services).

interLATA services in innovative and more convenient ways.<sup>69</sup> Bundled service packages, the Commission and Congress have recognized, can “have clear advantages for the public,” such as greater convenience and the ability to secure volume discounts by aggregating purchases of different services.<sup>70</sup> The Commission thus has supported developments that promise to speed the introduction of bundled services at the retail level. This was one reason why the Commission approved AT&T’s buyout of the largest cellular carrier, McCaw Cellular Communications, saying that it “would deny users the current and prospective benefits of bundling only if presented with a compelling public interest justification” for doing so. Applications of Craig O. McCaw, 9 FCC Rcd at 5880 ¶ 75. The Commission, in fact, already has identified bundled offerings as a benefit of Bell company in-region interLATA entry. Non-Accounting Safeguards NPRM ¶ 6 & n. 13.

Granting SBLD and SWBT the ability to offer bundled packages is essential to full and fair competition in telecommunications markets. As the Commission has explained, interexchange carriers are “capable of offering one-stop shopping, by building their own local facilities, by reselling unbundled network elements, or by reselling [Bell company] facilities and adding that local offering to their existing long distance service.” PacTel/SBC Order ¶ 48.

AT&T, for example, has announced that it plans to “take a basic \$25-a-month long distance customer and convert him or her into a \$100-a-month customer for a broader bundle of

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<sup>69</sup>. See § 272(g); Non-Accounting Safeguards Order ¶¶ 183, 291 (upon interLATA approval, allowing BOC to market local and long distance services jointly and to share marketing services with long distance affiliate).

<sup>70</sup>. Applications of Craig O. McCaw, 9 FCC Rcd at 5878-80; Memorandum Opinion & Order, Applications of Pacific Telesis Group and SBC Communications, Inc., FCC No. 97-28 ¶ 48 (rel. Jan. 31, 1997) (“PacTel/SBC Order”) (“[T]he bundling of local access and long distance services . . . may be a desirable feature for some customers.”); see also Kahn Aff. ¶ 67.

services.”<sup>71</sup> MCI, under the motto “One company, one number, one box, one bill” is offering bundled long distance, cellular service, Internet access, and MCI metro local service. Gordon Aff.

¶ 26. Sprint is positioning itself to bundle long distance with local landline service, cable television, and PCS offerings. Kahn Aff. ¶ 62. MFS Communications has merged with the Internet access provider Uunet and the long distance carrier WorldCom. Describing the plans of the new company, WorldCom’s President explained: “We are creating the first company since the breakup of AT&T to bundle together local and long distance service carried over an international end-to-end fiber network owned or controlled by a single company.”<sup>72</sup>

The “first mover” advantage currently enjoyed by interexchange carriers helps to explain their vehement opposition to entry by Bell companies. AT&T’s and MCI’s own documents show that they are trying to block Bell company entry not just to maintain their high profit margins in long distance, but also to sign up their existing interLATA customers for service packages that include local service, before they face Bell company competition. See Merger Br. at 120-26. This abuse of administrative process benefits the incumbent interexchange carriers at the expense of consumers, who are being denied the price and quality benefits that would flow from true competition.

Furthermore, although the major interexchange carriers are temporarily prohibited from bundling any resold retail services they obtain from SWBT with interLATA services, this very

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<sup>71</sup> John Keller, AT&T Challenges the Bell Companies: Allen Outlines Plans to Take Big Part of Local Market Over Next Several Years, Wall Street Journal, June 12, 1996, at A3 (App. Vol. II, Tab 26).

<sup>72</sup> Jube Shiver, Communications Firms to Join in \$12 Billion Deal, Los Angeles Times, August 27, 1996, at A-1 (App. Vol. II, Tab 27).

limited restriction will be lifted in Oklahoma as soon as SBLD is allowed to provide interLATA services in the State. See § 271(e)(1). Thus, when Southwestern Bell enters the interLATA services business in Oklahoma, the major carriers can become even more formidable local competitors. Market surveys leave no doubt that the resulting competition will be intense; a recent survey by J.D. Power and Associates, for example, indicates that 65 percent of households are likely to sign up with one company for all telecommunications services, and a majority of these customers are likely to choose their current long distance carrier as their sole provider.<sup>73</sup>

Importantly, any facilities or services SWBT provides to SBLD will be made available to other carriers on non-discriminatory terms, ensuring that all carriers will have a chance to generate similar economies of scope. See supra Part III(C). Thus, insofar as SBLD and SWBT are able to develop ways of utilizing SWBT's facilities or services more efficiently as inputs to interLATA service, even other carriers and their customers will benefit.

The total public benefits of SBLD's participation in the interLATA market in Oklahoma likely will be dramatic. The WEFA Group has undertaken to estimate the benefits for Oklahomans. It concluded that immediate long distance entry by SBLD would result in the creation of an additional 10,000 jobs in Oklahoma and an increase of more than \$700 million in the Gross State Product by the year 2006. WEFA Rep. at 1. The benefits would not be limited to telecommunications industries, but rather would be "spread across all major industry groups as the benefit of lower prices . . . boost economic activity throughout the economy." Id. These

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<sup>73</sup>. J.D. Power and Associates, J.D. Power and Associates Analysis Reveals: Long Distance Carriers Prime for Local and Long Distance Telephone Market Share (Feb. 27, 1997) (news release) (App. Vol. II, Tab 28).

estimates are conservative and the benefits to the Oklahoma economy may well prove to be greater. Dauffenbach Aff. at 8; Price Aff. at 9. Indeed, Dean MacAvoy projects that the ultimate nationwide gain to consumers from unrestricted Bell company entry into the long-distance market would be as high as \$306 billion, even if AT&T, MCI, and Sprint “maintain their tacitly collusive pricing strategies.” MacAvoy Study at 185. And, during debates on the 1996 Act, Congress itself relied upon estimated savings of \$333 billion from greater long distance competition. 141 Cong. Rec. S 704 (daily ed. Feb. 1, 1996) (Statement of Sen. Ford).

3. *Approval of This Petition Will Promote Competition in IntraLATA Toll Service and Telecommunications Equipment Manufacturing.*

Congress recognized that it would be unfair to require a Bell company to offer 1+ presubscription for intraLATA toll service as long as it cannot compete for interLATA calls. § 271(e)(2). Under the quid pro quo established by the 1996 Act, however, SWBT must offer 1+ presubscription for intraLATA calls within Oklahoma immediately upon its entry into the interLATA market. SWBT will comply with this obligation. Kaeshoefer Aff. ¶ 65; Stafford Aff. ¶ 10. Accordingly, while the OCC already has opened intraLATA toll service to competitors in Oklahoma, see Stafford Aff. ¶ 6, approval of this application will allow even fuller competition in that market and provide yet another benefit to the public in Oklahoma.

In addition to bringing about additional interexchange and local competition, approval of this petition will allow Southwestern Bell fully to participate in telecommunications equipment manufacturing, subject to statutory and regulatory safeguards. See 47 U.S.C. § 273. In the legislative debates that preceded the 1996 Act, the potential benefits of Bell company participation in manufacturing were almost universally acknowledged. See 141 Cong. Rec. S699

(daily ed. Feb. 1, 1996) (statement of Sen. Lott) (noting widespread industry support). The past Assistant Attorney General for Antitrust, among others, noted that “[g]iven their expertise in the industry, some or all of the RBOCs may be natural entrants into developing and manufacturing telecommunications equipment, especially for network switching.” “Under the right terms and conditions,” Assistant Attorney General Bingaman continued, “entry by the RBOCs into these activities could help spur innovation and bring down prices for telecommunications equipment. In the process, RBOCs could help make American firms even more competitive in the international telecommunications equipment market.” Id.

The Senate Commerce Committee found that allowing the Bell Companies to engage in manufacturing will “foste[r] competition . . . and creat[e] jobs along the way.” S. Rep. No. 23, 104th Cong., 1st Sess. 67 (1995). In 1994, under a different majority party, the same Committee determined that “[s]ubstantial benefits can be expected from permitting the RBOCs to enter the business of manufacturing communications equipment” because the Bell Companies “have considerable expertise and experience in the communications field that can be readily transferred into manufacturing activities.” S. Rep. No. 367, 103d Cong., 1st Sess 6 (1994). According to the Committee, Bell company manufacturing activities “can be expected to stimulate greater spending on research and development, improve the Nation’s trade position, increase job opportunities, increase the market share of U.S. firms both in the United States and abroad, and give U.S. firms an opportunity to seek funding from another U.S. firm rather than seek capital from overseas.” Id.



The 1996 Act removed some barriers to Southwestern Bell's participation in certain manufacturing relationships. Bell companies now may collaborate with manufacturers, engage in research activities, and enter into royalty agreements. See § 273(a), (b). But there will be instances in which a direct equity investment in a manufacturer is necessary to provide a potential partner with needed resources or to accomplish Southwestern Bell's business objectives. In such cases, the reforms brought about by the 1996 Act itself are insufficient to trigger the full economic benefits that have been identified by legislators and regulators. Approval of this application is needed to finish the job begun by the 1996 Act.

. **SBLD's Entry into the Interlata Market, Subject to Extensive Statutory and Regulatory Safeguards, Presents No Risk to Competition**

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

As the Commission has explained, the only rationale for delaying Bell company entry into interLATA services revolves around worries that (1) if regulators tie local telephone revenues to costs, "a BOC may have an incentive to improperly allocate to its regulated core business costs that would be properly attributable to competitive ventures;" and (2) "a BOC may have an incentive to discriminate in providing exchange access services and facilities that its affiliate's rivals need to compete in the interLATA telecommunications . . . marke[t]." Non-Accounting Safeguards NPRM at ¶¶ 7-8. Neither of these fears retains vitality in light of developments since restrictions were placed on Bell company activities almost fifteen years ago.

In that regard, the contrast between incumbent interexchange carriers' vague, theoretical claims about potential cross-subsidy or discrimination, and the concrete rules and market forces that prevent such misdeeds, must be stressed. MCI recently stressed in connection with its own planned merger with British Telecom, that regulators must reject the claims of parties who "merely speculate about what could go wrong" when that speculation runs contrary to "a comprehensive regulatory program," economic logic, and actual market experience.<sup>74</sup> MCI's caution against crediting self-interested speculation applies with full force here.

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

a. *Cost Misallocation.* Theories that Southwestern Bell might shift costs incurred in providing interLATA services to local ratepayers, thereby giving itself a competitive edge as an interLATA carrier, depend upon the dual assumptions that Southwestern Bell can fool regulators and that its local revenues will rise if the costs of providing local service rise.

Price Caps. To cure the problem of cost misallocation at its origin, the Commission has totally overhauled its approach to rate regulation. It adopted a price caps regime that sets aggregate maximum rates almost entirely without regard to costs, thereby encouraging LECs to cut the costs of their regulated services: "Because cost savings do not trigger reductions in the cap, the firm has a powerful profit incentive to reduce costs. Nor is there any reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce [a]

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<sup>74</sup> British Telecommunications PLC and MCI Communications Corp., Opposition & Reply at 13, Merger of MCI Communications Corp. and British Telecommunications plc, GN Dkt. No. 96-245 (Feb. 24, 1997) (App. Vol II, Tab 29).

higher legal ceiling price[ ].”<sup>75</sup> Indeed, the Commission recently described price caps regulation of interstate access as providing strong “efficiency incentives” to keep down costs allocated to regulated services. Accounting Safeguards Order ¶ 145; see also Non-Accounting Safeguards Order ¶ 181 (price caps reduce incentives to misallocate costs).

Structural Separation. Congress also has addressed concerns about possible cost misallocation. In section 272 of the 1996 Act, it prevented cost-shifting by requiring that a Bell company provide long distance through an affiliate that has separate facilities, employees, and record-keeping from the local telephone company. § 272(a). As explained in Part III, supra, all transactions between the two companies must be conducted on an “arm’s length basis . . . reduced to writing and available for public inspection.” § 272(b)(5). Congress also prevented the affiliate from obtaining credit for its long distance operations on more favorable terms by relying upon the assets, or credit rating, of the Bell company’s local exchange business. § 272(b)(4). And it reinforced structural separation with demanding accounting requirements. § 272(d). Legislators concluded in 1996, after hearing arguments on all sides, that these statutory safeguards and the Commission’s implementing rules would be sufficient to deal with concerns about Bell company cost misallocation. See, e.g., § 254(k) (requiring Commission to implement regulations as necessary “to ensure that” revenues from regulated services are not used to subsidize competitively provided services).

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<sup>75</sup>. National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993); see Non-Accounting Safeguards NPRM ¶ 136 (Commission’s price cap policies “reduc[e] the potential that the BOCs would improperly allocate the costs of their affiliates’ interLATA services”).

The Commission's Implementing Regulations. The Commission's recent rulemakings to implement section 272's safeguards, together with its pre-existing regulations, ensure that the statutory protections are adequate to prevent potential cost misallocation. The Commission has explained that its preexisting "cost allocation and affiliate transactions rules, in combination with audits, tariff review, and the complaint process, have proven successful at protecting regulated ratepayers from bearing the risks and costs of incumbent local exchange carriers' competitive ventures." Accounting Safeguards Order ¶ 25. It reasoned that these rules together "will effectively prevent predatory behavior that might result from cross-subsidization," and that because they "have proven generally effective" there was "no reason to require a change to a different system" when regulating Bell company interLATA operations. Id. ¶¶ 28, 108. The Commission further noted that "existing accounting safeguards, with the modifications . . . adopt[ed] in this Order, prevent subsidization of competitive nonregulated services . . . by subscribers to an incumbent local exchange carrier's regulated telecommunications services." Id. ¶ 275.

State Regulation. Oklahoma regulators have implemented a parallel regulatory regime that contains many of these same protections. As a general matter, state legislators and regulators have an "overwhelming concern for keeping the rates for local residential service low," and consequently have a powerful reason to prevent cost-shifting from unregulated activities to regulated telephone services. United States v. Western Elec. Co., 993 F.2d 1572, 1581 (D.C. Cir.), cert. denied, 510 U.S. 984 (1993). Consistent with these incentives, the OCC requires SWBT to follow the Uniform System of Accounts and the Commission's Part 32 rules, unless

otherwise ordered by the OCC. See Okl. Admin. Code § 165:70-1-2 (defining “accounting method”).

Moreover, the OCC has undertaken to respond to the “major changes” brought about by the 1996 Act through appropriate regulatory reforms.<sup>76</sup> These include possible departure from traditional rate regulation in favor of price caps or other incentive regulation. Id. at 2-4. Thus, the compliance of Southwestern Bell in Oklahoma with the 1996 Act’s requirements, and with related regulatory safeguards, will be monitored effectively not only by this Commission, but also at the state level.

b. *“Price Squeezes” and Predatory Pricing.* Just as cost misallocation would be impossible to accomplish, Southwestern Bell could not effectively effectuate a “price squeeze” on other interexchange carriers in Oklahoma by raising the prices of its interstate access services.<sup>77</sup> The Commission has found that interexchange carriers’ ability to acquire retail services at wholesale rates and to buy unbundled network elements is itself sufficient to enable those competitors “to defeat” an attempted price squeeze. PacTel/SBC Order ¶ 54. In addition, price caps for interstate access establish maximum aggregate rate levels that cannot be changed without Commission approval. For a LEC to price above the cap, it must make an “above-cap” filing that includes “extensive support materials” to satisfy the “stringent review

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<sup>76</sup> Notice of Proposed Rulemaking at 1, Rulemaking of the Okl. Corp. Comm’n to Establish Rules and Regs. for Alternative Forms of Reg. in Okl. for the Telecommunications Indus., Cause No. RM 970000001 (Jan. 15, 1997) (App. Vol. II, Tab 30).

<sup>77</sup> See generally Town of Concord v. Boston Edison Co., 915 F.2d 17, 18 (1<sup>st</sup> Cir. 1990) (per Breyer, J.) (discussing theory of price squeezes), cert. denied, 499 U.S. 931 (1991).

standards.”<sup>78</sup> Rate averaging requirements, separate price cap indices for different service baskets, service band indices within each basket, and the “just and reasonable” rates requirement of 47 U.S.C. § 202(a), further prevent Southwestern Bell from engaging in anticompetitive price manipulation of interstate rates. See generally Telephone Co.-Cable Television Cross-Ownership Rules, 10 FCC Rcd 244, 318-19, ¶¶ 152-154 (1994).

With respect to predatory pricing, the Commission has concluded that “further rules addressing predatory pricing by BOC section 272 affiliates are not necessary because adequate mechanisms are available to address this potential problem.” Non-Accounting Safeguards Order ¶ 258. Realistically, moreover, any attempt to drive out large and well-financed incumbent carriers who have made mammoth sunk investments would be doomed. See Kahn Aff. ¶ 39. AT&T itself has conceded that “there is little reason to fear that [a Bell company] could monopolize the interexchange market” by driving the major incumbents out of business.<sup>79</sup> Even if a facilities-based carrier could be driven out of the market, its network would remain in the ground and could be acquired — probably at a discount — by a new entrant. See Kahn Aff. ¶¶ 39, 76; see Non-Accounting Safeguards NPRM ¶ 137; PacTel/SBC Order ¶ 54. Furthermore, as just one of a number of interexchange carriers serving Oklahoma, SBLD would have to share any benefits from driving out a competitor with the other large carriers that remain, tilting the calculus that much more against attempting predation. For reasons such as these, the Commission

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<sup>78</sup>. Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6823-24 ¶¶ 303-04 (1990), aff’d sub nom. National Rural Telecom Ass’n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

<sup>79</sup>. AT&T's Opposition to Ameritech's Motions for “Permanent” and “Temporary” Waivers from the Interexchange Restriction of the Decree at 26, United States v. Western Elec. Co., No. 82-0192 (DOJ filed Feb. 15, 1994) (App. Vol. II, Tab 31).

has concluded — with considerable understatement — that successful predation is “unlikely” in the interLATA business. Non-Accounting Safeguards NPRM ¶ 137.

c. *Price Discrimination.* Nor is it conceivable that SWBT might discriminate in the pricing of its exchange access services. Congress specifically provided that Bell companies must charge their interLATA affiliate, or impute to themselves, “an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carrier for such service.” § 272(e)(3). Because access services are provided at publicly known, tariffed rates, enforcing this restriction is easy. Accordingly, the Commission has found that price discrimination “is relatively easy for us and others to detect, and is therefore unlikely to occur.” PacTel/SBC Order ¶ 53.

d. *Technical Discrimination.* Theories that SWBT might impede competition in Oklahoma by engaging in technical discrimination are equally unfounded. Interexchange carriers such as AT&T, MCI/British Telecom, and Sprint/Centel/Deutsche Telekom/France Telecom are sophisticated, vertically integrated goliaths with the expertise and resources to detect and challenge systematic discrimination. Indeed, to state how discrimination against them would have to occur is virtually to prove its impossibility: In order to gain an anticompetitive edge, Southwestern Bell would have to provide inferior access services to its competitors in Oklahoma, without disrupting its own local or long distance services, in a fashion that is invisible to other carriers and regulators, yet so apparent to customers that it drives them to switch to SBLD’s long distance service, but not the service of some other competitor. See Kahn Aff. ¶ 37. It thus is not surprising that interexchange carriers never have produced specifics

(much less hard evidence) as to the precise form hypothetical future discrimination would take, how it is feasible, what effect it would have on consumer decision-making, what costs it would impose on interexchange carriers, or how it would reduce competition and increase prices. When one considers the hard facts, it is clear that competitively meaningful discrimination simply could not go undetected.

Monitoring and Reporting Requirements. SWBT has been supplying exchange access services to the long distance industry for over a dozen years. This experience, together with established, objective performance standards and monitoring mechanisms, make a reversal to lower quality service utterly implausible. Deere Aff. ¶ 160; Kahn Aff. ¶ 45.

Interexchange carriers can and do directly monitor SWBT's performance. Deere Aff. ¶¶ 160-64. For instance, SWBT maintains test lines for each central office that interexchange carriers can use to verify quality automatically. Id. ¶ 162. SWBT also is required to file with the Commission reports relating to service quality, customer satisfaction, and infrastructure and investment. For example, FCC Report 43-05 provides, inter alia, information about trunk blockage figures and total switch downtime. FCC Report 43-06 reflects the results of consumer satisfaction surveys conducted by carriers. See Order, Revisions of ARMIS Quarterly Report, CC Dkt. No. 96-193, ¶¶ 20, 22 (AAD rel. Dec. 17, 1996).

Provisioning and maintenance likewise are the subject of extensive experience. Interexchange carriers specify performance and timeliness standards for access services in their agreements with SWBT, and there is a record of SWBT's historical performance for each company. Deere Aff. ¶ 160. Installation and repair intervals also are included in the reports that



SWBT must file with the Commission. Revisions of ARMIS Quarterly Report ¶ 20. Moreover, to ensure against discriminatory service delays, the Commission has required all Bell companies to make available to unaffiliated entities the “service intervals in which the BOCs provide service to themselves or their affiliates.” Non-Accounting Safeguards Order ¶¶ 242, 368.

The Commission recently reaffirmed its commitment “to monitor compliance with section 272[’s nondiscrimination] requirements” and “reserve[d] the ability to undertake appropriate measures in the event that future developments warranted.” Non-Accounting Safeguards Order ¶ 321. At the same time, however, it rejected additional reporting requirements because “sufficient mechanisms already exist within the 1996 Act both to deter anticompetitive behavior and to facilitate the detection of potential violations of section 272 requirements.” Id. The Commission explained that “the reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between BOCs and competing carriers will collectively minimize the potential for anticompetitive conduct by the BOC and its interexchange operations” and “will also facilitate detection of potential violations of the section 272 requirements.” Id. ¶ 327. That finding should be dispositive here.

Unbundling of SWBT’s Network. While monitoring is one low-cost way of defeating attempts at discrimination, the 1996 Act provides another. The Commission’s rules implementing sections 251 and 252 allow interexchange carriers to use unbundled network elements obtained from the incumbent LEC to complete their long distance calls. Local Interconnection Order ¶ 356. Under these rules, interexchange carriers are able effectively to bypass SWBT while still

using parts of SWBT's network. See Deere Aff. ¶¶ 35-47, 165. For example, if AT&T perceives a danger in discriminatory switching, it can buy a switch (or obtain switching from another CLEC) while using SWBT loops and trunks. See § 271(c)(2)(B)(vi). There is no need to duplicate SWBT's entire local network or to make massive sunk investments.

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

The Commission interprets the statute as requiring "at minimum" that Bell operating companies "must treat all other entities in the same manner as they treat their affiliates, and must provide and procure goods, services, facilities and information to and from those other entities under the same terms, conditions, and rates." Non-Accounting Safeguards Order ¶ 73; Non-Accounting Safeguards Order ¶¶ 198, 202. Indeed, the Commission has even held that when a

Bell company develops a new service for or with its long distance affiliate, “it must develop new services for or with unaffiliated entities in the same manner.” Non-Accounting Safeguards NPRM ¶ 210. These requirements, together with general interconnection and non-discrimination requirements of Title II of the Communications Act, fully address any potential discriminatory strategies. See Non-Accounting Safeguards Order ¶ 211.

When enforcing these requirements, the Commission will build upon existing rules relating to enhanced services and customer premises equipment, which currently protect against analogous discrimination. Non-Accounting Safeguards NPRM ¶ 75. Additionally, SWBT has an affirmative incentive to provide higher-quality or lower-cost access to interexchange carriers, so as to increase use of its exchange access services and resultant revenues. Gordon Aff. ¶ 33; Kahn Aff. ¶ 39 n.32. SWBT’s goal in providing access services will remain the same: providing the best possible service to its customers at a fair price. In the context of new exchange access arrangements, this will involve an evolution of existing, routinized, and mutually advantageous arrangements between interexchange carriers and SWBT.

*e. Misuse of Confidential Information.* The Commission’s rules require SWBT to make network disclosure information available to other interexchange carriers on the same terms and conditions as its own long distance affiliate. Non-Accounting Safeguards Order ¶ 222. With respect to network information, the Commission already has concluded that its “current network disclosure rules are sufficient to meet the requirement of section 272(e)(2) that BOCs disclose any ‘information concerning . . . exchange access’ on a nondiscriminatory basis.”

Non-Accounting Safeguards Order ¶ 253.<sup>80</sup> Commission regulations also have long governed, and will continue to regulate, access to competitively useful information concerning particular customers. Indeed, the Commission has commenced a rulemaking for just this purpose.<sup>81</sup>

*f. Penalties.* Southwestern Bell's inability successfully to engage in cost misallocation or discrimination eliminates any reason to risk the substantial penalties likely to follow such a fruitless endeavor. Yet if Southwestern Bell were to violate any provision of the Communications Act it would be liable to injured parties for the amount of their injuries plus attorneys fees. 47 U.S.C. §§ 206-207. In addition, section 220(e) of the Communications Act imposes criminal penalties for false entries in the books of a common carrier — a strong deterrent against purposeful violations of the accounting requirements described above. Sections 501 through 504 further provide additional penalties — including imprisonment, fines, and forfeiture — for knowing violations of any statutory or regulatory provision. Finally, if the Commission determines that Southwestern Bell “has ceased to meet any of the conditions required for” interLATA entry, it can revoke interLATA authority under section 271(d)(6).

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<sup>80</sup>. Under the Commission's “All Carrier Rule,” carriers must make any information necessary to carrier interconnection available in a timely manner and on a reasonable basis. Computer and Business Equipment Mfrs. Ass'n, 93 F.C.C.2d 1226, 1228 ¶ 6 (1983); see also Computer III, 104 F.C.C.2d 958, 1080-86. After several years of experience with analogous network disclosure regulations for enhanced services, the Commission determined that they “provide the [competitors] with critical network information in a timely fashion, and thus serve as an effective safeguard against discrimination in the provision of basic services to competing [providers].” Bell Operating Co. Safeguards, 6 FCC Rcd at 7603.

<sup>81</sup>. See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Dkt. No. 96-115, Notice of Proposed Rulemaking, 11 FCC Rcd 12,513 (1996).

All of the Act's and the Commission's specific statutory and regulatory protections are backed up by the federal and state antitrust laws. The weighty corporate and personal penalties (including imprisonment) that may be levied against violators of the antitrust laws, combined with the near impossibility of keeping systematic discrimination or cost-shifting secret, make it all the more unlikely that Bell company managers would order unlawful practices.

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

SBLD's inability to raise prices or restrict output as an interexchange carrier in Oklahoma is confirmed by over a decade of actual experience. Southwestern Bell and other Bell companies have entered a variety of new markets since their divestiture by AT&T in 1984, including information services, local cellular service, customer equipment, and wireless long distance. Each time, incumbents in those markets, wishing to protect their own profits, sought to convince regulators and/or the courts that prices would rise and competition would suffer. They raised the same sort of arguments about "unfair" efficiencies and alleged anticompetitive opportunities that opponents of full interLATA relief make today. Yet in each case, Bell company entry has enhanced, rather than diminished, competition. In addition, other large LECs, such as SNET and GTE, have provided wireline interLATA services without any anticompetitive results. These and other examples of healthy competition in adjacent markets discredit not only the predictions of monopolization that preceded them, but also the similar predictions that will be made by those who seek to thwart Southwestern Bell's interLATA entry in Oklahoma.

Long Distance. Local exchange carriers have competed fairly and effectively in the limited instances in which they have been permitted to offer long distance. See supra Part IV(C)(1). One

would not have expected such competitive benefits based on the self-serving predictions of the long distance incumbents. For instance, AT&T opposed Bell company entry into wireless long distance on the ground that Bell companies “would increase the prices paid by customers of the RBOCs[’ cellular companies], for the RBOCs are seeking the right to overcharge their cellular customers for long distance service . . . .”<sup>82</sup> Similarly, MCI opposed Southwestern Bell’s efforts to offer out-of-region long distance service under the MFJ, based on a prediction that SWBT would discriminate against competing interexchange carriers when providing in-region interconnection so as to “damag[e] the competitor’s services and reputation on a national basis.”<sup>83</sup> Yet, now that relief has been afforded in these areas, there have been no allegations of Bell company misconduct in wireless long distance or of discriminatory interconnection due to Bell company provision of out-of-region interLATA services.

Likewise, when NYNEX and Bell Atlantic sought permission to operate as interexchange carriers in limited geographic corridors during the early 1980s, the district court worried that allowing such service would give “the Operating Companies the same incentive to discriminate against new entrants that they had while part of the integrated Bell system,” and that it “may be tantamount to giving to the Operating Companies a monopoly over certain interstate traffic.” United States v. Western Elec. Co., 569 F. Supp. 990, 1018 n.142, 1023 (D.D.C. 1983). Despite the district court’s fears, these Bell companies do not dominate corridor traffic. By AT&T’s

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<sup>82</sup>. AT&T’s Opposition to RBOCs’ Motion to “Exempt” Wireless Services from Section II of the Decree at 55-56, United States v. Western Electric Co., No. 82-0192 (DOJ Apr. 27, 1992).

<sup>83</sup>. MCI Comments, Southwestern Bell’s Waiver Request to Provide Interexchange Service Waiver No. 20202, at 4 (DOJ Aug. 1, 1994) (App. Vol. II, Tab 32).

count, Bell Atlantic has less than 20 percent of the corridor business. AT&T Waiver Petition at 3. Moreover, AT&T and MCI sought authority to lower their long distance rates in the corridors while they raise them elsewhere, not because of any leveraging of local “bottlenecks,” but rather because their prices are being undercut.<sup>84</sup> As discussed above, the evidence similarly suggests that SNET’s competitive success in Connecticut is due to its low prices — not any anticompetitive behavior. See supra Part IV(C)(1).

GTE’s brief ownership of Sprint proves the same point on a larger scale. As the fourth largest local exchange carrier, GTE had the same theoretical incentives to impede interexchange competition as would a Bell company entering the long distance market today. See United States v. GTE Corp., 603 F. Supp. 730, 732 (D.D.C. 1984). Yet, as conclusive proof of its inability to earn supra-competitive profits in the long distance business, GTE sold Sprint in three installments between 1986 and 1992. GTE’s experience with Sprint thus disproves any claims that Southwestern Bell could carry out anti-competitive strategies upon entering the interLATA market in Oklahoma.

Finally, there is the example of intraLATA toll. Bell companies across the country are losing substantial market share to interexchange competitors. Kahn Aff. ¶ 59. IntraLATA toll prices fell faster than interstate long distance prices between 1990 and 1994, and that does not

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<sup>84</sup>. See AT&T Waiver Petition at 5; MCI Comments at 3. Although AT&T made a conclusory claim that Bell Atlantic’s lower prices are due in part to avoidance of access charges, AT&T Waiver Petition at 4, it did not allege that Bell Atlantic has violated the relevant Commission rules requiring it to impute such charges. Bell Atlantic has confirmed that its “corridor service pays (and publicly reports) the full tariffed access rates as an imputed expense” and “receives no special discounts over the rates paid by AT&T.” Comments of Bell Atlantic at 4, AT&T Petition for Waiver of Section 64.1701 of the Commission’s Rules, CC Docket No. 96-26 (FCC filed Nov. 18, 1996) (citing 47 C.F.R. § 61.44(b)) (App. Vol. II, Tab 33).

even account for the recent hikes in interstate rates. Hausman MTV Aff. ¶ 45. Again, this demonstrates the adequacy of existing safeguards to protect against anticompetitive conduct by Bell companies.

Cellular Services. Experience with LEC participation in cellular services provides another good example. Given that cellular carriers and interexchange carriers have similar local interconnection requirements, Bell companies have had essentially the same incentive and ability to act anticompetitively against rival cellular carriers as they would have to act anticompetitively against other interexchange carriers in in-region states. This theoretical incentive of wireline carriers to inhibit cellular growth has not created any actual problems, however. See Kahn Aff. ¶¶ 54-55. Cellular subscribership has soared from near zero in the early 1980s to 34 million in early 1996. CTIA, The Wireless FactBook 12 (Spring 1996). There now are more than two new cellular subscriptions for every new wireline telephone that is installed.<sup>85</sup> Cellular bills have fallen by nearly 50 percent.<sup>86</sup>

The Commission has confirmed “the infrequency of interconnection problems” between local exchange carriers and unaffiliated cellular providers. Eligibility for the Specialized Mobile Radio Servs., 77 Rad. Reg. 2d (P & F) 431, at ¶ 22 (FCC Mar. 7, 1995). And, the Bell companies have not displayed an ability to dominate the cellular business due to their control over

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<sup>85.</sup> Compare CTIA, The Wireless Sourcebook 12 (Spring 1996) (9,651,240 new cellular subscriptions between December 1994 and 1995) with FCC, Trends in Telephone Service at Tables 14 and 17 (March 1997) (3,963,150 new wirelines between June 1994 and 1995).

<sup>86.</sup> See FCC, Trends in Telephone Service at Table 48 (March 1997) (average monthly bills dropped from \$96.83 in December 1987 to \$47.70 in December 1996).



local exchange facilities.<sup>87</sup> As the Commission has found, “the wireless communications business is one in which relatively small, entrepreneurial competitors have often been as successful as . . . the BOCs.” Applications of Craig O. McCaw, 9 FCC Rcd at 5861-62, ¶ 38.

LECs, who would know if local wireline carriers could give their cellular affiliates an unfair competitive edge, have invested heavily in cellular systems that compete with the incumbent LEC’s systems. Kahn Aff. ¶ 55. (Southwestern Bell, for instance, competes against an affiliate of the incumbent LEC in the District of Columbia, Illinois, Indiana, and Massachusetts.) Such investments would never be made if Bell companies really believed that LECs can frustrate fair competition. Even AT&T effectively has agreed that the Bell companies have no ability to overwhelm competitors in wireless; it bought the nation’s largest cellular carrier for \$17 billion and has invested billions more for PCS licenses, investments that would not make sense if the incumbent LEC had a clear edge. See Kahn Aff. ¶¶ 55, 61; Gordon Aff. ¶ 38.<sup>88</sup>

Information Services. When the Bell companies sought permission to offer information services in 1987, the district court credited competing information services providers’ claims that Bell companies would “use their monopoly power to impede competition in the information services market.” See United States v. Western Elec. Co., 673 F. Supp. 525, 565-67 (D.D.C. 1987) (citing comments of Dun & Bradstreet and Metscan), aff’d in part, rev’d in part, 900 F.2d

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<sup>87</sup>. Kahn Aff. ¶ 54; see also Paul S. Brandon & Richard L. Schmalensee, The Benefits of Releasing the Bell Companies from the Interexchange Restrictions, 16 Managerial & Decision Econ. 349, 357-58 (1995) (no statistically significant difference between market shares of BOC and non-BOC first cellular carriers).

<sup>88</sup>. Paging markets, which also involve local interconnection of the sort used by interexchange carriers, show the same absence of any Bell company domination. Kahn Aff. ¶ 56.

283 (D.C. Cir. 1990). After years of litigation, the Court of Appeals finally put those objections to rest in 1993. Western Elec. Co., 993 F.2d at 1582.

Far from showing signs of decreasing output that might be attributable to Bell company market power, the information services market has been one of the fastest growing segments of the U.S. economy. U.S. Commerce Dep't, Industrial Outlook 1994 25-1 (App. Vol. II, Tab 34). The Bell companies have contributed to this growth and to the offering of innovative services, such as voice messaging. See Bell Operating Co. Safeguards, 6 FCC Rcd 7571, 7619-21 & n.201, ¶¶ 102-104 (1991); Kahn Aff. ¶ 57 (voice messaging). Yet Bell companies have small market shares and are hardly invincible competitors. Kahn Aff. ¶ 57.

*The Act's Local Competition Provisions Ensure Against Anticompetitive Effects in Interexchange Markets.*

Regulatory safeguards and market realities thus have effectively ensured that Bell company entry into adjacent markets promotes, rather than inhibits, competition. As described above, the 1996 Act's safeguards provide additional protection against anticompetitive conduct. But the 1996 Act goes even further. It eliminates the core rationale behind keeping the Bell companies out of interLATA services by opening the local exchange to competitive entry.

Legal barriers to local entry have been eliminated. 47 U.S.C. § 253(a). Congress also lowered economic barriers through the interconnection, unbundling, and resale requirements of sections 251 and 252 and the checklist of section 271(c), with which SWBT has complied. These sections of the Act, the Commission has explained, mandate not just removal of "the most significant economic impediments to efficient entry into the [formerly] monopolized local market," but also elimination of operational obstacles through number portability, dialing parity,

and access to rights of way. Local Interconnection Order ¶¶ 11, 16-18. As the U.S. Court of Appeals for the Eighth Circuit concluded, “[t]he Act effectively opens up local markets.”<sup>89</sup>

The interconnection and unbundling provided for in SWBT’s Statement and interconnection agreements assure that entry into SWBT’s local markets in Oklahoma is viable. As Dr. Gordon explains, competitors no longer must make huge and potentially unrecoverable network investments to provide local services. Gordon Aff. ¶ 37. They can enter the local exchange as pure resellers of SWBT services. Or, to take advantage of new technologies, specialized expertise, or other efficiencies, competitors can self-provide some network elements or services and use only the particular SWBT (or other third-party) facilities and services that they need. Id. ¶ 37. Of course, competitors also retain the option of building a stand-alone network of their own.

Marketplace developments confirm that interexchange carriers in Oklahoma will have options if they are dissatisfied with the price or quality of SWBT’s access services. Oklahoma was the first state to adopt rules for local service competition after enactment of the 1996 Act. Stafford Aff. ¶ 5. Since February 8, 1996, 23 companies have applied for certificates of public interest, convenience, and necessity to provide local exchange service and the Oklahoma Corporation Commission has granted 11 applications. Id. ¶¶ 5, 11-14. SWBT has received 45 requests for local interconnection and/or resale in Oklahoma, and already has signed 16 agreements with CLECs, 6 of which have been approved by the OCC. Id. ¶ 13-14. Five of

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<sup>89</sup>. Order Granting Stay Pending Judicial Review, Iowa Utilities Bd. v. FCC, No. 96-3321, slip op. at 9 (Oct. 15, 1996).

SWBT's signed agreements provide interconnection and access for the CLECs' facilities-based service. Id. ¶ 14-15.

Moreover, the most formidable possible competitors, the incumbent interexchange carriers, are entering the local business in Oklahoma. Sprint, for instance, received a certificate of convenience and necessity to provide local services on August 30, 1996, id. ¶ 11, and executed its comprehensive interconnection agreement with SWBT on February 10, 1997. AT&T likewise has received a certificate to provide local services from the OCC. Id. ¶ 11. AT&T's Chairman has stated that "AT&T is going into the local service market with everything we've got," and the company expects to have one-third of the local telephone market on a national basis "within several years."<sup>90</sup> SWBT currently is negotiating with AT&T to implement the terms of the AT&T arbitration decision. Zamora Aff. ¶ 28.

A variety of alternative networks already are in place in Tulsa and Oklahoma City, cities that together account for approximately 55 percent of SWBT's business and residential local exchange service revenues in Oklahoma. Wheeler Aff. ¶ 6 & Sched. 1. Brooks Fiber alone owns local networks that include 221 route miles of fiber in Tulsa, 44 miles of fiber in Oklahoma City, and two Lucent 5ESS central office switches. Brooks Fiber OCC Comments at 2; see Wheeler Aff. ¶¶ 7, 14. These networks are well-positioned to compete with SWBT, particularly in providing profitable business services. In Tulsa, for example, approximately 56 percent of SWBT's Tulsa business lines are within 1000 feet of the Brooks Fiber network. Montgomery

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<sup>90</sup>. John J. Keller, AT&T Challenges the Bell Companies; Allen Outlines Plans to Take Big Part of Local Market over Next Several Years, Wall Street Journal, June 12, 1996 (App. Vol. II, Tab 35).

Aff. ¶ 8. When the Brooks Fiber network is combined with ACSI's competitive network in Tulsa, they run within 500 feet of almost half of SWBT's Tulsa business lines and within 1000 feet of more than half of those SWBT lines. Id. ¶ 8. TCI is deploying its own \$50 million fiber network in Tulsa, reportedly designed to support traditional telephony, high-speed data service, and home security along with video programming. Wheeler Aff. ¶ 16.

In Oklahoma City, about 41 percent of SWBT's business lines are within 1000 feet of Brooks Fiber's network. In addition, Cox Communications has a network throughout the Oklahoma City metropolitan area. Cox has completed a 450-mile fiber upgrade to make the network capable of providing two-way transmissions, and it intends to provide facilities-based local telephone service.<sup>91</sup> Approximately 57 percent of SWBT's Oklahoma City business lines are within 1000 feet of either Cox's network or Brooks Fiber's. Montgomery Aff. ¶ 12.

Competitors' networks also are well positioned to serve residential customers in Oklahoma. About 27 percent of SWBT's residential lines in Tulsa are located within 1000 feet of Brooks Fiber's network. Id. ¶ 9. In Oklahoma City, Cox's network currently passes "over 95%" of residential households. Cox OCC Reply Comments at 1.

Other fiber networks are in place or under construction in Oklahoma. See Wheeler Aff. ¶¶ 11-13, 17-18. Nor is competition in the local exchange limited to wireline service. Wireless providers are expanding their facilities and offerings. In addition to existing cellular services' expanding subscribership, there are two personal communication services ("PCS") networks under construction in Oklahoma City, including one being installed by Sprint Spectrum. Wheeler

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<sup>91</sup>. Wheeler Aff. ¶ 9; Reply Comments of Cox Communications Oklahoma City, Inc. at 1 (OCC filed Mar. 25, 1997) ("Cox OCC Reply Comments") (App. Vol. IV, Tab. 29).

Aff. ¶ 13. Sprint Spectrum also is constructing PCS facilities in Tulsa. Id. Aff. ¶ 18. For its part, AT&T recently announced a new wireless system that would link customers directly to its network. This system reportedly will be used to “give AT&T lightening-fast entry into the local phone business” in those markets it chooses to target.<sup>92</sup> Such systems provide additional competitive opportunities — as Congress recognized by including non-cellular wireless providers among the range of CLECs whose entry may speed Bell company interLATA entry under subsection 271(c)(1)(A).

With the spread of local competition in Oklahoma, discrimination and cost-shifting designed to favor affiliated interexchange operations will become economically irrational. Customers who are dissatisfied with the quality or price of their local service connection will simply switch to another carrier, leaving SWBT with lower local revenues and without any conceivable way to favor its interexchange operations. See Gordon Aff. ¶¶ 35-40.

### CONCLUSION

Southwestern Bell has satisfied all statutory prerequisites to provide interexchange services in Oklahoma. Such service would be consistent with the public interest, convenience, and necessity. The application should be granted.

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<sup>92</sup> John J. Keller, AT&T Unveils New Wireless System Linking Home Phones to Its Network, The Wall Street Journal, Feb. 26, 1997, at B4.

Southwestern Bell, April 11, 1997, Oklahoma

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